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Monday
November 30, 1998

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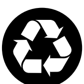

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

RIN 3206–AI53

Authorization of Solicitations During the Combined Federal Campaign

AGENCY: Office of Personnel Management.

ACTION: Interim Rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing an interim rule giving the Director the discretion to authorize solicitations upon written request during the Combined Federal Campaign (CFC). In extraordinary circumstances, solicitations in support of victims in cases of emergencies or disasters may be approved. The intended effect of this rule is to enable the Federal workforce to respond to emergencies or disasters of catastrophic proportions which may occur during the CFC.

DATES: Interim rule effective: November 30, 1998; comments must be received on or before December 30, 1998.

ADDRESSES: Send written comments to Lorraine Lewis, General Counsel, Office of General Counsel; Office of Personnel Management; Room 7353, 1900 E Street, NW., Washington, DC 20415–1300.

FOR FURTHER INFORMATION CONTACT: Becky Kumar, Office of General Counsel, Office of Personnel Management, (202) 606–2885.

SUPPLEMENTARY INFORMATION: The recent devastation in Central America caused by Hurricane Mitch in late October and early November resulted in over 10,000 deaths and destroyed the homes and communities of many thousands more. This tragedy provided the impetus for OPM to review its regulations governing the solicitation of the Federal workforce and to conclude that there is a need for further flexibility in its regulations in order to respond to emergencies and disasters of catastrophic proportions.

The CFC regulations prohibit solicitations of the Federal workforce apart from those conducted as part of the Combined Federal Campaign. The CFC was designed to be the one concentrated period during which Federal employees may be solicited to contribute to all eligible organizations. The rationale for limiting the CFC to a single period during the year is to provide Federal employees with a means of contributing to a wide variety of worthy voluntary organizations, but to accomplish this with minimal disruption to the work of the Government.

The regulations contain an exception for solicitations requested in writing on behalf of victims of emergencies and disasters, with the limitation that no such solicitations may occur between September 1 to December 15, the period of the CFC. In our review of this matter, we have determined on rare occasions, it may be necessary to authorize a solicitation during this time period. Natural disasters are not subject to time constraints, and extraordinary occurrences may necessitate extraordinary relief measures. OPM believes that this time period is of continuing concern in the future, since, according to the National Oceanic and Atmospheric Administration, the Atlantic hurricane season runs from June 1 through November 30 each year and the Pacific hurricane season runs from May 15 through November 30. Both of these periods overlap with the CFC.

In light of all of the above, OPM is adding a provision to the current regulations governing the CFC to allow the Director to authorize solicitations during the CFC for victims of disasters or emergencies, upon written request and a showing of extraordinary circumstances. OPM expects that both the requests and approvals for such solicitations will be rare.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would only apply to Federal agencies and employees.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to make this rule effective in less than 30 days. This regulation is needed to provide the Director with the discretion to authorize solicitations during the Combined Federal Campaign, in extraordinary circumstances in cases of emergencies or disasters.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 950

Administrative practice and procedure, Charitable contributions, Government employees, Military personnel, Nonprofit organizations.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

PART 950— SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATIONS

Subpart A— General Provisions

1. The authority citation for part 950 continues to read as follows:

Authority: E.O. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982). 3 CFR, 1982 Comp., p. 139. E.O. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1983), Pub. L. 100–202, and Pub. L. 102–393 (5 U.SC. 1101 Note).

2. In § 950.102, paragraph (a) is amended by revising the last sentence to read as follows:

§ 950.102 Scope of the Combined Federal Campaign.

(a) * * * No such permissions will be granted for such solicitations during the period September 1 through December 15, except at the discretion of the Director upon a showing of extraordinary circumstances.

* * * * *

[FR Doc. 98–31693 Filed 11–27–98; 8:45 am]
BILLING CODE 6325–01–P

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2423

Unfair Labor Practice Proceedings

AGENCY: Office of the General Counsel, Federal Labor Relations Authority.

ACTION: Final rule.

SUMMARY: The General Counsel of the Federal Labor Relations Authority (FLRA) revises the regulations regarding the prevention, resolution, and investigation of unfair labor practice (ULP) disputes (part 2423, subpart A). The purpose of the revisions is to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. Implementation of the changes will enhance the purposes and policies of the Federal Service Labor-Management Relations Statute (Statute) by preventing ULP disputes, resolving disputes that arise, and fully investigating and taking determinative action in disputes that are not resolved. The revisions implement the FLRA's agency-wide collaboration and alternative dispute resolution initiative to assist labor and management parties in developing collaborative relationships, and to provide dispute resolution services in ULP, representation, negotiability, impasses, and arbitration cases pending before the Office of the General Counsel, the three Authority Members, and the Federal Service Impasses Panel. The regulations are applicable to any charge pending or filed after January 1, 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: David L. Feder, Deputy General Counsel, at the address listed above or by telephone at (202) 482–6680, ext. 203.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1998, the Office of the General Counsel (OGC) of the FLRA published proposed modifications to the existing rules and regulations in subpart A of part 2423 of title 5 of the Code of Federal Regulations regarding the prevention of ULPs, as well as to the meaning of terms as used in this subchapter located at part 2421, and to related miscellaneous and general requirements located at part 2429 (63 FR 45013) (August 24, 1998). These revisions are part of the FLRA's initiative to facilitate dispute resolution and to simplify, clarify, and improve the processing of ULP charges. For the sake of clarity, with respect to the substance of the revisions proposed for parts 2421 and 2429, those revisions have been incorporated, where appropriate, in subpart A of part 2423. Further, the general provision regarding dates of applicability of part 2423, which was § 2423.1, is now found prior to subpart A as § 2423.0. The respective revisions are discussed below in the section-by-section analysis.

Concurrent with issuing the proposed rule, the General Counsel invited comment on the proposed rule in one of two ways: By convening a series of meetings held in each of the seven Regional Office cities as well as the OGC Headquarters in Washington DC, and by offering the public an opportunity to submit written comments. All comments, whether expressed orally at one of the meetings, or submitted in writing, have been considered prior to publishing the final rule, although all comments are not specifically addressed below.

Sectional Analyses

Sectional analyses of the revisions to Part 2423—Unfair Labor Practice Proceedings are as follows:

Part 2423—Unfair Labor Practice Proceedings

Section 2423.0

This newly-created section incorporates and amends § 2423.1 of the current regulations. Specifically, this section is amended to clarify that Subpart A of the regulations is applicable to any charge pending or filed after January 1, 1999. The provision regarding applicability of this part to any complaint filed on or after October 1, 1997 remains unchanged.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

Section 2423.1

Numerous commenters responded favorably to the regulatory revision. One commenter stated that the revisions merely codify and emphasize the dispute resolution efforts that Regional Office agents routinely initiate.

Two commenters suggested retaining the 15-day delay before a Regional Office begins processing a charge because the parties may wish to resolve any ULP dispute without outside intervention or might prefer to use another third party neutral to provide such services. The final regulation deletes the 15-day delay requirement because the parties are always free to communicate with each other to arrange for any assistance, either through the efforts of Regional Office staff, or through other outside assistance, prior or subsequent to filing a charge. Regional Office representatives routinely assist parties in resolving their dispute as part of the investigation. Thus, there is no need to require a 15-day delay before beginning to process a ULP charge. However, to further accommodate the interest raised by these commenters, if an outside facilitator is assisting the parties in resolving the subject matter of a pending ULP charge, the parties may jointly request that the Regional Director defer the initiation of an investigation for a reasonable period of time.

One commenter suggested adding a provision which clarifies that the statutory time limits for filing a ULP charge are not tolled during the time that the parties are attempting to resolve the dispute. This suggestion has been incorporated in the final regulation because it is necessary that parties consider the statutory time limit, which is set forth at 5 U.S.C. 7118(a)(4), in determining whether to engage in dispute resolution before a ULP charge is filed. The provision is inserted as the last sentence of paragraph (a).

Another commenter suggested that there be a presumption in favor of providing the services upon request. The OGC's public Intervention Policy currently provides criteria and principles for Regional Offices to follow in determining whether to offer these services. This Policy will be incorporated into an Unfair Labor Practice Casehandling Manual (ULP Manual) that will be issued and made public in the spring of 1999.

A minor editorial modification has been made to paragraph (b) for clarity purposes.

Section 2423.2

There was almost unanimous agreement among the commenters that the provision of Alternative Dispute Resolution (ADR) Services promotes the purposes and policies underlying the Statute. In this regard, experience has shown that by providing these services to parties: Their labor-management relationships are improved and enhanced; ULP disputes are avoided; and, the parties are better able to resolve ULP disputes among themselves. A desired by-product of the provision of ADR services has been a reduction in the filing of ULP charges. Paragraph (a) has been modified to reflect that these ADR services, delivered by the OGC, are part of the FLRA-wide Collaboration and Alternative Dispute Resolution Program.

Several commenters suggested inserting a requirement to notify the national or parent organization when an ADR service is to be provided at a local

facility, particularly where a nationwide bargaining unit is involved. Parties engaged in ADR services delivered by the OGC are free to notify their national or parent organization. However, to accommodate the interest raised by these commenters, before undertaking to provide an ADR service, Regional Office staff may inquire whether notification of the parties' national or parent organization is desired.

Another commenter recommended that the ADR process be made mandatory upon the request of one of the parties. Experience has shown that the success and/or effectiveness of the provision of ADR services depends upon the parties voluntarily requesting or agreeing to partake in the process. Paragraph (b) is clarified to state that the parties may jointly request, or agree to, the provision of an ADR service.

Section 2423.3

No comments were received concerning the proposed rule. New paragraphs (b) and (c) have been added to incorporate the definitions for ''Charging Party'' and ''Charged Party'' that were initially proposed as definitions in proposed new §§ 2421.23 and 2421.24 of part 2421.

Section 2423.4

The majority of the comments concerning the proposed rule recommended retaining the requirement that the charge state the section(s) and paragraph(s) of the Statute alleged to have been violated. These commenters stated that preserving this requirement will help charged parties to better understand the basis of the charge. Based upon comments received and discussion at the meetings, the OGC has reconsidered the proposed rule and has decided to retain the requirement which is set forth in the final rule at paragraph (a)(5).

Several comments suggested that the charge form be amended to provide space for the charging party to indicate whether it has attempted to meet with the charged party to resolve the ULP dispute before the charge was filed and to ask whether the charging party is willing to attempt to resolve the charge with or without the assistance of the Regional Office. These matters are routinely considered by the Regional Office in their initial conversations with the parties in considering whether the provision of ADR services would be beneficial in any given case. Since Regional Office staff routinely make these inquiries, and the parties may communicate with each other prior to filing a charge, there is no need to amend the charge form.

Many commenters expressed concern regarding the requirement that supporting evidence and documents be submitted with the charge. These commenters stated, for various reasons, that it is sometimes difficult to gather all of the supporting evidence at the time a charge is filed. This requirement, which is set forth at paragraph (e) is, in relevant part, the same as the regulatory requirement that has always existed. The new regulation merely explains the requirement by listing the types of supporting evidence and documents that are routinely provided by charging parties. It is necessary to submit supporting evidence with the charge so that the agent to whom an investigation is assigned is able to fully understand the basis of the charge and to prepare to talk with the parties, which is the first step in the investigation process. This regulation does not preclude parties from submitting additional evidence and information during the course of the investigation, as it becomes available. A minor edit also has been made to this paragraph for clarity purposes.

The final regulation contains a new paragraph (c) concerning Statement of Service requirements which had been proposed as the second sentence of paragraph (b). Other minor editorial clarifications have been made to the final regulation.

Section 2423.5

One comment received suggested that once the Authority revises part 2424 of the regulations concerning negotiability proceedings, the General Counsel should make a corresponding revision concerning the availability of the ULP process to resolve certain duty to bargain issues. As the matter concerning related ULP and negotiability proceedings is being addressed by the Authority in its final regulations in part 2424, there is no reason to address the matter in subpart A of part 2423. The Regions will continue to follow § 2424.5 until the effective date of a new rule promulgated by the Authority. Moreover, the deletion of any provision addressing negotiability matters from subpart A of part 2423 has no impact on the availability of the ULP process to a charging party to resolve allegations that a charged party failed to fulfill a statutory bargaining obligation and committed a ULP.

Section 2423.6

Almost all of the comments on this section were favorable and pertained to the use of facsimile transmission to file a charge. Several commenters expressed concern regarding verification of receipt of a charge filed by facsimile transmission. This concern has been addressed by clarifying in paragraph (c) that a ''charging party assumes responsibility for receipt of a charge.''

Two commenters questioned the proposed imposition of a 5-page limitation on those charges filed by facsimile transmission. One commenter inquired about the basis for the proposed limitation and another was concerned about practical problems that arise upon the imposition of a page limitation. The final regulation has been changed to contain a 2-page limitation for those charges filed by facsimile. After reviewing the proposed regulation, the OGC has concluded that in order to expedite the inception of the investigatory process, charging parties must present their factual allegations supporting the charge in a succinct and organized manner. This may be accomplished in 2 pages. The final regulation also clarifies that a charging party may not file a charge by electronic mail and that supporting evidence and documents shall be filed in person, by commercial delivery, first-class mail, or certified mail. Recognizing that at times, supporting evidence and other documents may be voluminous, the regulation provides that all such documents may not be filed by facsimile transmission. Other minor editorial revisions have been made to this section to clarify that parties are aware that a charge may now be filed by facsimile transmission.

Section 2423.7

One commenter and others who favor the use of facilitation as an effective means to resolve disputes in some circumstances nevertheless expressed concern that there are other circumstances that may require enforcement of the Statute through issuance of a formal complaint. The OGC agrees that not every dispute is an appropriate candidate for the alternative case processing procedure. Regional staff will apply criteria and principles in determining whether to offer an alternative case processing procedure, upon joint request, to the parties. These criteria and principles currently are contained in the OGC's public Intervention Policy and will be incorporated into the public ULP Manual. The intent underlying the revision of the regulations is not to accord lesser priority to the General Counsel's essential prosecutorial role in seeking enforcement of the Statute through traditional means, but rather to recognize the use of an alternative case processing procedure and other ADR techniques as tools to assist parties in resolving their dispute.

Another commenter in favor of the alternative case processing procedure suggested that the process be mandatory upon the request of one of the parties. For the reasons discussed above concerning ADR services under § 2423.2, the OGC has determined that a strictly voluntary process works best. For those reasons, paragraph (a) has been amended to clearly state that the parties must ''voluntarily'' agree to use the alternative case processing procedure.

In addition, paragraph (b) has been clarified by substituting ''shall'' for ''may'' in the last sentence. This revision is necessary to contrast the difference between the alternative case processing procedure and a traditional investigation. In the former, the regional agent facilitates a problem-solving process which does not, in any way, involve taking evidence or the parties' positions on the merits. Several commenters suggested that attempts to resolve the dispute should also occur during the investigation. This concern is specifically addressed in § 2423.1(b) concerning resolving ULP disputes after filing a charge, where it is stated that a ''representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.'' Only one other minor editorial modification has been made to this paragraph.

The comments received regarding paragraph (c) concerned the last sentence. Several individuals recommended replacing ''may'' with ''shall'' to indicate a mandatory requirement that another representative of the Regional Office will conduct an investigation in the event an alternative case processing procedure is unsuccessful. Another commenter suggested that the person who presides over the alternative case processing procedure is better situated to investigate the case, if necessary. Yet another commenter suggested that the word ''shall'' be used with the caveat that the parties be allowed to waive the requirement that the same agent who facilitated the alternative case processing procedure shall not be the same person who investigates the merits of the charge. The last recommendation has been modified and adopted because it addresses the interests of the parties, as well as those of the Regional Director.

An additional concern was raised about the potential for disclosure of information discussed during the alternative case processing procedure should the dispute not be resolved and a ULP investigation be necessary. No evidence pertaining to the alleged ULP violation will be obtained during the alternative case processing procedure. Moreover, the agent involved in working with the parties in the alternative case processing procedure will not be involved in any manner in the investigation and decision-making process of the ULP charge, unless the parties and the Regional Director agree otherwise. These safeguards ensure that the alternative case processing procedure will have no impact on the investigation, if deemed necessary.

Section 2423.8

This section of the proposed regulations generated the most comments. Many commenters who favor the proposed regulation stated that it is useful to explain what specific actions are expected of a party during an investigation.

Many other commenters expressed concern that the proposed regulation would upset the careful balance that currently exists between Regional Directors and charged parties. That is, under the regulation, commenters stated that Regional Directors will have access to all of the evidence whereas charged parties do not have access to the statements relied upon by the Regional Director unless and until after that person testifies at trial.

Other concerns raised by commenters suggest that, among other things: (1) There is no statutory authority to order Federal supervisors and managers to give sworn testimony; (2) based on a vague charge, the Regional Director will insist that a charged party provide sworn statements; (3) the General Counsel should delete the reference to cooperation in the final regulations; (4) the Regional Director should be required to disclose exculpatory evidence to the charged party representative obtained during the course of an investigation; (5) the regulation provides the Regional Director with investigatory powers that exceed the current level of discovery afforded litigants before Administrative Law Judges under § 2423.23; (6) a detailed explanation for expanding the General Counsel's investigatory authority should be given because the current procedures have worked well for 20 years; and (7) that in exchange for charged party cooperation, the Regional Offices should disclose their case file prior to a decision on the merits. It further is suggested that unlike the private sector, where there is good reason to withhold the General Counsel's evidence due to the prospect of retaliation that may befall a charging party or neutral witness, retaliation should not be an issue in the Federal sector because a Federal employee has avenues of redress before several different agencies. The following discussion addresses these concerns.

The role of a Regional Office investigator, in part, is to obtain the best possible relevant evidence for a Regional Director to be able to reach a proper disposition in each case. This is an OGC quality standard applicable to all investigations which is part of the OGC's current, public Quality of Investigations Policy, and which will be incorporated into the public ULP Manual. To this end, a regional agent must identify the questions to ask witnesses, and ask the parties to provide relevant documents from all potential sources. So that a complete record is developed, it is necessary that both the charging party and the charged party voluntarily cooperate during the investigation. None of the commenters have cited any legal authority which purportedly allows any Federal agency that has been charged with violating a Federal law, to refuse to cooperate with another Federal agency that has been charged by the Congress to initiate an investigation to determine if the alleged violation of law has occurred, and if so, to prosecute, absent settlement, the agency charged with violating the law.

Current OGC practice protects a charged party's right to represent its agents. If a Regional Director deems it necessary to take the sworn/affirmed statement of a charged party witness, whether an agency or a union witness, the current OGC practice provides that all regional agents first contact the charged party representative to arrange to take the charged party witness' statement. No regional agent is authorized to directly initiate contact with any current agency manager/ supervisor or union official who is an agent of a charged party agency or union unless authorized to do so by a charged party agency or union representative. Second, anytime it is necessary to take the statement of a charged party witness, the charged party has the right to have a representative present when the statement is given. These safeguards protect the interest of a charged party to represent its agents.

If a charging party fails to cooperate in an investigation, after being afforded ample opportunity to do so, the charge will be dismissed for lack of cooperation, absent withdrawal. If a neutral entity or a charged party fails to cooperate in an investigation, after being afforded ample opportunity to do so, the final regulation provides that an investigatory subpoena may be issued and enforced.

A new paragraph (c) has been added to the final regulation to incorporate a

provision concerning investigatory subpoenas. This section is modeled after, and consistent with, the subpoena provision set forth at § 2423.28 in subpart B of part 2423, which concerns post complaint and prehearing procedures. The authority for both of these sections is derived from section 7132 of the Statute. Under section 7132, the General Counsel, the Authority Members, and the Federal Service Impasses Panel have the same authority to issue and enforce subpoenas.

Because charged parties are usually cooperative to the extent deemed necessary by the Region during an investigation, it is anticipated that only in rare situations will it be necessary for an investigatory subpoena to be issued. During the meetings, many commenters suggested that since these subpoenas will be used only on rare occasions, they should only be issued upon the approval of the General Counsel. To accommodate this interest, the final regulation provides that an investigatory subpoena will be issued only by the General Counsel, upon the recommendation of a Regional Director. Moreover, prior to the issuance of an investigatory subpoena, a charged party will be afforded ample opportunity to cooperate in the investigation before a Regional Director recommends to the General Counsel to issue an investigatory subpoena ''for the attendance and testimony of witnesses and the production of documentary or other evidence.'' Further, the Regional Directors will consider, among other things, the following factors before recommending the issuance of an investigatory subpoena: (1) Whether the evidence submitted by charging party and any neutral witnesses establishes a potential violation (if the Region has sufficient evidence for the Regional Director to decide the merits of the charge, it would not be necessary to require the charged party to produce additional evidence); (2) whether the evidence sought is relevant and material and is neither privileged, unduly repetitious nor unreasonably cumulative; (3) whether the evidence is necessary to decide a factual issue which must be resolved to determine whether or not a violation of the Statute has occurred, and that evidence is not otherwise available; (4) whether the evidence sought is not within the control of the charging party; (5) whether the evidence can be produced without an undue burden and is specific, narrowly tailored, and reasonable; and (6) the likelihood of compliance, and failing that, the prospect for successful enforcement of the subpoena. Once the General Counsel has determined to issue a subpoena, the investigative agent will once again contact the charged party representative and give the charged party one final opportunity to voluntarily cooperate with the investigation. The charged party will be informed that absent voluntary compliance, a subpoena will issue, and absent compliance with the subpoena, enforcement will be sought in an appropriate United States district court.

Thus, it is expected that the use of an investigatory subpoena will occur only in rare cases. Parties should understand that its use will be infrequent and that it is not intended either as a substitute for, or to lessen, the charging party's burden of submitting evidence to support the underlying allegations of a charge.

Consistent with § 2423.28, under paragraph (c)(2), a provision for the revocation of an investigatory subpoena has been included, although not statutorily required under section 7132. Paragraph (c)(3) contains the applicable standards for ruling on a petition to revoke a subpoena. These standards are, with minor editorial modifications, the same as those set forth at paragraph (e)(1) of § 2423.28. In addition, the regulation provides that any petition to revoke, and any ruling on the petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

Subsection (c)(4) addresses the situation where a charged party fails to comply with a subpoena issued by the General Counsel. In this situation, the General Counsel makes the determination whether to institute proceedings in the appropriate district court for the enforcement of the subpoena.

The General Counsel's confidentiality policy reflected in paragraph (d) (previously paragraph (c) in the proposed rule), which is the same as stated in the proposed rule, has existed for many years and remains sound. Maintaining the confidentiality of individuals who submit statements and information during the course of an investigation and to protect against the disclosure of documents obtained during an investigation is essential. However, it bears noting that under the section of the Authority's revised post-complaint regulations published on July 31, 1997 (62 FR 40911), which specifically concerns new prehearing disclosure requirements (§ 2423.23), the OGC attorney is required to disclose to charged parties, among other things, the witnesses and documents on which the OGC attorney will rely to prove the General Counsel's case, should a complaint issue and, absent settlement, the case goes to hearing.

Section 2423.9

No comments were received concerning this section.

Section 2423.10

No comments were received concerning this section. Minor editorial modifications have been made to paragraphs (a), (b) and (c). One additional edit to proposed paragraph (c) has been made in the next-to-last sentence. In this regard, to be consistent with the remainder of the paragraph, the word ''will'' has been changed to ''may.''

Section 2423.11

Commenters submitted favorable responses to the proposed revisions in this section. Two commenters suggested that the charging party be required to serve a copy of an appeal of a Regional Director determination not to issue complaint on the charged party. This interest has been addressed by modifying paragraph (c) which requires the OGC to serve notice on the charged party that an appeal has been filed.

Another commenter suggested adding the standards Regional Directors use to exercise prosecutorial discretion to this section. These standards are set forth in the OGC's public Prosecutorial Discretion Policy, which will be incorporated in the public ULP Manual.

Other minor editorial modifications have been made to this section. For example, paragraphs (a) and (b) have been clarified to state that the Regional Director acts on behalf of the General Counsel when determining not to issue a complaint. Thus, a dismissal letter issued by a Regional Director, on behalf of the General Counsel, constitutes the ''written statement of reasons for not issuing a complaint'' as required by section 7118(a) of the Statute. Further, an appeal of a Regional Director's dismissal decision will only be granted on one of the specific grounds in paragraph (e). The review, therefore, is similar to the Authority's review of Regional Directors' decisions and orders in representation cases, and is not a *de novo* review. Upon an appeal, the appeal letter states the grounds listed in paragraph (e) for granting or denying the appeal.

One other suggestion concerned clarification of paragraph (g) to state that the General Counsel's decision on reconsideration is final. This suggestion has been adopted. In addition, this paragraph has been changed to state that a motion for reconsideration shall be

filed within 10 days of the date on which the General Counsel's decision is postmarked. The provisions for filing an appeal and for filing a motion for reconsideration are governed by 5 CFR 2429.22.

Section 2423.12

The only change made to this section appears in paragraph (b) which now clarifies that the Regional Director acts on behalf of the General Counsel in approving a unilateral settlement agreement.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the General Counsel of the FLRA has determined that this final rule will not have a significant impact on a substantial number of small entities, because this rule applies to federal employees, federal agencies, and labor organizations representing federal employees.

Unfunded Mandates Reform Act of 1995

This final rule change will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This final rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

The final rule contains no additional information collection or record keeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, et seq.

List of Subjects in 5 CFR Part 2423

Administrative practice and procedure, Government employees, Labor management relations.

For the reasons discussed in the preamble, the General Counsel of the Federal Labor Relations Authority revises 5 CFR part 2423 as follows:

PART 2423—UNFAIR LABOR PRACTICE PROCEEDINGS

1. The authority citation for part 2423 continues to read as follows:

Authority: 5 U.S.C. 7134.

2. Section 2423.0 and subpart A of Part 2423 are revised to read as follows:

Sec.
2423.0 Applicability of this part.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.
2423.2 Alternative Dispute Resolution (ADR) services.
2423.3 Who may file charges.
2423.4 Contents of the charge; supporting evidence and documents.
2423.5 [Reserved]
2423.6 Filing and service of copies.
2423.7 Alternative Case Processing Procedure.
2423.8 Investigation of charges.
2423.9 Amendment of charges.
2423.10 Action by the Regional Director.
2423.11 Determination not to issue complaint; review of action by the Regional Director.
2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.
2423.13–2423.19 [Reserved]

§ 2423.0 Applicability of this part

This part is applicable to any charge of alleged unfair labor practices pending or filed with the Authority on or after January 1, 1999, and any complaint filed on or after October 1, 1997.

Subpart A—Filing, Investigating, Resolving, and Acting on Charges

§ 2423.1 Resolution of unfair labor practice disputes prior to a Regional Director determination whether to issue a complaint.

(a) *Resolving unfair labor practice disputes prior to filing a charge.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the collaborative efforts of all persons covered by that law. The General Counsel encourages all persons to meet and, in good faith, attempt to resolve unfair labor practice disputes prior to filing unfair labor practice charges. If requested, or agreed to, by both parties, a representative of the Regional Office, in appropriate circumstances, may participate in these meetings to assist the parties in identifying the issues and their interests and in resolving the dispute. Attempts to resolve unfair labor practice disputes prior to filing an unfair labor practice charge do not toll the time limitations for filing a charge set forth at 5 U.S.C. 7118(a)(4).

(b) *Resolving unfair labor practice disputes after filing a charge.* The General Counsel encourages the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to a determination on the merits of the charge by a Regional Director. A representative of the appropriate Regional Office, as part of the investigation, may assist the parties in informally resolving their dispute.

§ 2423.2 Alternative Dispute Resolution (ADR) services.

(a) *Purpose of ADR services.* The Office of the General Counsel furthers its mission and implements the agency-wide Federal Labor Relations Authority Collaboration and Alternative Dispute Resolution Program by promoting stable and productive labor-management relationships governed by the Federal Service Labor-Management Relations Statute and by providing services which assist labor organizations and agencies, on a voluntary basis: To develop collaborative labor-management relationships; to avoid unfair labor practice disputes; and to resolve any unfair labor practice disputes informally.

(b) *Types of ADR Services.* Agencies and labor organizations may jointly request, or agree to, the provision of the following services by the Office of the General Counsel:

(1) *Facilitation.* Assisting the parties in improving their labor-management relationship as governed by the Federal Service Labor-Management Relations Statute;

(2) *Intervention.* Intervening when parties are experiencing or expect significant unfair labor practice disputes;

(3) *Training.* Training labor organization officials and agency representatives on their rights and responsibilities under the Federal Service Labor-Management Relations Statute and how to avoid litigation over those rights and responsibilities, and on utilizing problem solving and ADR skills, techniques, and strategies to resolve informally unfair labor practice disputes; and

(4) *Education.* Working with the parties to recognize the benefits of, and establish processes for, avoiding unfair labor practice disputes, and resolving any unfair labor practice disputes that

arise by consensual, rather than adversarial, methods.

(c) *ADR services after initiation of an investigation.* As part of processing an unfair labor practice charge, the Office of the General Counsel may suggest to the parties, as appropriate, that they may benefit from these ADR services.

§ 2423.3 Who may file charges.

(a) *Filing charges.* Any person may charge an activity, agency or labor organization with having engaged in, or engaging in, any unfair labor practice prohibited under 5 U.S.C. 7116.

(b) *Charging Party.* Charging Party means the individual, labor organization, activity or agency filing an unfair labor practice charge with a Regional Director.

(c) *Charged Party.* Charged Party means the activity, agency or labor organization charged with allegedly having engaged in, or engaging in, an unfair labor practice.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) *What to file.* The Charging Party may file a charge alleging a violation of 5 U.S.C. 7116 by completing a form prescribed by the General Counsel, or on a substantially similar form, that contains the following information:

(1) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party;

(2) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party;

(3) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charging Party's point of contact;

(4) The name, address, telephone number, and facsimile number (where facsimile equipment is available) of the Charged Party's point of contact;

(5) A clear and concise statement of the facts alleged to constitute an unfair labor practice, a statement of the section(s) and paragraph(s) of the Federal Service Labor-Management Relations Statute alleged to have been violated, and the date and place of occurrence of the particular acts; and

(6) A statement whether the subject matter raised in the charge:

(i) Has been raised previously in a grievance procedure;

(ii) Has been referred to the Federal Service Impasses Panel, the Federal Mediation and Conciliation Service, the Equal Employment Opportunity Commission, the Merit Systems Protection Board, or the Office of the Special Counsel for consideration or action;

(iii) Involves a negotiability issue raised by the Charging Party in a petition pending before the Authority pursuant to part 2424 of this subchapter; or

(iv) Has been the subject of any other administrative or judicial proceeding.

(7) A statement describing the result or status of any proceeding identified in paragraph (a)(6) of this section.

(b) *Declaration of truth and statement of service.* A charge shall be in writing and signed, and shall contain a declaration by the individual signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that individual's knowledge and belief.

(c) *Statement of service.* A charge shall also contain a statement that the Charging Party served the charge on the Charged Party, and shall list the name, title and location of the individual served, and the method of service.

(d) *Self-contained document.* A charge shall be a self-contained document describing the alleged unfair labor practice without a need to refer to supporting evidence documents submitted under paragraph (e) of this section.

(e) *Submitting supporting evidence and documents and identifying potential witnesses.* When filing a charge, the Charging Party shall submit to the Regional Director any supporting evidence and documents, including, but not limited to, correspondence and memoranda, records, reports, applicable collective bargaining agreement clauses, memoranda of understanding, minutes of meetings, applicable regulations, statements of position and other documentary evidence. The Charging Party also shall identify potential witnesses and shall provide a brief synopsis of their expected testimony.

§ 2423.5 [Reserved]

§ 2423.6 Filing and service of copies.

(a) *Where to file.* A Charging Party shall file the charge with the Regional Director for the region in which the alleged unfair labor practice has occurred or is occurring. A charge alleging that an unfair labor practice has occurred or is occurring in two or more regions may be filed with the Regional Director in any of those regions.

(b) *Filing date.* A charge is deemed filed when it is received by a Regional Director.

(c) *Method of filing.* A Charging Party may file a charge with the Regional Director in person or by commercial delivery, first-class mail, or certified mail. Notwithstanding § 2429.24(e) of this subchapter, a Charging Party also may file a charge by facsimile transmission if the charge does not exceed 2 pages. If filing by facsimile transmission, the Charging Party is not required to file an original copy of the charge with the Region. A Charging Party assumes responsibility for receipt of a charge. Supporting evidence and documents shall be submitted to the Regional Director in person, by commercial delivery, first-class mail, or certified mail, not by facsimile transmission. Charges shall not be filed by electronic mail.

(d) *Service of the charge.* The Charging Party shall serve a copy of the charge (without supporting evidence and documents) on the Charged Party. Where facsimile equipment is available, the charge may be served by facsimile transmission in accordance with paragraph (c) of this section. The Region routinely serves a copy of the charge on the Charged Party, but the Charging Party remains responsible for serving the charge in accordance with this paragraph.

§ 2423.7 Alternative case processing procedure.

(a) *Alternative case processing procedure.* The Region may utilize an alternative case processing procedure to assist the parties in resolving their unfair labor practice dispute, if the parties voluntarily agree, by facilitating a problem-solving approach, rather than initially investigating the particular facts and determining the merits of the charge.

(b) *No evidence is taken.* The purpose of the alternative case processing procedure is to resolve the underlying unfair labor practice dispute without determining the merits of the charge. The role of the agent is to assist the parties in that endeavor by facilitating a solution rather than conducting an investigation. No testimonial or documentary evidence or positions on the merits of the charge shall be gathered during the alternative case processing procedure or entered into the case file.

(c) *Investigation is not waived.* If the parties are unable to resolve the dispute, the Region conducts an investigation on the merits of the charge. The agent who is involved in the alternative case processing procedure shall not be involved in any subsequent investigation on the merits of the charge, unless the parties and the Regional Director agree otherwise.

§ 2423.8 Investigation of charges.

(a) *Investigation.* The Regional Director, on behalf of the General

Counsel, conducts such investigation of the charge as the Regional Director deems necessary. During the course of the investigation, all parties involved are afforded an opportunity to present their evidence and views to the Regional Director.

(b) *Cooperation.* The purposes and policies of the Federal Service Labor-Management Relations Statute can best be achieved by the full cooperation of all parties involved and the timely submission of all potentially relevant information from all potential sources during the course of the investigation. All persons shall cooperate fully with the Regional Director in the investigation of charges. Cooperation includes any of the following actions, when deemed appropriate by the Regional Director:

(1) Making union officials, employees, and agency supervisors and managers available to give sworn/affirmed testimony regarding matters under investigation;

(2) Producing documentary evidence pertinent to the matters under investigation; and

(3) Providing statements of position on the matters under investigation.

(c) *Investigatory subpoenas.* If a person fails to cooperate with the Regional Director in the investigation of a charge, the General Counsel, upon recommendation of a Regional Director, may decide in appropriate circumstances to issue a subpoena under 5 U.S.C. 7132 for the attendance and testimony of witnesses and the production of documentary or other evidence. However, no subpoena shall be issued under this section which requires the disclosure of intramanagement guidance, advice, counsel or training within an agency or between an agency and the Office of Personnel Management.

(1) A subpoena shall be served by any individual who is at least 18 years old and who is not a party to the proceeding. The individual who served the subpoena must certify that he or she did so:

(i) By delivering it to the witness in person;

(ii) By registered or certified mail; or

(iii) By delivering the subpoena to a responsible individual (named in the document certifying the delivery) at the residence or place of business (as appropriate) of the person for whom the subpoena was intended. The subpoena shall show on its face the name and address of the Regional Director and the General Counsel.

(2) Any person served with a subpoena who does not intend to comply shall, within 5 days after the date of service of the subpoena upon such person, petition in writing to revoke the subpoena. A copy of any petition to revoke a subpoena shall be served on the General Counsel.

(3) The General Counsel shall revoke the subpoena if the witness or evidence, the production of which is required, is not material and relevant to the matters under investigation or in question in the proceedings, or the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason sufficient in law the subpoena is invalid. The General Counsel shall state the procedural or other grounds for the ruling on the petition to revoke. The petition to revoke, and any ruling on the petition to revoke, shall become part of the official record if there is a hearing under subpart C of this part.

(4) Upon the failure of any person to comply with a subpoena issued by the General Counsel, the General Counsel shall determine whether to institute proceedings in the appropriate district court for the enforcement of the subpoena. Enforcement shall not be sought if to do so would be inconsistent with law, including the Federal Service Labor-Management Relations Statute.

(d) *Confidentiality.* It is the General Counsel's policy to protect the identity of individuals who submit statements and information during the investigation, and to protect against the disclosure of documents obtained during the investigation, as a means of ensuring the General Counsel's continuing ability to obtain all relevant information. After issuance of a complaint and in preparation for a hearing, however, identification of witnesses, a synopsis of their expected testimony and documents proposed to be offered into evidence at the hearing may be disclosed as required by the prehearing disclosure requirements in § 2423.23.

§ 2423.9 Amendment of charges.

Prior to the issuance of a complaint, the Charging Party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.10 Action by the Regional Director.

(a) *Regional Director action.* The Regional Director may take any of the following actions, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to issue a complaint;

(3) Approve a written settlement agreement in accordance with the provisions of § 2423.12;

(4) Issue a complaint; or

(5) Withdraw a complaint.

(b) *Request for appropriate temporary relief.* Parties may request the General Counsel to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d). The General Counsel may initiate and prosecute injunctive proceedings under 5 U.S.C. 7123(d) only upon approval of the Authority. A determination by the General Counsel not to seek approval of the Authority to seek such appropriate temporary relief is final and shall not be appealed to the Authority.

(c) *General Counsel requests to the Authority.* When a complaint issues and the Authority approves the General Counsel's request to seek appropriate temporary relief (including a restraining order) under 5 U.S.C. 7123(d), the General Counsel may make application for appropriate temporary relief (including a restraining order) in the district court of the United States within which the unfair labor practice is alleged to have occurred or in which the party sought to be enjoined resides or transacts business. Temporary relief may be sought if it is just and proper and the record establishes probable cause that an unfair labor practice is being committed. Temporary relief shall not be sought if it would interfere with the ability of the agency to carry out its essential functions.

(d) *Actions subsequent to obtaining appropriate temporary relief.* The General Counsel shall inform the district court which granted temporary relief pursuant to 5 U.S.C. 7123(d) whenever an Administrative Law Judge recommends dismissal of the complaint, in whole or in part.

§ 2423.11 Determination not to issue complaint; review of action by the Regional Director.

(a) *Opportunity to withdraw a charge.* If upon the completion of an investigation under § 2423.8, the Regional Director, on behalf of the General Counsel, determines that issuance of a complaint is not warranted because the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the Regional Director may request the Charging Party to withdraw the charge.

(b) *Dismissal letter.* If the Charging Party does not withdraw the charge within a reasonable period of time, the Regional Director may, on behalf of the General Counsel, dismiss the charge and provide the parties with a written statement of the reasons for not issuing a complaint.

(c) *Appeal of a dismissal letter.* The Charging Party may obtain review of the Regional Director's decision not to issue

a complaint by filing an appeal with the General Counsel within 25 days after service of the Regional Director's decision. A Charging Party shall serve a copy of the appeal on the Regional Director. The Office of the General Counsel shall serve notice on the Charged Party that an appeal has been filed.

(d) *Extension of time.* The Charging Party may file a request, in writing, for an extension of time to file an appeal, which shall be received by the General Counsel not later than 5 days before the date the appeal is due. A Charging Party shall serve a copy of the request for an extension of time on the Regional Director.

(e) *Grounds for granting an appeal.* The General Counsel may grant an appeal when the appeal establishes at least one of the following grounds:

(1) The Regional Director's decision did not consider material facts that would have resulted in issuance of complaint;

(2) The Regional Director's decision is based on a finding of a material fact that is clearly erroneous;

(3) The Regional Director's decision is based on an incorrect statement of the applicable rule of law;

(4) There is no Authority precedent on the legal issue in the case; or

(5) The manner in which the Region conducted the investigation has resulted in prejudicial error.

(f) *General Counsel action.* The General Counsel may deny the appeal of the Regional Director's refusal to issue a complaint, or may grant the appeal and remand the case to the Regional Director to take further action. The General Counsel's decision on the appeal states the grounds listed in paragraph (e) of this section for denying or granting the appeal, and is served on all the parties. Absent a timely motion for reconsideration, the decision of the General Counsel is final.

(g) *Reconsideration.* After the General Counsel issues a final decision, the Charging Party may move for reconsideration of the final decision if it can establish extraordinary circumstances in its moving papers. The motion shall be filed within 10 days after the date on which the General Counsel's final decision is postmarked. A motion for reconsideration shall state with particularity the extraordinary circumstances claimed and shall be supported by appropriate citations. The decision of the General Counsel on a motion for reconsideration is final.

§ 2423.12 Settlement of unfair labor practice charges after a Regional Director determination to issue a complaint but prior to issuance of a complaint.

(a) *Bilateral informal settlement agreement.* Prior to issuing a complaint, the Regional Director may afford the Charging Party and the Charged Party a reasonable period of time to enter into an informal settlement agreement to be approved by the Regional Director. When a Charged Party complies with the terms of an informal settlement agreement approved by the Regional Director, no further action is taken in the case. If the Charged Party fails to perform its obligations under the approved informal settlement agreement, the Regional Director may institute further proceedings.

(b) *Unilateral informal settlement agreement.* If the Charging Party elects not to become a party to an informal settlement agreement which the Regional Director concludes effectuates the policies of the Federal Service Labor-Management Relations Statute, the agreement may be between the Charged Party and the Regional Director. The Regional Director, on behalf of the General Counsel, shall issue a letter stating the grounds for approving the settlement agreement and declining to issue a complaint. The Charging Party may obtain review of the Regional Director's action by filing an appeal with the General Counsel in accordance with § 2423.11(c) and (d). The General Counsel shall take action on the appeal as set forth in § 2423.11(e)–(g).

§§ 2423.13–2423.19 [Reserved]

Dated: November 24, 1998.

Joseph Swerdzewski,

General Counsel, Federal Labor Relations Authority.

[FR Doc. 98–31763 Filed 11–27–98; 8:45 am]

BILLING CODE 6727–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 97–005–2]

Fruit From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies. These actions will relieve restrictions on the movement of these fruits from Hawaii while continuing to provide protection against the spread of injurious plant pests from Hawaii to other parts of the United States.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Staff Officer, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236, (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

The Hawaiian Fruits and Vegetables regulations, contained in 7 CFR 318.13 through 318.13–17 (referred to below as the regulations), govern, among other things, the interstate movement of fruits and vegetables from Hawaii. The regulations are necessary to prevent the spread of dangerous plant diseases and pests that occur in Hawaii, including the Mediterranean fruit fly (*Ceratitis capitata*), the melon fly (*Bactrocera cucurbitae*), the Oriental fruit fly (*Bactrocera dorsalis*), and the Malaysian fruit fly (*Bactrocera latifrons*). These types of fruit flies are collectively referred to in this document as ''fruit flies.''

On June 10, 1998, we published in the **Federal Register** (63 FR 31675–31678, Docket No. 97–005–1) a proposal to allow abiu (*Pouteria caimito*), atemoya (*Annona squamosa* x *A. cherimola*), longan (*Dimocarpus longan*), rambutan (*Nephelium lappaceum*), and sapodilla (*Manilkara zapota*) to be moved interstate from Hawaii if, among other things, the fruits undergo irradiation treatment in accordance with § 318.13–4f of the regulations. We also proposed to allow durian (*Durio zibethinus*) to be moved interstate from Hawaii if it is inspected and found free of plant pests. In addition, we proposed to allow green bananas (*Musa* spp.) of the cultivars ''Williams,'' ''Valery,'' and dwarf

''Brazilian'' to be moved interstate from Hawaii under certain conditions.

We solicited comments concerning our proposal for 60 days ending August 10, 1998. We received five comments by that date. They were from representatives of industry and State governments. One commenter supported the proposal rule in its entirety. The remaining four commenters expressed concerns about portions of the proposed rule. Their concerns are discussed below.

Comment: The proposed rule should require each irradiation facility to have in place a set of standard operating procedures before the facility is approved by the Animal and Plant Health Inspection Service (APHIS).

Response: In order to be approved by APHIS, each irradiation facility must meet certain operating standards and enter into a compliance agreement with APHIS, in accordance with § 318.13–4f(b)(2)(iii). Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: Treatment record requirements should be clarified for Hawaiian fruits treated by irradiation on the mainland United States. Section 318.13–4f(b)(4)(i)(C) specifies that fruits irradiated in Hawaii for subsequent interstate movement are required to be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment. It is not clear, however, whether Hawaiian fruits treated by irradiation on the mainland United States are subject to comparable labeling requirements. In order to maintain the identity of a shipment treated at any location and to expedite inspections at the port of destination, all irradiated Hawaiian fruits, whether treated in Hawaii or on the mainland United States, should be subject to these same labeling requirements. In addition, all irradiated Hawaiian fruit should be accompanied by a document or labeling that provides information on the absorbed minimum dose of irradiation.

Response: In Hawaii, irradiated shipments could, if treated or handled improperly, be reinfested with fruit flies. Therefore, we established certain labeling requirements for shipments of fruits and vegetables irradiated in Hawaii to aid in traceback if those shipments were found to contain fruit flies upon arrival on the mainland United States. Since the mainland United States does not have established populations of fruit flies, and irradiation facilities will be located in non-fruit fly-supporting areas of the mainland, the risk of reinfestation of shipments irradiated on the mainland United States is, at best, negligible. Therefore, we do not believe that it is necessary to require similar labeling of shipments irradiated on the mainland United States.

Further, it is standard procedure for irradiation facilities to supply the person who commissions the irradiation of fruit or vegetables with a document stating the minimum absorbed dose of the irradiation treatment. Therefore, we do not feel that it is necessary to label boxes with that information.

Comment: APHIS should require that irradiated fruit be labeled so that consumers can easily differentiate irradiated fruit from organically grown fruit.

Response: The labeling of irradiated fruit falls under the jurisdiction of the Food and Drug Administration (FDA). Under the FDA's regulations at 21 CFR 179.26(c), concerning irradiated foods not in package form (e.g., loose fresh fruits and vegetables), an irradiation logo and phrase (e.g., ''Treated with radiation'' or ''Treated by irradiation'') must be displayed to the purchaser of the food either by labeling of the bulk container plainly in view; a counter sign, card, or other appropriate device bearing the required information; or individual labels on each item of food. In any case, the information must be prominently and conspicuously displayed to purchasers. Therefore, no changes to the proposal appear necessary in response to this comment.

Comment: APHIS should reconsider its proposal to allow durian and green bananas to move interstate to the mainland United States without a quarantine treatment. Durian and green bananas both have the potential to carry pink hibiscus mealybug (*Maconellicoccus hirsutus*) (PHM). PHM occurs in Hawaii, attacks more than 200 different plants, and is considered to be a serious threat to American agriculture. Inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii.

Response: We consider PHM a serious plant pest, but we disagree that inspection is not sufficient to mitigate the risk of the introduction of PHM on durian and green bananas from Hawaii. PHM is easily detectable by inspection because when fruits are infested with PHM, they are covered, to at least some degree, with the white waxy coating of the mealybug, which is clearly visible on fruits and vegetables. We successfully inspect a variety of untreated commodities, including avocados, bananas, citrus fruits, peppers, and tomatoes, imported into the United States from many different countries for the presence of PHM. Therefore, we are making no changes to the proposal in response to this comment.

Comment: This proposal should be postponed until it is determined whether Hawaii will build an irradiation facility. If Hawaii does not build its own irradiation facility, there will be no irradiated Hawaiian fruit to move interstate under the provisions outlined in the proposal.

Response: This rule allows abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility in Hawaii or in non-fruit fly supporting areas of the mainland United States. Therefore, the presence of an irradiation facility in Hawaii is not necessary to enable Hawaiian fruits to move interstate under this rule.

Comment: It is unclear from the proposal whether untreated abiu, atemoya, longan, rambutan, and sapodilla moving from Hawaii to the mainland United States for irradiation treatment may move into or through all States on the mainland or just certain States. Allowable ports of entry should be identified in advance and should be consistent with those ports considered safe for the entry of other untreated fruit fly host shipments intended for cold treatment upon arrival.

Response: In accordance with § 318.13–4f(b)(1), all untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment may not move into or through the States of Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia, except that certain movements are allowed through Dallas/Fort Worth, TX. Dallas/Fort Worth is authorized as an approved stop for air cargo, and as a transloading location for shipments that arrive by air and then are loaded into trucks for overland movement from Dallas/Fort Worth into an authorized State by the shortest route. We are considering allowing untreated fruits and vegetables moving from Hawaii to the mainland United States for irradiation treatment to move to other locations on the mainland United States where cold treatment of fruit flies has been approved. If it appears that movement to these additional locations would be appropriate, we will propose that change in the **Federal Register**.

Comment: Citrus should be added to the list of fruit approved for movement interstate from Hawaii with irradiation treatment.

Response: We are currently reviewing data to determine the pest risk associated with the movement of irradiated citrus from Hawaii to the mainland United States. If, after review, it appears that citrus may safely move interstate from Hawaii with irradiation treatment, we will propose that change in the **Federal Register**.

Comment: Because green bananas are not a fruit fly host, pest-proof containers or cartons should not be required for the interstate movement of green bananas from Hawaii.

Response: Because research shows that harvested bananas gradually become susceptible to fruit fly infestation, we believe that it is necessary to require a measure of protection against possible infestation. However, we agree that producers should have flexibility in the way that they meet this requirement. Therefore, in this final rule, § 318.13–4i(d) will read: ''The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.'' This will allow producers to use either pest-proof shipping cartons, pest-proof shipping containers (e.g., air or sea containers), or other means, such as loading the bananas into a cold storage facility or packing the bananas in a carton fully covered by plastic or netting, to ensure that harvested bananas are protected from fruit fly infestation.

Comment: Green bananas of the cultivars 'Grand Nain' and standard 'Brazilian' should be allowed to move interstate from Hawaii to the mainland United States under the same provisions outlined in the proposal for certain other cultivars of green bananas.

Response: We agree. At the time that we were developing our proposal, it was our understanding that ''Grand Nain'' and standard ''Brazilian'' bananas were either not grown commercially in Hawaii or were grown in such limited quantities in Hawaii that there would be no interest in moving them interstate to the mainland United States. Therefore, we omitted these cultivars of green bananas from our proposal. This comment, however, makes it clear that there is interest in moving these cultivars of green bananas to the mainland United States. Research conducted concurrently with research on the other cultivars of green bananas proposed for interstate movement from Hawaii indicates that green bananas of the cultivars ''Grand Nain'' and standard ''Brazilian'' can be safely moved interstate under the same conditions outlined in the proposal for green bananas of the cultivars ''Williams,'' ''Valery,'' and dwarf ''Brazilian.'' Therefore, in this final rule, § 318.13–4i includes green bananas of the cultivars ''Grand Nain'' and standard ''Brazilian.''

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with changes discussed in this document.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

We are allowing abiu, atemoya, longan, rambutan, and sapodilla to be moved interstate from Hawaii if the fruit undergoes irradiation treatment at an approved facility. Treatment may be conducted either in Hawaii or in non-fruit fly supporting areas of the mainland United States. The fruit will also have to meet certain additional requirements, including packaging requirements. We are also allowing durian to be moved interstate from Hawaii if the durian is inspected and found free of certain plant pests. In addition, we are allowing certain varieties of green bananas to move interstate from Hawaii under certain conditions intended to ensure the bananas' freedom from plant pests, including fruit flies.

The mainland United States has very limited, if any, quantities of abiu, atemoya, durian, longan, rambutan, and sapodilla for sale to consumers. Three of these specialty fruits—abiu, durian, and rambutan—are not grown commercially on the mainland United States; atemoya, longan, and sapodilla are grown commercially on the mainland United States but only in relatively small quantities. All mainland production of atemoya, longan, and sapodilla occurs in the State of Florida. It is estimated that Florida's annual production of atemoya amounts to approximately 80,000 pounds; of longan, approximately 2 million pounds; of sapodilla, approximately 350,000 pounds.

Unlike the other fruits listed in this document, bananas are generally not considered to be specialty fruits. Also unlike the other fruits, the mainland United States has abundant quantities of bananas, including green bananas, for sale to consumers. However, virtually all bananas sold in the United States are imported. Less than 1 percent of the U.S. supply of bananas is produced domestically, and only a minuscule portion of domestic production occurs on the mainland United States, in Florida and California. In 1992, Florida produced 158,662 pounds of bananas. Production data for California is not available, but production in California is estimated to be much less than in Florida, given that in 1992 there were only 2 banana-producing farms in California and 67 in Florida. Hawaii accounted for the remainder of domestic banana production in 1992, with a total of 12,570,831 pounds. Based on data for 1992, therefore, Hawaii accounts for nearly all of the banana production in the United States.

It is estimated that there are fewer than 100 farms growing tropical specialty fruits in Florida, and virtually all of these farms are located in the southern part of the State. Information is not available on the gross receipts for each of these farms, but since the farms are generally less than 5 acres in size, it is reasonable to assume that most are small entities under Small Business Administration (SBA) standards. We do not expect the interstate movement of abiu, atemoya, durian, longan, rambutan, and sapodilla to affect these fruit producers for several reasons. First, as discussed earlier, three of the six specialty fruits are not grown commercially on the mainland United States. Second, the demand for the remaining three specialty fruits that are produced in Florida is strong, particularly among Asian Americans on the mainland United States. Florida currently has no difficulty selling all of the atemoya, longan, and sapodilla that it produces. Third, Hawaiian fruit will likely be marketed primarily in western States on the mainland while Florida's fruits are sold primarily in eastern States. Therefore, Hawaii's specialty fruits will likely be in little direct competition with Florida's specialty fruits.

As discussed above, in 1992, 67 farms in Florida and 2 farms in California produced bananas. Like the specialty fruit growers, most banana-producing

farms in Florida and California are assumed to be small entities under SBA standards. However, any interstate movement of green bananas from Hawaii should have little or no impact on banana producers on the mainland United States. This is due to the relatively small volume of bananas that may be moved interstate from Hawaii. Even in the unlikely event that Hawaii moved all of its production interstate, Hawaii's bananas would still account for less than 1 percent of the mainland U.S. supply.

We expect that fruit growers in Hawaii will benefit from the interstate movement of abiu, atemoya, durian, green bananas, longan, rambutan, and sapodilla from Hawaii because these growers will have new outlets for their products. In 1995, the State of Hawaii produced 1,250,800 pounds of specialty tropical fruit (of all varieties) with a value of $987,100. Three varieties of fruit—carambola, litchi, and specialty pineapple—accounted for 74 percent of Hawaii's 1995 production. The remaining 26 percent, or approximately 325,000 pounds of fruit, consisted of all other varieties of fruit grown in Hawaii, including the six specialty fruits named in this document. Also, in 1992, Hawaii produced 12,570,831 pounds of bananas, with a value of $5.2 million.

In 1995, 115 farms in the State of Hawaii grew at least one variety of specialty tropical fruit. However, information on which of those farms grew one or more of the six specialty fruits named in this document is not available. Information is also not available on the gross receipts for each of the 115 farms. In all likelihood, most of the 115 farms are small entities because data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards.

The production of tropical specialty fruit is growing rapidly in Hawaii. The State's 1995 production level represents an increase of approximately 126 percent, or 698,100 pounds, over the 1994 level of 552,700 pounds. Carambola and specialty pineapple accounted for more than 80 percent of the increase. The increase in production of tropical specialty fruit is expected to continue, as a response to the decline in the sugar industry and to the recent availability of prime agricultural lands in the State of Hawaii. In 1995, Hawaiian growers devoted 415 acres to tropical specialty fruits, 6 percent more acreage than in 1994. It is estimated that by the year 2000, Hawaii will be producing 2.6 million pounds of tropical specialty fruits annually, more than double the 1995 level. If Hawaiian growers move 200,000 pounds of each of the six specialty fruits named in this document interstate annually, using the 1995 average per pound value of all tropical specialty fruits produced in Hawaii (on all 115 farms) of $.79, the collective annual sales of the fruit would generate $948,000. This amounts to $8,243 per farm when divided equally among the 115 farms growing specialty tropical fruit.

In 1992, bananas were produced on 700 farms in Hawaii, and a total of 1,506 acres were devoted to banana production on those farms. Although data for individual farms in Hawaii that produce bananas is not available, most are probably small entities by SBA standards because, as mentioned earlier, data for all 2,019 Hawaiian farms whose revenues are derived primarily from the sales of fruit and/or tree nuts show that 99 percent are small entities under SBA standards. However, we do not expect this rule to have a significant impact on Hawaiian banana producers. Even if those producers were to move interstate the equivalent of half of the 1992 banana production (6.3 million pounds), the combined revenues from such sales would amount to $2.6 million dollars, an average of only $3,681 per farm.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

Lists of Subjects in 7 CFR Part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Incorporation by reference, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we are amending 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 318.13–2 [Amended]

2. In § 318.13–2, paragraph (b), the list of fruits and vegetables is amended by adding, in alphabetical order, ''Durian (*Durio zibethinus*).''

3. In § 318.13–4f, paragraphs (a) and (b)(4)(iii) are revised to read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain fruits and vegetables from Hawaii.

(a) *Approved irradiation treatment.* Irradiation, carried out in accordance with the provisions of this section, is approved as a treatment for the following fruits and vegetables: Abiu, atemoya, carambola, litchi, longan, papaya, rambutan, and sapodilla.

(b) * * *

(4) * * *

(iii) Litchi and longan from Hawaii may not be moved interstate into Florida. All cartons in which litchi or longan are packed must be stamped ''Not for importation into or distribution in FL.''

* * * * *

4. A new § 318.13–4i is added to read as follows:

§ 318.13–4i Administrative instructions; conditions governing the movement of green bananas from Hawaii.

Green bananas (*Musa* spp.) of the cultivars ''Williams,'' ''Valery,'' ''Grand Nain,'' and standard and dwarf ''Brazilian'' may be moved interstate from Hawaii with a certificate issued in accordance with §§ 318.13–3 and 318.13–4 of this subpart if the bananas meet the following conditions:

(a) The bananas must be picked while green and packed for shipment within 24 hours after harvest. If the green bananas will be stored overnight during

that 24-hour period, they must be stored in a facility that prevents access by fruit flies;

(b) No bananas from bunches containing prematurely ripe fingers (i.e., individual yellow bananas in a cluster of otherwise green bananas) may be harvested or packed for shipment;

(c) The bananas must be inspected by an inspector and found free of plant pests as well as any of the following defects: prematurely ripe fingers, fused fingers, or exposed flesh (not including fresh cuts made during the packing process); and

(d) The bananas must be safeguarded from fruit fly infestation from the time that they are packaged for shipment until they reach the port of arrival on the mainland United States.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31714 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–011–2]

Importation of Coffee

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising the regulations for importing coffee by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service, and clarifying the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations and the prohibitions on importing coffee berries or fruits. These nonsubstantive changes will make the regulations easier to read and understand, thereby facilitating compliance.

EFFECTIVE DATE: December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Peter M. Grosser, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231, (301) 734–6799; or e-mail: Peter.M.Grosser@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations contained in 7 CFR 319.73 through 319.73–4, ''Subpart—Coffee'' (referred to below as the coffee regulations), restrict the importation of coffee from foreign countries and localities. The coffee regulations are intended to prevent the introduction of coffee berry borers *Hypothenemus hampei* (Ferrari) and a rust disease caused by the fungus *Hemileia vastatrix* (Berkeley and Broome) into Hawaii and Puerto Rico, where coffee is commercially grown.

On May 9, 1997, we published in the **Federal Register** (62 FR 25561–25562, Docket No. 97–011–1) a proposal to amend the coffee regulations by removing unnecessary text, updating references to officials of the Animal and Plant Health Inspection Service (APHIS), and making other nonsubstantive changes to clarify the requirements for moving samples of unroasted coffee through Hawaii and Puerto Rico to other destinations. In addition, we proposed to amend the coffee regulations to clarify that coffee fruits or berries are prohibited importation into all parts of the United States because they present a significant risk of introducing the Mediterranean fruit fly, which attacks a wide range of host material grown throughout the United States.

We solicited comments concerning our proposal for 60 days ending July 8, 1997. We received two comments by that date. One was from a State government official and the other was a representative of the coffee industry. Their concerns are addressed below.

Importation of Coffee Berries and Fruit for Research and Analytical Purposes

One commenter stated that it was his understanding that restricted articles such as coffee berries and fruits may be imported into the United States under certain conditions for research and analytical purposes. He therefore suggested that the coffee regulations include a provision that provides an exemption for coffee berries and fruits being imported for research and analytical purposes.

Seeds of all kinds when in pulp, including coffee berries or fruits, may be imported into the United States for research and analytical purposes by the United States Department of Agriculture under the conditions listed in § 319.37–2(c). We agree that this provision should be made clear in the coffee regulations. Therefore, in order to avoid confusion, and to facilitate compliance with the coffee regulations, we are including a reference in the revised coffee regulations to the scientific and experimental importation provisions currently contained in § 319.37–2(c).

Importation of Green Coffee and Coffee Nursery Stock into Hawaii

We received a comment from an official of Hawaii's Department of Agriculture that recommends new requirements for the importation of green coffee beans and coffee nursery stock into that State. We intend to consider the comment further and consult with Hawaii's State Department of Agriculture about the recommendations. However, the recommendations are outside the scope of our original proposal. Therefore, any changes we make in response to those recommendations will have to be the subject of a subsequent rulemaking.

We are also clarifying the proposed § 319.73–4, ''Costs,'' to clearly indicate that costs for the listed services will be borne by the owner, importer, or agent of the owner or importer, including a broker.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

This final rule updates and clarifies the regulations for importing coffee into the United States and for moving samples of unroasted coffee through Hawaii and Puerto Rico in transit to other destinations. This rule makes no substantive changes in import or transit requirements. Therefore, it should have no economic impact on any United States entities, whether large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which, among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. Subpart—Coffee, consisting of §§ 319.73–1 through 319.73–4, is revised to read as follows:

Subpart—Coffee

Sec.
319.73–1 Definitions.
319.73–2 Products prohibited importation.
319.73–3 Conditions for transit movement of certain products through Puerto Rico or Hawaii.
319.73–4 Costs.

Subpart—Coffee

§ 319.73–1 Definitions.

Administrator. The Administrator of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or any employee of the United States Department of Agriculture delegated to act in his or her stead.

Inspector. Any individual authorized by the Administrator to enforce this subpart.

Sample. Unroasted coffee not for commercial resale. Intended use includes, but is not limited to, evaluation, testing, or market analysis.

United States. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

Unroasted coffee. The raw or unroasted seeds or beans of coffee.

§ 319.73–2 Products prohibited importation.

(a) To prevent the spread of the coffee berry borer *Hypothenemus hampei* (Ferrari) and the fungus *Hemileia vastatrix* (Berkely and Broome), which causes an injurious rust disease, the following articles are prohibited importation into Hawaii and Puerto Rico, except as provided in § 319.73–3 of this subpart:

(1) Unroasted coffee;

(2) Coffee plants and leaves; and (3) Empty sacks previously used for unroasted coffee.

(b) Due to the risk of Mediterranean fruit fly and other injurious insects, seeds of all kinds when in pulp, including coffee berries or fruits, are prohibited importation into all parts of the United States by § 319.37–2(a) of this part, except as provided in § 319.37–2(c).

§ 319.73–3 Conditions for transit movement of certain products through Puerto Rico or Hawaii.

(a) *Mail.* Samples of unroasted coffee that are transiting Hawaii or Puerto Rico en route to other destinations and that are packaged to prevent the escape of any plant pests may proceed without action by an inspector. Packaging that would prevent the escape of plant pests includes, but is not limited to, sealed cartons, airtight containers, or vacuum packaging. Samples of unroasted coffee received by mail but not packaged in this manner are subject to inspection and safeguard by an inspector. These samples must be returned to origin or forwarded to a destination outside Hawaii or Puerto Rico in a time specified by an inspector and in packaging that will prevent the escape of any plant pests. If this action is not possible, the samples must be destroyed.

(b) *Cargo.* Samples of unroasted coffee that are transiting Hawaii or Puerto Rico as cargo and that remain on the carrier may proceed to a destination outside Hawaii or Puerto Rico without action by an inspector. Samples may be transshipped in Puerto Rico or Hawaii only after an inspector determines that they are packaged to prevent the escape of any plant pests. Samples that are not packaged in this manner must be rewrapped or packaged in a manner prescribed by an inspector to prevent the escape of plant pests before the transshipment will be allowed.

(c) Other mail, cargo, and baggage shipments of articles covered by § 319.73–2 arriving in Puerto Rico or Hawaii may not be unloaded or transshipped in Puerto Rico or Hawaii and are subject to inspection and other applicable requirements of the Plant Safeguard Regulations (part 352 of this chapter).

319.73–4 Costs.

All costs of inspection, packing materials, handling, cleaning, safeguarding, treating, or other disposal of products or articles under this subpart will be borne by the owner, importer, or agent of the owner or importer, including a broker. The services of an inspector during regularly assigned hours of duty and at the usual places of duty will be furnished without cost to the importer.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31712 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 97–107–2]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Fruits and Vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction of injurious plant pests by imported fruits and vegetables.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Campbell, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799; or E-mail: Ronald.C.Campbell@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 319.56 through 319.56–8 (referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of fruit flies and other injurious plant pests that are new to or not widely distributed within and throughout the United States.

On June 5, 1998, we published in the **Federal Register** (63 FR 30646–30655) a proposal to amend the regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States and to declare certain areas in Mexico as fruit fly-free areas. We proposed these actions at the request of various importers and foreign ministries of agriculture, and after conducting pest risk analyses [1] that indicate these actions can be taken without significant risk of introducing plant pests into the United States.

We solicited comments on our proposal for 60 days, ending August 4, 1998. We received six comments by that date. They were from representatives of industry and a State government. Four commenters supported the proposed rule in its entirety. The remaining two commenters had reservations about specific provisions of the proposed rule. Of those two, one commenter expressed concerns about the proposed declaration of certain areas in Mexico as fruit fly-free areas. Upon further review and consideration of this issue, we are taking final action at this time on all portions of our June 5, 1998, proposed rule except the portion concerning fruit fly-free areas in Mexico. We will continue to review data and research concerning the proposed fruit fly-free areas in Mexico. The comment that raised concerns about actions other than the proposed declaration of certain areas in Mexico as fruit fly-free areas is discussed below.

Comment: The Animal and Plant Health Inspection Service (APHIS) should reconsider proposing the entry of certain vegetable crops into the United States from South America because of their association with the pests *Japanagromyza phaseoli, Copitarsia consueta,* and *Mycena citricolor.* We believe that, although these pests are detectable by inspection, the overwhelming workload of APHIS inspectors, as discussed in a recent Government Accounting Office (GAO) report, may prevent those inspectors from detecting these pests in shipments. In fact, we suggest that APHIS review its policy of considering port of entry inspections as a reliable and effective mitigation measure and, instead, think of inspections more realistically as a tool to monitor compliance with quarantine regulations.

Response: The pests referred to by the commenter are readily detectable by inspection, and we are confident that our inspectors will detect these pests if they occur in a shipment of vegetable crops from South America. Further, while the GAO Report (GAO Report GAO/RCED–97–102, May 1997) mentioned by the commenter pinpoints certain weaknesses in our inspection programs, the report acknowledges that APHIS has changed its inspection program to address new challenges, increased resources for inspection activities, expanded use of alternative inspection practices, increased interagency coordination, and implemented a program to determine pest risks at ports. With information from this report and other sources, we continue to enhance our inspection programs. We believe that our inspections at the port of entry are an effective and reliable mitigation measure to prevent the introduction of plant pests into the United States. Therefore, we are making no changes to the proposed rule in response to this comment.

Therefore, based on the rationale presented in the proposed rule and in this document, we are adopting the provisions of the proposed rule, with the exception of the proposed declaration of certain areas in Mexico as fruit fly-free areas, as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The 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.

In accordance with 5 U.S.C. 603, we have performed a Final Regulatory Flexibility Analysis, which is set out below, regarding the impact of this rule on small entities. In our proposed rule, we invited comments on the potential effects of the proposed actions. In particular, we requested information on the number and kind of small entities that may incur benefits or costs from the implementation of the proposed rule. No comments were submitted. Based on the information we have, there is no basis to conclude that adoption of this rule will result in any significant economic impact on a substantial number of small entities.

Under the Federal Plant Pest Act (7 U.S.C. 150aa–150jj) and the Plant Quarantine Act (7 U.S.C. 151–165, and 167), the Secretary of Agriculture is authorized to regulate the importation of fruits and vegetables to prevent the introduction of injurious plant pests.

We are amending the Fruits and Vegetables regulations to list a number of fruits and vegetables from certain parts of the world as eligible, under specified conditions, for importation into the United States. All of the fruits and vegetables, as a condition of entry, will be inspected and subject to such disinfection at the port of first arrival as may be required by a U.S. Department of Agriculture inspector. In addition, some of the fruits and vegetables will be required to meet other special conditions. This action will provide the United States with additional kinds and sources of fruits and vegetables while continuing to provide protection against the introduction and dissemination of injurious plant pests by imported fruits and vegetables.

This rule is based on pest risk assessments that were conducted by APHIS at the request of various importers and foreign ministries of agriculture. The pest risk assessments indicate that the fruits or vegetables listed in this rule may, under certain conditions, be imported into the United States without significant pest risk.

Availability of Data

For many of the commodities allowed to be imported into the United States in this document, data on the levels of production and the anticipated import volume is unavailable for a number of

[1] Information on these pest risk analyses and any other pest risk analysis referred to in this document may be obtained by writing to the person listed under FOR FURTHER INFORMATION CONTACT or by calling the Plant Protection and Quarantine (PPQ) fax vault at 301–734–3560.

reasons. First, many of these commodities are not produced in significant quantities either in the United States or in the country that would be exporting the commodity to the United States; generally, less statistical data is collected—and therefore available—for commodities produced in small quantities when compared to a country's more heavily produced commodities. Second, some of these commodities do not appear to be produced in the United States at all; therefore, data on the U.S. production and export levels for those commodities does not exist. Finally, estimates of potential exports of commodities from foreign countries to the United States are often difficult to obtain, due in part to the uncertainty surrounding the cost and availability of transportation and the demand for the commodity in the United States.

Watermelon From Brazil

Complete information is not available on U.S. watermelon production. However, data shows that, in 1996, a total of 459,180 metric tons of watermelon, of which 22 percent was imported, was shipped to 18 major U.S. cities.

The United States is a net importer of watermelons. In 1996, imports totaled 207,000 metric tons, valued at $49.9 million, compared to 116,000 metric tons exported, worth $30.4 million.

Data on the number or size of watermelon producers in the United States is not available. However, since most U.S. vegetable and melon farms are small by Small Business Administration (SBA) standards, it is very likely that the U.S. farms that produce watermelons are also small.

Watermelons will be allowed to be exported to the United States from that part of Brazil considered free of the South American cucurbit fly. Information on the quantity of watermelons produced in that area of Brazil and on the quantity of watermelons expected to be imported from Brazil is not available, but we do not expect that amount to be large enough to adversely affect U.S. growers.

Brassica spp. from Ecuador, El Salvador, Nicaragua, and Peru

Brassica spp. include a variety of crops, some of which are more familiar (such as broccoli, cauliflower, and cabbage) than others (such as pak choi, tatsoi, celery mustard, and celery cabbage).

For the two major *Brassica* sub-varieties, broccoli and cauliflower, U.S. commercial production in 1996 was valued at about $397 million (649,600 metric tons) and $217 million (297,560 metric tons), respectively. Although U.S. production data is not available for other *Brassica* species, information on quantities shipped fresh to 18 major U.S. cities illustrates their relative importance to those markets. While fresh shipments of broccoli and cauliflower totaled 170,830 metric tons and 87,270 metric tons, respectively, fresh shipments of cabbage totaled 219,360 metric tons; Chinese cabbage, 27,490 metric tons; turnips-rutabagas, 10,800 metric tons; and Brussels sprouts, 6,080 metric tons.

In 1996, the value of U.S. exports of major *Brassica* spp. totaled about $188 million, compared to U.S. imports of $146 million. This means that the United States is a net exporter of these vegetables.

Information on U.S. production of less popular *Brassica* varieties and sub-varieties, such as *Brassica rapa*, *Brassica chinensis*, and *Brassica pekinensis*, is generally very limited for a number of reasons. Data that is recorded for the production of these commodities is usually presented in an aggregated format, under ''Chinese'' or ''Oriental'' vegetables or more broadly under a ''Miscellaneous'' category. Even when data specifically addresses one or more of these commodities, the information may still provide an incomplete picture of overall production. For example, statistics obtained from county lists of pesticide permittees only include crops treated with pesticides for which permits are required.

Bearing in mind these limitations, APHIS has made inquiries at the county and producer levels in principal production areas of California and Florida regarding number of growers, acreage, and quantities and values of production. Though most domestic production probably occurs in California and Florida, some production of these commodities takes place in other States as well. For example, one large-scale producer in California regularly grows mizuna and tatsoi in California for 37 weeks and in Arizona during the remaining weeks of the year. However, most domestically grown *Brassica rapa* and *Brassica chinensis* are probably produced in California and Florida.

Twenty-five counties in California were surveyed for production of these commodities. No information was available from seven of the counties. Of the remaining 18 counties, ''Oriental'' vegetables are grown on about 12,250 acres, with total annual production valued at about $33 million. Nine of the 18 counties were found to record information on areas planted in specific sub-varieties of *Brassica rapa* and *Brassica chinensis*. Those counties reported a combined production area of about 3,500 acres for these varieties. Only four of the nine counties could provide information on the value of production for certain sub-varieties; in those counties, the sub-varieties were grown on a total of 1,012 acres and were valued at about $4.9 million.

Because most of the data on California's production of these commodities is aggregated, there is little that can be stated with confidence about the individual quantities grown. However, it would appear that the value of California's annual production of *Brassica rapa* and *Brassica chinensis* probably lies well above $5 million, but below $30 million. By far, most producers are small entities by SBA standards. Even the larger operations can probably be considered small entities (with annual sales below $0.5 million).

In Florida, most production of *Brassica rapa* and *Brassica chinensis* takes place in Palm Beach County, by both small- and large-scale producers. It is possible that a couple of the larger ones may have annual sales exceeding $0.5 million. In 1995–96, over 1,260 acres were planted with these commodities in Palm Beach County, with production valued at almost $2.3 million. Assuming this amount represents about 80 percent of the State's total, Florida's overall production may be worth more than $2.8 million.

To these estimates for California and Florida should be added production taking place in other States where conducive growing conditions are found. When all growers are considered, U.S. producers of *Brassica rapa* and *Brassica chinensis* may number in the hundreds, with most of the operations very small-scale. The value of U.S. production is probably in the tens of millions of dollars.

Although statistics are not available on U.S. production of Chinese cabbage (*Brassica pekinensis*), fresh shipments to 18 major U.S. cities in 1996 totaled about 27,490 metric tons, of which less than 2 percent was imported (about 320 metric tons from Mexico and 180 metric tons from Canada). California was the origin of nearly 95 percent of fresh shipments of domestically grown Chinese cabbage. Between 1994 and 1996, shipments to the 18 major U.S. cities grew by more than 20 percent.

Of the surveyed counties in California, only four offered specific information on the number of acres planted with Chinese cabbage and the

value of production. They reported Chinese cabbage grown on 845 acres and worth $5.5 million.

The most recent data on Ecuador's production of principal *Brassica* vegetables indicate relative small quantities compared to those of the United States. In 1996, Ecuador produced 11,132 metric tons of cabbage, 4,000 metric tons of broccoli, and 1,421 metric tons of cauliflower. However, it has not been possible to gather information on the quantity of *Brassica* spp. expected to be imported from Ecuador, but the amounts are unlikely to be large enough to affect U.S. entities.

Certain *Brassica oleracea* varieties, including cabbage, cauliflower, broccoli, Brussels sprouts, and kale, grown in El Salvador have been entering the United States under permit for many years. Therefore, the impact of allowing entry of all *Brassica* spp. would be based on the potential imports of the more minor species, such as *Brassica rapa* varieties. Research is being conducted in El Salvador on some of the minor *Brassica* varieties, such as Chinese cabbage, but they are not established commercial crops. Therefore, no impacts are expected in allowing the importation into the United States of *Brassica* spp. from El Salvador.

The only information available on the production of *Brassica* spp. by Nicaragua concerns broccoli and cauliflower. Nicaragua's annual levels of production of these two vegetables are reported to be 158 metric tons and 308 metric tons, respectively. These quantities represent less than 0.03 percent and 0.1 percent, respectively, of U.S. broccoli and cauliflower production. Also, in a recent year, Nicaragua exported about 162 tons of cabbage to El Salvador and Honduras. Given these relatively low levels of production and export, importation of *Brassica* spp. from Nicaragua is expected to have a negligible impact on U.S. entities.

Certain *Brassica oleracea* varieties, including cabbage, cauliflower, broccoli, Brussels sprouts, and kale, grown in Peru have been entering the United States under permit for many years. In 1996, Peru exported approximately 211 metric tons of cabbage and 6 metric tons of Brussels sprouts to the United States. Therefore, the impact of allowing entry of all *Brassica* spp. would be based on the potential imports of the more minor species, such as *Brassica rapa* varieties. Information is not available on the quantity of these commodities grown in or expected to be imported from Peru, but the amounts are unlikely to be large enough to adversely affect U.S. entities.

Rhubarb From Guatemala

No official data is available on U.S. rhubarb production, but in 1996, shipments of fresh rhubarb to 18 major U.S. cities totaled about 454 metric tons, with 90 percent coming from Washington and 10 percent from Oregon. In 1995, there were 3,732 metric tons of frozen rhubarb shipped commercially to the same cities from western States (California, Colorado, Idaho, Montana, Oregon, Washington, and Wyoming). In general, U.S. rhubarb imports and exports are very minor.

Although the demand for rhubarb is fairly stable, with little change among long-time commercial buyers, production in Washington is expected to expand. An additional 300 acres are being brought into production, and the growing season has been lengthened, from January-July to December-September, by using hot house and covered field production in addition to open field production.

In Guatemala, rhubarb is produced in very small quantities for domestic sales only. Commercial production could increase if importation to the United States were allowed. However, any impact on the U.S. rhubarb market will probably be negligible, given the small amount produced by Guatemala and the current absence of Guatemalan rhubarb exports.

Parsley From Israel and Nicaragua

California leads all States in parsley production. In 1996, there were 45,411 tons of parsley produced from 2,982 acres in California. That same year, fresh parsley imports (together with fresh tarragon and marjoram imports) to the United States totaled 1,509 metric tons and were valued at $3.1 million. In other words, U.S. imports represented about 3 percent or less of California's production. No U.S. exports of fresh parsley were recorded in 1996.

Israel, with a total 1997 production of about 4,500 tons of parsley, is already an important source of imported dehydrated (manufactured) parsley in the United States. It is estimated that Israel's annual fresh parsley exports to the United States could amount to about 50 tons. This quantity represents an extremely small fraction (only about 3 percent) of current fresh parsley imports by the United States, and it is a negligible amount compared to U.S. domestic production. Therefore, no significant impacts are expected for U.S. parsley producers or other small entities.

The quantity of parsley expected to be imported from Nicaragua is not known, but given the relatively low level of current imports of parsley from all sources, which amount to only 3 percent of California's production, no significant impacts are expected for U.S. parsley producers or other entities.

Salicornia from Mexico

Salicornia is a succulent grown primarily as an oil seed crop. Much like asparagus, the tips of the salicornia plant are consumed as food in many countries; in Europe, for example, salicornia is widely eaten. The demand for salicornia as a food item in the United States is still a niche market, although some is produced along coastlines, such as in Texas and California. Domestic production is limited to one or two months of the year.

Information is not available on the number of U.S. producers of salicornia or on the quantity produced, but it is assumed to be a very minor crop in the United States. The quantity expected to be imported from Mexico is also not known, and will depend upon market development. Since it is to be grown on irrigated land in Mexico, exports to the United States could potentially be year-round. APHIS has no information to suggest that U.S. entities will be adversely affected by salicornia imports from Mexico.

Mint From Nicaragua

An average of 151,600 acres of mint were harvested annually in the United States between 1994 and 1996, for the production of peppermint oil and spearmint oil. The average annual value of the oils produced during these years was about $150 million. Statistics are not available on the production of mint leaves for purposes other than oil production. The annual value of mint leaves imported by the United States from 1992 through 1994 averaged approximately $407,000, increasing to $422,000 in 1996 and $469,000 in 1997. Thus, the current value of mint leaf imports is not significant compared to the value of U.S. mint oil production.

The quantity of mint expected to be imported from Nicaragua is not known, but given existing levels of U.S. production, potential imports of mint from Nicaragua are not expected to have an impact on U.S. producers or other entities.

Rosemary From Nicaragua

No information is readily available on rosemary production or imports for the United States. Similarly, no estimates were possible regarding Nicaragua's production or potential exports of rosemary to the United States. However, there is no reason to believe that

allowing rosemary imports from Nicaragua will have negative impacts on U.S. entities.

Belgian Endive, Chicory, and Endive From Panama

Although there is no information on U.S. production of Belgian endive, chicory, and endive, fresh endive shipments to 18 major U.S. cities in 1996 totaled about 17,550 metric tons, of which imports contributed about 1,135 metric tons (1,000 tons from Belgium, 90 tons from Canada, and 45 tons from The Netherlands). California and Florida were the sources of about 40 percent and 28 percent, respectively, of domestically grown shipments. Between 1994 and 1996, endive shipments to those 18 major U.S. cities grew by more than 77 percent. In 1996, the value of imports, $11.45 million, was three times that of exports, $3.9 million.

It has not been possible to gather information on the production levels or expected import quantities of Belgian endive, chicory, and endive from Panama. However, we do not expect the importation of these commodities from Panama to significantly impact U.S. entities.

Pineapple From South Africa

Pineapple production in the United States is concentrated in Hawaii, and, in 1996, totaled about 314,800 metric tons, of which 7,800 metric tons were exported. U.S. imports of pineapple in the same year reached 135,260 metric tons. In other words, about 30 percent of the pineapples consumed in the United States are imported.

South Africa produces about 46,000 metric tons of pineapple, of which approximately 4,000 metric tons are exported to the European Union and parts of Asia. It is estimated that South Africa could potentially export about 2,000 metric tons a year to the United States, depending on demand and available airfreight space. This amount represents less than one percent of U.S. production, and about 1 percent of U.S. imports. Therefore, we expect that U.S. producers and other entities will not be significantly affected by the importation of pineapple from South Africa.

Peppers From Spain

Although there is no information on U.S. production of *Capsicum* species, there were about 240,230 metric tons of fresh bell peppers and 36,150 metric tons of other fresh peppers shipped to 18 major U.S. cities in 1996. Nearly 30 percent of the bell pepper shipments were imported, as were more than one-half of other pepper shipments. In 1996, pepper imports (fresh and chilled) by the United States totaled 277,320 metric tons and were valued at $217 million. That same year, U.S. pepper exports amounted to 60,470 metric tons, valued at $48.4 million. As such, the United States is clearly a net importer of peppers.

The size distribution of U.S. pepper producers is similar to that of most crops, with numerous small-scale operations and fewer very large operations. For example, in Florida in 1992, there were 199 sweet pepper farms with a total of 19,554 harvested acres. More than half were farms of less than 15 acres. Most pepper producers in the United States are small entities (less than $0.5 million in annual sales).

Between 1994 and 1996, fresh bell pepper shipments to the 18 major U.S. cities grew by about 3.5 percent, while shipments of other fresh peppers increased by more than 58 percent.

Peppers from Spain would be required to have been grown in insect-proof greenhouses in the Province of Almeria. Currently, about 20,000 metric tons of the 200,000 metric tons of peppers produced annually in Province of Almeria are grown in insect-proof greenhouses. It is expected that about 1,500 metric tons would be shipped yearly to the United States. Annual shipments could increase to as much as 4,000 metric tons, depending on production and market developments.

This higher estimate, 4,000 metric tons, represents only 1.4 percent of current U.S. pepper imports, and even a smaller fraction of U.S. domestic production. Pepper imports from Spain will have a negligible impact on U.S. entities. However, they may help to satisfy the rapidly increasing U.S. demand for fresh peppers.

Cantaloupe, Honeydew Melon, and Watermelon From Venezuela

The U.S. melon season runs from May to November, with most domestic shipments taking place in May, June, and July. Production statistics are available only for honeydew melon; in 1996, the commercial crop totaled 242,490 metric tons and was valued at $91.3 million. Although such information is not available for cantaloupe or watermelon, quantities shipped to 18 major U.S. cities in 1996 are as follows: Cantaloupe, 325,230 metric tons (30 percent imported); honeydew melon, 130,770 metric tons (40 percent imported); and watermelon, 459,180 metric tons (22 percent imported).

California dominates cantaloupe and honeydew melon production, while Florida, Georgia, and Texas devote the most acreage to watermelon production. Most melon and cantaloupe producers can be considered small entities, but probably a major share of production is by a relatively few large-scale operations having annual sales greater than $0.5 million.

U.S. trade in cantaloupes, honeydew melons, and watermelons demonstrates that the United States is a net importer of these commodities. In 1996, overall fresh melon imports were valued at $205 million, and exports worth $81 million.

The Paraguana Peninsula, because it is considered free of the South American cucurbit fly, is the area in Venezuela from which cantaloupe, honeydew melons, and watermelons would be allowed to be exported to the United States. When melons were last shipped from the Paraguana Peninsula to the United States in 1985, 2,000 metric tons of honeydew melon and 400 metric tons of watermelon were exported. (No cantaloupe was exported.) In 1986, shipments were discontinued because of phytosanitary restrictions.

With removal of the restrictions, projected annual exports to the United States are 6,000 metric tons of cantaloupe, 3,000 metric tons of honeydew melon, and 2,000 metric tons of watermelon. In each case, these amounts represent about 1 percent or less of U.S. domestic production. The export season for the melons will be October to April, the period of the year when domestic supply is at its lowest.

Shipments from Venezuela will improve the year-round availability of melons for consumers by augmenting existing off-season imports. The relatively small amounts expected to be shipped are likely to have only a negligible impact on U.S. producers of cantaloupe, honeydew melon, and watermelon.

Executive Order 12988

This rule allows certain fruits and vegetables to be imported into the United States from certain parts of the world. State and local laws and regulations regarding the importation of fruits and vegetables under this rule are preempted while the fruits and vegetables are in foreign commerce. Fresh fruits and vegetables are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, we will publish a document in the **Federal Register** providing notice of the assigned OMB control number or, if approval is denied, providing notice of what action we plan to take.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 319.56–2t, the table is amended by adding, in alphabetical order, the following entries:

§ 319.56–2t Administrative instructions: conditions governing the entry of certain fruits and vegetables.

* * * * *

Country/locality	Common name	Botanical name	Plant part(s)
* * * * * * *			
Ecuador			
* * * * * * *			
	Cole and mustard crops, including cabbage, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
* * * * * * *			
El Salvador			
* * * * * * *			
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
* * * * * * *			
Guatemala			
* * * * * * *			
	Rhubarb	*Rheum rhabarbarum*	Above ground parts.
* * * * * * *			
Israel			
* * * * * * *			
	Parsley	*Petroselinum crispum*	Above ground parts.
* * * * * * *			
Mexico			
* * * * * * *			
	Salicornia	*Salicornia* spp	Above ground parts.
* * * * * * *			
Nicaragua			
* * * * * * *			
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
* * * * * * *			
	Mint	*Mentha* spp	Above ground parts.
	Parsley	*Petroselinum crispum*	Above ground parts.
* * * * * * *			
	Rosemary	*Rosmarinus officinalla*	Above ground parts.
* * * * * * *			
Panama			
* * * * * * *			
	Belgian endive	*Cichorium* spp	Above ground parts.

Country/locality	Common name	Botanical name	Plant part(s)
	Chicory	*Cichorium* spp	Above ground parts.
* *	* *	*	* *
	Endive	*Cichorium* spp	Above ground parts.
* *	* *	*	* *
Peru			
* *	* *	*	* *
	Cole and mustard crops, including cabbages, broccoli, cauliflower, turnips, mustards, and related varieties.	*Brassica* spp	Whole plant of edible varieties only.
* *	* *	*	* *
	Swiss chard	*Beta vulgaris*	Leaf and stem.
* *	* *	*	* *
South Africa			
* *	* *	*	* *
	Pineapple	*Ananas* spp	Fruit.
* *	* *	*	* *

* * * * *

3. Section 319.56–2aa is revised to read as follows:

§ 319.56–2aa Administrative instructions governing the entry of cantaloupe, honeydew melons, and watermelon from Brazil and Venezuela.

Cantaloupe, honeydew melons, and watermelon may be imported into the United States from Brazil and Venezuela only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The cantaloupe, honeydew melons, or watermelon must have been grown in the area of Brazil or the area of Venezuela considered by the Animal and Plant Health Inspection Service to be free of the South American cucurbit fly, (*Anastrepha grandis*), in accordance with § 319.56–2(e)(4) of this subpart. In addition, all shipments of cantaloupe, honeydew melons, and watermelon must be accompanied by a phytosanitary certificate issued either by the Departmento de Defesa e Inspeção Vegetal (Brazilian Department of Plant Health and Inspection) or the Servicio Autonomo de Sanidad Agropecuaria (the plant protection service of Venezuela) that includes a declaration indicating that the cantaloupe or melons were grown in an area recognized to be free of the South American cucurbit fly.

(1) *Area considered free of the South American cucurbit fly in Brazil.* The following area in Brazil is considered free of the South American cucurbit fly: That portion of Brazil bounded on the north by the Atlantic Ocean; on the east by the River Assu (Acu) from the Atlantic Ocean to the city of Assu; on the south by Highway BR 304 from the city of Assu (Acu) to Mossoro, and by Farm Road RN–015 from Mossoro to the Ceara State line; and on the west by the Ceara State line to the Atlantic Ocean.

(2) *Area considered free of the South American cucurbit fly in Venezuela.* The following area in Venezuela is considered free of the South American cucurbit fly: The Paraguana Peninsula, located in the State of Falcon, bounded on the north and east by the Caribbean Ocean, on the south by the Gulf of Coro and an imaginary line dividing the autonomous districts of Falcon and Miranda, and on the west by the Gulf of Venezuela.

(b) *Shipping requirements.* The cantaloupe, honeydew melons, and watermelon must be packed in an enclosed container or vehicle, or must be covered by a pest-proof screen or plastic tarpaulin while in transit to the United States.

(c) *Labeling.* All shipments of cantaloupe, honeydew melons, and watermelon must be labeled in accordance with § 319.56–2(g) of this subpart.

4. A new § 319.56–2gg is added to read as follows:

§ 319.56–2gg Administrative instructions; conditions governing the entry of peppers from Spain.

Peppers (fruit) (*Capsicum* spp.) may be imported into the United States from Spain only under permit, and only in accordance with this section and all other applicable requirements of this subpart:

(a) The peppers must be grown in the Almeria Province of Spain in pest-proof greenhouses registered with, and inspected by, the Spanish Ministry of Agriculture, Fisheries, and Food (MAFF);

(b) The peppers may be shipped only from December 1 through April 30, inclusive;

(c) Beginning October 1, and continuing through April 30, MAFF must set and maintain Mediterranean fruit fly (Medfly) traps baited with trimedlure inside the greenhouses at a rate of four traps per hectare. In all outside areas, including urban and residential areas, within 8 kilometers of the greenhouses, MAFF must set and maintain Medfly traps baited with trimedlure at a rate of four traps per square kilometer. All traps must be checked every 7 days;

(d) Capture of a single Medfly in a registered greenhouse will immediately halt exports from that greenhouse until the Deputy Administrator determines that the source of infestation has been identified, that all Medflies have been eradicated, and that measures have been taken to preclude any future infestation. Capture of a single Medfly within 2 kilometers of a registered greenhouse will necessitate increased trap density in order to determine whether there is a reproducing population in the area. Capture of two Medflies within 2 kilometers of a registered greenhouse during a 1-month period will halt exports from all registered greenhouses within 2 kilometers of the capture, until the source of infestation is determined and all Medflies are eradicated;

(e) The peppers must be safeguarded against fruit fly infestation from harvest to export. Such safeguarding includes covering newly harvested peppers with fruit fly-proof mesh screen or plastic tarpaulin while in transit to the packing house and while awaiting packing, and packing the peppers in fruit fly-proof cartons, or cartons covered with fruit-fly proof mesh or plastic tarpaulin, and placing those cartons in enclosed shipping containers for transit to the airport and subsequent shipment to the United States;

(f) The peppers must be packed for shipment within 24 hours of harvest;

(g) During shipment, the peppers may not transit other fruit fly-supporting areas unless shipping containers are sealed by MAFF with an official seal whose number is noted on the phytosanitary certificate; and

(h) A phytosanitary certificate issued by MAFF and bearing the declaration, ''These peppers were grown in registered greenhouses in Almeria Province in Spain,'' must accompany the shipment.

Done in Washington, DC, this 19th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31713 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, and 299

[INS 1962–98]

RIN 1115–AF31

Petitioning Requirements for the H–1B Nonimmigrant Classification Under Public Law 105–277

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service's (Service) fee schedule and regulations with respect to filing requirements for Form I–129, Petition for H–1B Nonimmigrant Worker, for alien workers coming to perform services in a specialty occupation. Specifically, this rule amends the regulations to reflect an additional $500 billing fee, added by the American Competitiveness and Workforce Improvement Act (ACWIA), for H–1B petitions filed on or after December 1, 1998. This rule also describes the organizations that are exempt from the new fee requirements. Finally, this rule amends the regulations to reflect the new annual numerical limits on H–1B classification.

DATES: *Effective date:* This rule is effective December 1, 1998.

Comment date: Written comments must be submitted on or before January 29, 1999.

ADDRESSES: Please submit the original and two copies of written comments to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1962–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Adjudications Officer, Benefits Division, Immigration and Naturalization Service, 425 I Street NW., Room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, Congress enacted the American Competitiveness and Workforce Improvement Act of 1990 (ACWIA), as Title IV of Div. C of Public Law 105–277. This new legislation amended and created several statutory provisions relating to the H–1B nonimmigrant classification. These amendments include, among others:

(1) revisions to the attestation requirements for labor condition applications (LCA) under section 212(n) of the Immigration and Nationality Act (INA);

(2) new penalties and definitions of violations of LCA conditions;

(3) amendments to prevailing wage computations for academic and research organizations; and

(4) data collection and reporting requirements.

The Department of Labor is primarily responsible for administration and enforcement of the labor condition application and associated penalties. Therefore, as a number of these provisions require close coordination between the Department of Labor and the Service, they will be the subject of a separate rulemaking.

For this rulemaking, the Service is implementing only the provisions of section 414(a) and 415(a) of ACWIA, addressing the new fees for United States employers filing petitions for H–1B nonimmigrants and the organizations that are exempt from the new fee requirements. The Service is also revising the regulations at § 214.2(h)(8)(i)(A) to reflect the increase in the annual limitations on the number of aliens who can be granted an H–1B visa or otherwise accorded such status.

What Is the New Fee Required by H–1B Petitions?

ACWIA requires certain H–1B petitioners to pay an additional fee of $500, in addition to the standard $110 filing fee for Form I–129 petitions. This $500 fee will be disbursed between the Department of Labor and National Science Foundation for job training, low-income scholarships, grants for mathematics, engineering, or science enrichment courses, systematic reform activities, and administration and enforcement of the H–1B program. The Service will receive 1.5 percent of the fee as reimbursement for the costs of collection and processing of H–1B nonimmigrant petitions.

Who Is Required to Pay This Fee?

The new $500 filing fee must be paid by United States employers when they file H–1B petitions on or after December 1, 1998, and before October 1, 2001, for any of the following purposes:

(1) an initial grant of H–1B status under section 101(a)(15)(H)(i)(b) of the INA;

(2) an extension of stay for individuals currently in H–1B status; or

(3) authorization for a change in employment for individuals currently in H–1B status.

All United States employers seeking authorization for a change in employment (e.g., a change from one specialty occupation to another specialty occupation) for an H–1B nonimmigrant must pay the additional $500 fee, regardless of whether the request for change in employment is the first request for such a change or a subsequent request for the same H–1B nonimmigrant. For employers seeking an extension of stay under § 214.2(h)(15)(i), the additional $500 fee only applies to the *first* extension request. However, in instances where a new employer has received approval for a change in employment for an H–1B nonimmigrant and subsequently seeks an extension of stay for that H–1B worker, the new employer must also pay the additional $500 filing fee for its *first* request for extension of stay, regardless of whether the prior employer had requested an extension of stay for the H–1B nonimmigrant. Finally, the additional fee will not be required for employers filing amended petitions under § 214.2(h)(2)(i)(E), unless the

petition has the effect of extending the alien's status and is the first petition that the employer has filed to extend that alien's status.

Employers should note that the additional $500 filing fee is not waivable under § 103.7(c)(1).

What Are the Application Procedures for H–1B Petitions in Light of the New Fee Requirements?

All H–1B petitions filed on or after December 1, 1998, for new H–1B employment, concurrent employment, sequential employment, and the first extension of stay filed by an employer for the alien, must be filed in accordance with § 103.2(a), at the Service Center having jurisdiction over the area where the alien will perform the specialty occupation services. The completed Form I–129 must be accompanied by the required $110 filing fee and an additional $500 fee in a single remittance (one check or money order) of $610, unless the United States employer is an "exempt organization" as defined under § 214.2(h)(19)(iii).

Those United States employers claiming exemption from the additional $500 filing fee should submit a completed Form I–129, the $110 filing fee, the Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and evidence that their organization is an "exempt organization" as defined in § 214.2(h)(19)(iii).

Employers should note that under section 413(a) of ACWIA, which amends section 212(n)(2)(C) of the INA, an employer may not require an alien beneficiary to reimburse or otherwise compensate the employer for all or part of an H–1B petition filing fee. Therefore, the Service will reject remittances from an alien beneficiary or the alien's representative that accompanies an H–1B petition.

Who Is Exempt From the $500 Filing Fee?

The only organizations exempt from paying the additional $500 fee for filing H–1B petitions are:

(1) institutions of higher education, as defined in section 101(a) of the Higher Education Act of 1965, or related or affiliated nonprofit entities, and

(2) nonprofit or governmental research organizations.

The Service has created preliminary definitions for the terms "nonprofit" and "research" and the phrase "related or affiliated," drawing on generally accepted definitions of the terms. In addition, the Service has drawn from definitions of the terms. In addition, the Service has drawn from definitions contained in the regulations of the Internal Revenue Service (IRS), 26 CFR 1.501(c)(3)–1, (c)(4)–1, and (c)(6)–1, and Small Business Administration, 13 CFR 121.103. The Service also consulted with the Department of Labor and nonprofit and academic organizations for assistance in developing the definitions reflected in this rulemaking. In addition, these definitions will be the subject of a separate rulemaking proceeding with an opportunity for public comment when the Service and the Department of Labor address section 415 and subtitle C of ACWIA. The definitions are set forth in new § 214.2(h)(19)(iii). We invite public comment on this section.

Which H–1B Petitions Are Affected by ACWIA?

The new law only applies to petitions filed on or after December 1, 1998, and before October 1, 2001. For purposes of determining whether a petition is filed on or after December 1, 1998, the Service will rely on its existing regulation at § 103.2(a)(7), under which "filing" occurs on the date of receipt. As Senator Abraham stated in the House Conference Report 105–825, October 21, 1998, 2nd. Sess. 1998, ACWIA was the product of combined efforts by Congress and the business industry to implement changes in the H–1B nonimmigrant program. The Service believes that United States employers filing for H–1B nonimmigrant workers are well aware of the new fee requirements and the December 1, 1998, effective date for the new fee. In addition, since the Service has existing regulations governing filing and receipt of benefit applications, and employers of H–1B nonimmigrant workers are familiar with these regulations, United States employers should not have difficulty complying with the new fee requirement.

In the rulemaking, the Service also is requiring that a United States employer claiming to be an "exempt organization" must provide the Service with evidence of its section 501 (c)(3), (c)(4), or (c)(6) tax exempt status. The Service understands from the IRS that certain organizations (e.g., churches) qualify for nonprofit status even without a notice from the IRS confirming such status. The Service, however, believes that most employers of specialty occupation workers claiming an exemption will be able to meet this evidentiary requirement, either with a notice from the IRS or other documents demonstrating the United States employer's nonprofit status. In addition, the Service believes that information to be submitted with the H–1B petition, as provided in this interim rule, should provide sufficient evidence that the employer is an institution of higher education or research institution. The Service is not imposing any additional evidentiary requirements at this time; however, the Service may invoke its existing authority under § 103.2(b)(8) to request additional evidence if there is a question of eligibility for exemption from the filing fee. This is consistent with conference report language at House Report 105–825, October 21, 1998, 2nd Sess. 1998.

Good Cause Exception

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Sections 414(a) and 415(a) of ACWIA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of these sections. It also will inform the public about the new $500 filing fee for H–1B petitions for nonimmigrant workers and allow the Service to begin collecting this fee for H–1B petitions filed on or after December 1, 1998.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. Sections 414(a) and 415(a) of ACWIA established the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation implements procedures for submission of the new $500 filing fee for Form I–129, H–1B Nonimmigrant Petitions.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in

costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets. While the rule is not a major rule, the Service recognizes that all businesses, regardless of size, whose hiring practices involve H–1B aliens, are affected by this rule in that they will be required to submit an additional $500 per petition, unless exempt. It is anticipated that this rule will result in an estimated annual effect on the economy of $75,050,000 for the first year. It is anticipated that the effect on the economy for the second year will be $88,550,000. Further, as previously stated in the supplement to this rule, sections 414(a) and 415(a) of ACWIA establish the new $500 filing fee and exemptions that are effective December 1, 1998. This regulation merely implements procedures for the submission of the new $500 filing fee for H–1B nonimmigrant petitions.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation proposed 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 rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988.

Paperwork Reduction Act

Under ACWIA, on or after December 1, 1998, a United States employer must file an additional $500 fee for all petitions to classify an alien as an H–1B nonimmigrant worker. Institutions of higher education or related or affiliated nonprofit entities, and nonprofit or governmental research organizations, are exempt from this new fee requirement. United States employers claiming to be an exempt organization must complete Form I–129W, Petition for Nonimmigrant Worker, Filing Fee Exemption, and submit it to the Service. This attachment is considered an information collection covered under the Paperwork Reduction Act (PRA). The estimated burden hours for the first year are 38,500 which lead to a cost of $385,000. The additional costs of the collection total $75,050,000 for the first year. The estimated burden hours for the second year are 46,000 which lead to a cost of $460,000. The additional costs of the collection for the second year total $88,550,000.

Accordingly, the Service will be submitting an information collection package to the Office of Management and Budget (OMB) for review and approval in accordance with 8 CFR part 1320.13.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7 is amended as follows:

a. In paragraph (b)(1), remove the entries for ''Form I–129H'' and ''Form I–129L'' from the listing of fees;

b. Revise in paragraph (b)(1) the entry for ''Form I–129''; and

c. In paragraph (c)(1) add a new sentence at the end of the paragraph, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * *

Form I–129. For filing a petition for a nonimmigrant worker, a base fee of $110 plus an additional $500 fee in a single remittance of $610. Payment of this additional $500 fee is not required if an organization is exempt under § 214.2(h)(19)(iii) of this chapter. Payment of this additional $500 fee is not waivable under § 103.7(c)(1).

* * * * *

(c) * * *

(1) * * * The payment of the additional $500 fee prescribed by section 214(c)(9) of the Act when applying for petition for nonimmigrant worker under section 101(a)(15)(H)(i)(b) of the Act may not be waived.

* * * * *

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows;

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.2 is amended by:

a. Revising paragraph (h)(8)(i)(A); and by

b. Adding a new paragraph (h)(19); to read as follows:

§ 214.2. Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *

(8) * * *

(i) * * *

(A) Aliens classified as H–1B nonimmigrants, excluding those involved in Department of Defense research and development projects or coproduction projects, may not exceed:

(*1*) 115,000 in fiscal year 1999;

(*2*) 115,000 in fiscal year 2000;

(*3*) 107,500 in fiscal year 2001; and

(*4*) 65,000 in each succeeding fiscal year.

* * * * *

(19) *Additional fee for filing certain H–1B petitions*—(i) A United States employer (other than an exempt employer as defined in paragraph (h)(19)(iii) of this section) who files a Form I–129, on or after December 1, 1998, and before October 1, 2001, must include the additional fee required in § 103.7(b)(1) of this chapter, if the petition is filed for any of the following purposes:

(A) An initial grant of H–1B status under section 101(a)(15)(H)(i)(b) of the Act;

(B) An initial extension of stay, as provided in paragraph (h)(15)(i) of this section; or

(C) Authorization for a change in employment, as provided in paragraph (h)(2)(i)(D) of this section.

(ii) The service will accept remittances of the additional fee only from the United States employer or its representative of record, as defined under 8 CFR part 292 and 8 CFR 103.2(a)(3).

(iii) The following exempt organizations are not required to pay the additional fee:

(A) *An institution of higher education,* as defined in section 101(a) of the Higher Education Act of 1965;

(B) *An affiliated or related nonprofit entity.* A nonprofit entity (including but not limited to hospitals and medical or research institutions) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(C) *A nonprofit research organization or governmental research organization.* A research organization that is either a nonprofit organization of entity that is primarily engaged in basic research and/or applied research or a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research also is not research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or potential commercial interest. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services.

(iv) For purposes of paragraphs (h)(19)(iii)(B) and (C) of this section, a nonprofit organization or entity is one that is qualified as a tax exempt organization under section 501(c)(3), (c)(4), or (c)(6) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)) and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

* * * * *

PART 299—IMMIGRATION FORMS

5. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

6. Section 299.1 is amended in the table by adding the Form ''I–129W'' in numerical order to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
*	*	* * *
I–129W ..	11–24–98	Petition for Non-immigrant Worker, Filing Fee Exemption.
*	*	* * *

7. Section 299.5 is amended in the table by adding Form ''I–129W'' in numerical order to read as follows:

§ 299.5 Display of control numbers.

* * * * *

INS form No.	INS form title	Currently assigned OMB control No.
*	* *	* *
I–129W ..	Petition for Nonimmigrant Worker, Filing Fee Exemption	1115–0225
*	* *	* *

Dated: November 25, 1998.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 98–31953 Filed 11–25–98; 3:36 pm]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–1026]

Reserve Requirements of Depository Institutions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to decrease the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $47.8 million to $46.5 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board is increasing from $4.7 million to $4.9 million the amount of reserveable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reserveable liabilities exemption adjustment. The Board is also increasing the deposit cutoff levels that are used in conjunction with the reserveable liabilities exemption to determine the frequency of deposit reporting from $78.9 million to $81.9 million for nonexempt depository institutions and from $50.7 million to $52.6 million for exempt institutions. (Nonexempt institutions are those with total reserveable liabilities exceeding the amount exempted from reserve requirements ($4.9 million) while exempt institutions are those with total reserveable liabilities not exceeding the amount exempted from reserve requirements.) Thus, beginning in September 1999, nonexempt institutions with total deposits of $81.9 million or more will be required to report weekly while nonexempt institutions with total deposits less than $81.9 million may report quarterly, in both cases on form FR 2900. Similarly, exempt institutions with total deposits of $52.6 million or more will be required to report quarterly on form FR 2910q while exempt institutions with total deposits less than $52.6 million may report annually on form FR 2910a.

DATES: *Effective date:* December 1, 1998.

Compliance dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 1, 1998, and the corresponding reserve maintenance period that begins Thursday, December 31, 1998. For institutions that report quarterly, the low reserve tranche adjustment and the reserveable liabilities exemption adjustment will apply to the reserve computation period that begins Tuesday, December 15, 1998, and the corresponding reserve maintenance period that begins Thursday, January 14, 1999. For all depository institutions, the deposit cutoff levels will be used to screen institutions in the second quarter of 1999 to determine the reporting

frequency for the twelve month period that begins in September 1999.

FOR FURTHER INFORMATION CONTACT: Rick Heyke, Attorney (202/452–3688), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs; for the hearing impaired only, contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544); Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting the low reserve tranche for the next calendar year. The adjustment in the tranche is to be 80 percent of the percentage increase or decrease in net transaction accounts at all depository institutions over the one-year period that ends on June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $47.8 million. Net transaction accounts of all depository institutions decreased by 3.5 percent (from $713.6 billion to $688.6 billion) from June 30, 1997, to June 30, 1998. In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR Part 204) to decrease the low reserve tranche for transaction accounts for 1998 by $1.3 million to $46.5 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that $2 million of reserveable liabilities [1] of each depository institution shall be subject to a zero percent reserve requirement. Each depository institution may, in accordance with the rules and regulations of the Board, designate the reserveable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (i.e., net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reserveable liabilities exempt from reserve requirements. Unlike the adjustment for the low reserve tranche on net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reserveable liabilities held at all depository institutions increase from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reserveable liabilities of all depository institutions as of the year ending June 30. Total reserveable liabilities of all depository institutions increased by 4.6 percent (from $1,821.2 billion to $1,904.6 billion) from June 30, 1997, to June 30, 1998. Consequently, the reserveable liabilities exemption amount for 1999 under section 19(b)(11)(B) will be increased by $0.2 million to $4.9 million.[2]

The effect of the application of section 19(b) of the Federal Reserve Act to the change in the total net transaction accounts and the change in the total reserveable liabilities from June 30, 1997, to June 30, 1998, is to decrease the low reserve tranche to $46.5 million, to apply a zero percent reserve requirement on the first $4.9 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reserveable liabilities exemption adjustment for weekly reporting institutions will be effective for the reserve computation period beginning Tuesday, December 1, 1998, and for the corresponding reserve maintenance period beginning Thursday, December 31, 1998. For institutions that report quarterly, the tranche adjustment and the reserveable liabilities exemption adjustment will be effective for the computation period beginning Tuesday, December 15, 1998, and for the reserve maintenance period beginning Thursday, January 14, 1999. In addition, all institutions currently submitting form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established deposit reporting cutoff levels to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set a single cutoff level for all depository institutions of $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[3] In August of 1994, the Board replaced the single deposit cutoff level that had applied to both nonexempt and exempt institutions with separate cutoff levels, increasing the cutoff level for nonexempt institutions, and in September 1997 further increased the cutoff level for nonexempt institutions to $75.0 million. In September 1998, the cutoff level for nonexempt institutions, which determines whether they report (on FR 2900) quarterly or weekly, was raised to $78.9 million, and the deposit cutoff level for exempt institutions, which determines whether they report annually (on FR 2910a) or quarterly (on FR 2910q), was raised to $50.7 million.

From June 30, 1997, to June 30, 1998, total deposits increased 4.8 percent, from $4,441.3 billion to $4,653.2 billion. Accordingly, the nonexempt deposit cutoff level will increase by $3.0 million to $81.9 million and the exempt deposit cutoff level will increase by $1.9 million to $52.6 million. Based on the indexation of the reserveable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $4.7 million to $4.9 million. Institutions with total deposits below $4.9 million will be excused from reporting if their deposits can be estimated from other data sources. The $81.9 million cutoff level for weekly versus quarterly FR 2900 reporting for nonexempt institutions, the $52.6 million cutoff level for quarterly FR 2910q versus annual FR 2910a reporting for exempt institutions, and the $4.9 million level threshold for reporting will be used in the second quarter 1999 deposits report screening process, and the adjustments will be made when the new deposit

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

[2] Consistent with Board practice, the tranche and exemption amounts have been rounded to the nearest $0.1 million.

[3] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

reporting panels are implemented in September 1999.

All U.S. branches and agencies of foreign banks and all Edge and agreement corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). After the indexations become effective in 1999, all other institutions that have reserveable liabilities in excess of the exemption level of $4.9 million prescribed by section 19(b)(11) of the Federal Reserve Act (known as ''nonexempt institutions'') and total deposits at least equal to the nonexempt deposit cutoff level ($81.9 million) will be required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900) for the twelve month period starting September 1999. However, nonexempt institutions with total deposits less than the nonexempt deposit cutoff level ($81.9 million), will be able to file the FR 2900 quarterly. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reserveable liabilities at or below the exemption level ($4.9 million) (known as exempt institutions) will be required to file the Quarterly Report of Selected Deposits, Vault Cash, and Reserveable Liabilities (FR 2910q) if their total deposits equal or exceed the exempt deposit cutoff level ($52.6 million). Exempt institutions with total deposits less than the exempt deposit cutoff level ($52.6 million) but at least equal to the exemption amount ($4.9 million) will be able to file the Annual Report of Total Deposits and Reserveable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.9 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or overstates the deductions allowed in computing required reserve balances.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve expected, ministerial adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. Moreover, the low reserve tranche adjustment and the reservable liabilities exemption adjustment are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities exemption adjustment and the increases for reporting purposes in the deposit cutoff levels reduce regulatory burdens on depository institutions, and the low reserve tranche adjustment will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $46.5 million. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation is unnecessary, impracticable, or contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the low reserve tranche adjustment and the reservable liabilities adjustment are expected, ministerial amendments prescribed by statute. Moreover, they are required to be effective for the next calendar year even though the data which they are required to reflect are only available late in the prior year. In addition, the reservable liabilities adjustment and the increase in deposit cutoff levels for reporting purposes relieve a restriction on depository institutions, and the low reserve tranche will have a *de minimis* effect on depository institutions with net transaction accounts exceeding $46.5 million. Accordingly, there is good cause to determine, and the Board so determines, that such notice is impracticable or unnecessary.

Regulatory Flexibility Analysis

The Board certifies that these amendments will not have a substantial economic impact on small depository institutions. *See* ''Notice and Public Participation'' above.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 continues to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. Section 204.9 is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement [1]
Net transaction accounts:	
$0 to $46.5 million	3 percent of amount.
Over $46.5 million	$1,395,000 plus 10 percent of amount over $46.5 million.
Nonpersonal time deposits	0 percent.
Eurocurrency liabilities	0 percent.

[1] Before deducting the adjustment to be made by paragraph (b) of this section.

(b) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a) of this section not in excess of $4.9 million determined in accordance with § 204.3(a)(3).

By order of the Board of Governors of the Federal Reserve System, November 23, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–31764 Filed 11–27–98; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 502

[No. 98–118]

RIN 1550–AB20

Assessments and Fees

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to more equitably impose assessments on savings associations. OTS's experience has shown that the current assessment structure may cause some savings associations to pay assessments over or under OTS's costs of supervising those savings associations. The final rule is designed to correlate OTS's assessments on savings associations more closely with the costs associated with supervising those associations. At the same time, the final rule establishes a regulatory structure that allows OTS to keep its assessment rates as low as possible while providing OTS the resources essential to effectively supervise the industry. The rule also clarifies certain other matters involving assessments and other fees, and revises the entire assessment and fee regulation using a plain language format.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Christine Harrington, Counsel (Banking and Finance), (202) 906–7957, or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office; or Eric Hirschhorn, Principal Financial Economist, (202) 906–7350, Research & Analysis; William Brady, Director, Planning & Budget, (202) 906–7408, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

OTS is charged with the mission of examining, regulating, and providing for the safe and sound operation of savings associations.[1] Under 12 U.S.C. 1467, OTS funds these operations through assessments on savings associations and through other fees, as necessary and appropriate. This section authorizes the Director of OTS to assess examination costs against savings associations and their affiliates, and to recover the agency's direct and indirect expenses, as the Director deems necessary or appropriate.

Recently, OTS analyzed its operating costs and compared these costs to its assessments on savings associations under its current regulation. OTS found that its assessments could be more closely correlated to its costs in certain respects. For these reasons, on August 14, 1998, OTS proposed to amend its assessment regulation.[2] The proposed rule based assessments on three components: the savings association's asset size, its condition, and its complexity. The proposed rule also streamlined and clarified OTS's regulation concerning fees, and clarified administrative matters.

Today, OTS is issuing a final assessments rule. Briefly, this final rule is substantially identical to the proposal, but with certain changes to the complexity component. OTS limits its trust examinations fee to those associations not subject to the complexity component's coverage of trust assets. Additionally, OTS has decided to adopt a structure that will permit OTS to use one or more different assessment rates for each of the different activities covered by the complexity component. Currently, for trust assets and recourse obligations and direct credit substitutes, OTS will use flat rates. In contrast, for loans serviced for others, OTS will initially use two rates to reflect economies of scale in examining these activities. Additionally, the final rule clarifies which assets and activities are covered by each of the three categories within the complexity component. The final rule is described more specifically below.

II. General Discussion of Comments

The comment period on the proposed rule closed on October 13, 1998. OTS received thirteen comments from eight savings associations, four trade associations, and one holding company. The comments were mixed, with most commenters supporting some parts of the proposal while opposing others. Several commenters opposed the complexity component as proposed, but expressed no opinions on other aspects of the proposal. One commenter supported the proposal, but suggested alternatives. One commenter discussed the proposal but did not take a position. All others had mixed reactions.

In the proposed rule, OTS indicated that it has two goals with respect to the assessment rule. First, OTS wants to establish an assessment structure that keeps assessment rates as low as possible while providing the resources essential to effective supervision of a changing industry. One commenter opposed the proposal to the extent that it would result in an overall increase in assessments. The final rule adopted today is designed to correlate OTS assessments to the costs of supervision of the thrift industry. As the industry's size, condition, and complexity change in the future, OTS's costs will also change. The final rule will enable OTS's revenues to move along with these changes in its supervisory expenses. OTS believes the approach in the final rule is appropriate and should not result in overcharging the thrift industry.

As its second goal, OTS wants to more closely tailor assessments with OTS's supervisory costs. To do so, OTS used statistical analyses of examiner hours to correlate its proposed assessments with supervisory costs. Two commenters supported basing assessments on examination costs, while one opposed this method, believing examiner hours are excessive. Examiner hours are the main component of OTS's supervisory expenses that vary with the size, condition, or other attributes of thrift institutions. As such, they are a useful standard for evaluating consistency between an assessment schedule and actual supervision. OTS has not found, and no one has proposed, a better alternative. OTS, therefore, will continue to base its assessments on its statistical analyses of examination costs.

Commenters specifically argued that OTS did not provide empirical evidence supporting its assertions regarding examination time and costs. One commenter noted that OTS did not provide details regarding the actual supervision costs, the structure of the quantitative model used to analyze costs, or the variables in the model.

While OTS studied examination costs and examination hours devoted to different tasks, it did not publish these studies in the **Federal Register** because they are too voluminous. Instead, OTS provided adequate details through other means. First, OTS summarized its findings in the notice of proposed rulemaking. In addition, OTS placed a paper providing background analysis in the public comment file. This paper has been available for inspection in the OTS public reading room. Moreover, the Principal Financial Economist who conducted the studies was listed as an

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[1] 12 U.S.C. 1463(a).

[2] 63 FR 43642 (Aug. 14, 1998).

contact person in the proposed rule. Finally, OTS's financial statements, including information about OTS's expenses, are available on OTS's web site.

Several commenters noted that the proposed assessments rule would place OTS-regulated institutions at a competitive disadvantage with regard to national banks and other entities. For example, these commenters pointed out that the Office of the Comptroller of the Currency (OCC), which regulates national banks, does not impose a complexity component, charges a lower condition premium for 4- and 5-rated institutions, and does not charge for trust examinations. Commenters argued that the proposed complexity component would discourage thrifts from engaging in the certain activities, particularly where profit margins are low, as in the loan servicing field. Other commenters predicted that new or existing institutions may reconsider their charter choice.

Competitive disparities are inevitable in any assessment structure. Savings associations compete with many institutions that are subject to differing assessments structures and other entities that are not subject to any assessments. For example, thrifts compete with credit unions, and with state chartered commercial and savings banks who do not pay Federal assessments. Thrifts also compete with entities that are not regulated by a federal banking agency, such as mutual funds.

Moreover, eliminating the aspects of this rule that are different from the OCC assessments model would not eliminate all competitive inequities. Rather, such a change would merely move a competitive disparity from one thrift to another. For example, if OTS were to eliminate the assessment on trust activities or on loan servicing, it would necessarily transfer the costs of supervising those activities from the institutions that cause them to other savings associations. These other institutions would be forced to bear these costs while, at the same time, they are trying to compete with other institutions who do not have to cover such costs. OTS sees no benefit in such an approach. OTS's goal in amending its assessment regulation is to more closely tailor its assessments to its costs, which this regulation does. OTS believes this is the most equitable approach.

One commenter encouraged OTS to meet with the OCC to discuss the disparities between the assessments for thrifts and national banks. Specifically, this commenter urged OTS to evaluate the merits of the complexity component with the OCC before implementing the proposed rule. This commenter encouraged OTS to work toward a uniform regulation with the OCC. Another commenter noted that section 303(a)(2) of the Riegle Community Development Act requires OTS to work toward uniform regulation with the other federal banking agencies.[3]

OTS considered the OCC's assessment structure in developing its proposed and final rules, just as the OCC considered the OTS structure in adding a surcharge on its assessments for national banks requiring additional supervisory resources.[4] However, because the thrift industry and the national bank industry differ in certain respects, identical rules are not necessarily the most equitable. For example, thrifts concentrate on mortgage lending operations, such as mortgage servicing, more than national banks. As a result, an assessment that does not cover mortgage loan servicing would have a more inequitable impact on institutions in the thrift industry than in the banking industry. OTS's system will reduce the cross-subsidies between thrifts. While this system is different than the OCC's, OTS believes it is more equitable for the thrift industry.

III. Description of the Final Rule

A. Size Component

OTS proposed to base the first component of the assessment calculation on asset size, as reported in the Thrift Financial Report (TFR). Like the current regulation, the size component would use marginal assessment rates that decline as asset size increases. Second, OTS would incorporate some fixed costs into the assessment rate schedule via an explicit charge. Commenters generally supported the size component, and one noted that this method is easy to understand and to plan for. Specific comments regarding the size component are discussed below.

1. Declining Rate Schedule

The proposed assessment structure uses assessment rates that decline as asset size increases because OTS realizes economies of scale in supervising and regulating larger savings associations. Because OTS's experience indicated that the current marginal assessment rates are no longer consistent with existing economies of scale, the projected marginal rates in the preamble to the proposed rule differed from the rates OTS had been using for assessments. Four commenters supported this system of declining rates.

Like the current rule, the proposed graduated schedule included seven asset size classes. The highest class included institutions with over $35 billion in assets. One commenter urged OTS to add more asset size classes. This commenter believed that the largest asset size category, $35 billion and larger, denies economies of scale to the largest institutions.[5] Another commenter suggested that OTS reexamine whether the proposed asset size categories are appropriate.

OTS considered altering the asset size categories in its assessments regulation, but declines to amend them at this time. There currently are not enough savings institutions significantly over $35 billion in size to justify a new, larger, size category. OTS believes the seven asset size categories, along with an adjustable marginal assessment rate for each category, will permit OTS to appropriately recognize existing economies of scale in the size component. If those economies of scale change over time, OTS can incorporate those changes by adjusting the rates, for each appropriate class, accordingly.

2. Fixed Charge

OTS proposed to incorporate fixed supervision costs into the assessment rate schedule via an explicit charge assessed on all savings associations. Two commenters supported this proposal.[6] One commenter, however, suggested that OTS should include a lower fixed cost in the schedule to cover only the ''basic'' cost of examination and impose the fixed cost of other activities (e.g., rule drafting) directly on those institutions that are affected by the specific regulatory activity.

The commenter's proposed alternative would impose excessive and unnecessary administrative burdens on

[3] 12 U.S.C. 4803(a)(2). This statute required Federal banking agencies to work jointly toward uniform regulations in common areas.

[4] *See* 62 FR 54147 n.5 (Oct. 21, 1997).

[5] Alternatively, the commenter proposed that OTS base assessments on a per hour charge for examiners' actual time at each institution. While this method would correlate assessments with OTS's supervisory costs, it would also result in fluctuating and unpredictable assessments. OTS does not always examine thrifts at regular intervals. Some are examined more or less frequently in response to marketplace or other events. Currently, for example, OTS is conducting Year 2000 examinations, which are a temporary cost. OTS believes that the final assessments rule offers savings associations a measure of predictability as to the amount due at the time of each assessment. This will aid both institutions and the agency in the budgetary process. Further, this assessment scheme is simpler and less burdensome for the agency to administer.

[6] Three commenters argued that the fixed charge could be burdensome to small institutions. These comments are discussed below in connection with the alternate fee calculation for small institutions.

OTS. It would be impractical administratively to charge each affected institution for specific supervision costs on a rule by rule or policy by policy basis. It is impossible to determine all the thrifts affected by any rule or policy. It would also increase OTS's costs and create uncertainty over the assessments that thrifts would pay from one year to the next. Accordingly, OTS declines to adopts the commenter's alternative proposal. The final rule continues to incorporate the fixed cost aspect of the size component, as proposed.

3. Alternate Calculation for Certain Small Institutions

OTS recognized that the size component could have a disproportionate impact on the smallest savings associations—those with less than $100 million in assets. Accordingly, OTS proposed to base the size component for certain qualifying savings associations on the lesser of the new size component or the assessment calculated under the current general assessment table. This grandfather provision would not be available to savings associations formed after this rule's effective date, or to institutions whose assets have exceeded $100 million at the end of any quarter. Three commenters supported the grandfather provision.

Three commenters suggested modifications to the grandfather provisions. These commenters suggested that institutions with less than $100 million in assets should qualify for the grandfather provision, even if they had more that $100 million in assets at the end of a prior quarter. Another commenter believed that institutions should qualify for the grandfather clause if their asset size is $150 million or less.

These suggested approaches would have little effect. For the January 1999 assessment, the size component for institutions with over $67.5 million in assets will be lower under the new assessment schedule than under the existing general assessment schedule. Thus, even if these institutions qualified for the special treatment afforded small institutions, OTS would use the new size component to compute their assessment, rather than the grandfather provision. Institutions under $67.5 million in assets will find little difference between the two assessments. OTS acknowledges that if supervisory expenses increase in the future, this may no longer be true. However, if OTS needs to increase its rates, it will consider the effects of an increase on small institutions before increasing the marginal rates under the size component.

Finally, one commenter urged that institutions that become savings associations after the rule's effective date should qualify for the small institution exemption. In proposing the small institution exemption, OTS was concerned that the new size component would impose undue burdens on existing savings associations, which may not be in a position to absorb the new burden. It is not necessary to minimize the potential burden of a changing regulatory structure for newly created institutions because those institutions will be able to plan for and take into account the new assessment schedule as they make their initial business decisions.

4. Assessment Rates

In its proposed rulemaking, OTS included a chart indicating the base assessment amounts and marginal assessment rates it was considering for the initial size component. OTS, however, also indicated that these amounts and rates could change depending on changes to the final rule. For example, OTS noted that if it were to decide against imposing a complexity component, it would charge higher rates under the size component.

As discussed below, OTS has adopted different assessment rates for the activities within the complexity component. As a result, the rates for the initial size component are different than those listed in the notice of proposed rulemaking. The rates OTS will apply for the January 31, 1999 semi-annual assessment are set forth in a Thrift Bulletin issued simultaneously with this rulemaking and available on OTS's web site.

B. Condition Component

Under the second component of the assessment calculation, OTS proposed to impose an additional 25% premium on the size component for 3-rated institutions and to continue its current 50% premium on 4- and 5-rated institutions. Commenters addressing the condition component generally favored it. One commenter, however, opposed the 25% surcharge, arguing that OTS's examination rating system is arbitrary and may pressure examiners to generate income through the rating system.

The CAMELS rating system that OTS uses was developed jointly by all of the Federal banking regulators in an effort to establish a uniform rating system using standard criteria and definitions for rating in six different ratings areas. The CAMELS rating system, with its correlation to increased supervisory attention, is well suited to distinguish between savings associations whose performance is consonant with safe and sound operations (1- and 2-rated institutions), those whose performance is flawed in certain respects (3-rated institutions), and those whose performance is poor or unsatisfactory (4- and 5-rated institutions). Over the years, this rating system has proven to be an effective supervisory tool for evaluating the soundness of financial institutions on a uniform basis and for identifying those institutions requiring special supervisory attention or concerns.[7]

Moreover, OTS does not believe that the surcharge for 3-rated thrifts will place pressure on examiners to generate income. OTS's experience with its surcharge for 4- and 5-rated thrifts has shown no pressure to lower ratings to generate revenue. On the contrary, the number of 4- and 5-rated savings associations has steadily decreased since OTS began imposing a premium for lower rated associations. For example, there were 203 institutions rated 4 or 5 in 1992, which dropped to 101 in 1993, and plummeted to only 18 by June 1998.

Two commenters were concerned that the condition component would take capital away from struggling institutions. While OTS agrees with these commenters' concerns, its analyses demonstrate that examiners devote substantially more hours to 3-rated institutions than 1-or 2-rated institutions, although not as many hours as 4- and 5-rated institutions. In other words, 3-rated institutions cause OTS to incur extra supervisory costs. OTS must, therefore, pass along those costs either to 3-rated associations or to other institutions. Passing the costs to 4- and 5-rated institutions would worsen their condition. Passing the costs to 1- and 2-rated institutions would unfairly burden them. OTS believes the 25% surcharge for three-rated institutions in the condition component is the most fair and appropriate solution overall, and therefore adopts it as proposed.

To alleviate some of the burden on 3-rated institutions, one commenter suggested a sliding scale within the 3-rated category. Under this alternative, some institutions would not incur a full 25% premium. OTS considered the commenter's suggestion, but believes that it would be impossible to administer fairly. OTS does not assign ''high'' and ''low'' three-ratings and does not track its examiners' hours on this basis. Accordingly, OTS declines to adopt this suggestion.

[7] See 61 FR 67021 (Dec. 19, 1996) (Uniform Financial Institutions Rating System).

C. Complexity Component

OTS proposed to include a new complexity component in its assessment regulation. This component would impose an assessment based on a percentage of the value of certain complex assets or activities that require OTS to expend supervisory resources beyond those at institutions of similar size and condition. OTS proposed that the complexity component cover loans serviced for others, trust assets, and recourse obligations and direct credit substitutes, to the extent that any of these categories exceed $1 billion. OTS solicited comments on whether commercial loans and non-residential real estate loans should also be included in the basis for the complexity component.

The complexity component drew the most public comment. One commenter agreed that the component was logical, and another supported the complexity component for larger institutions with complex operations but not for local community institutions that make consumer and commercial loans. Ten others opposed at least one aspect of the proposed complexity component. As detailed below, OTS adopts much of the complexity component as proposed, but makes certain changes and clarifications in response to the comments.

1. Assets or Activities Subject to the Complexity Component

(a) *Loan serviced for others.* The proposed rule would include loans serviced for others as part of the base for the complexity component. Three commenters asked how OTS would interpret ''loans serviced for others.'' Loans serviced for others, as clarified in the final rule, means the principal amount of loans serviced for others, as currently reported in the TFR on line SI390.[8] This definition is familiar to all thrifts that service loans for others because they routinely use it in completing TFRs. OTS, therefore, believes this is the most appropriate definition to use.

Four commenters noted that loans serviced for others are reflected on the balance sheet under some circumstances (i.e., mortgage servicing rights and asset backed securities), and are therefore covered by the size component. At the same time, these assets would also be covered by the complexity component. Commenters urged OTS to either remove the asset from the complexity component base or from the size component base.

OTS's statistical analyses of examiner hours showed that institutions that service loans for others require more examiner hours than institutions of similar size and condition without such activities. Thus, even to the extent that some assets related to these activities are also covered by the size component, the analyses demonstrates that the size component alone does not cover the supervisory costs for such activities.[9]

One commenter observed that there could also be inconsistent counting on an industry-wide basis. For example, loans included under one association's size component could also be covered by another association's complexity component as loans serviced for others. By contrast, if an originator retained both the loans and the servicing, the loans would be included in the originator's size component, but the servicing would not be assessed under the complexity component. This commenter questioned why OTS should collect more revenue in the first instance than in the second.

When loans are split into their components and spread between institutions, it is appropriate to assess under different components to correlate to OTS's costs. Separating loans from their servicing increases OTS's supervisory workload because both the loans and the loan servicing require OTS's review, sometimes by different groups of examiners. To the extent that loan servicing for others exceeds $1 billion, OTS has found that this activity increases OTS's examination costs independently of an institution's size and condition.

Finally, one commenter noted that complex assets are often supported by other related on-balance sheet assets (e.g., fixed assets to generate cash flow) and that these related assets are also assessed under the size component. Such fixed assets are not included in the complexity component, so they are not assessed twice. Rather, they are included only in the size component, as are all fixed assets. OTS sees no reason to treat these assets differently than the fixed assets that support any lines of business.

Two commenters suggested that mortgage loans serviced for government sponsored entities (GSEs) should be excluded from the complexity component because GSEs already supervise their servicers. GSEs, however, do not always examine servicing for the same purposes as OTS, so OTS oversight is also necessary. The complexity component is based on, and reflects, OTS's examination costs. If OTS did not assess for those costs through the complexity component, the same costs would necessarily be imposed on other savings associations.

One commenter urged OTS to distinguish between loan servicing and subservicing. This commenter argued that subservicing does not raise the same safety and soundness concerns that servicing does, and that subservicing should therefore be excluded from the complexity component. In this rulemaking, OTS is seeking to correlate assessments with its costs of supervision rather than with the safety and soundness of activities. Nevertheless, OTS did consider this concern about subservicing. The agency's workload analyses are based on TFRs, which do not distinguish between servicing and subservicing. Therefore, the agency's statistical analysis cannot separate examination time spent on subservicing specifically. However, the agency's experience is that supervising loan servicing and subservicing are quite similar and require substantially the same amount of examiner time. With both servicing and subservicing, examiners look at the quality of operations, and they analyze future expected income and costs.

Subservicing may require slightly less examiner time than servicing. However, this is counterbalanced by the fact that direct servicing is assessed under the size component because a small percentage of the loan value does appear on the balance sheet as a servicing asset. Thus, while subservicing may require slightly less examining than direct servicing, subservicing is assessed less under this rule than direct servicing.

Current information demonstrates that subservicing should be covered by the complexity component. OTS will monitor the amount of its time examiners spend on subservicing. If, over time, OTS determines that subservicing requires less examination than direct servicing, OTS may partially or wholly exclude subservicing from assessments.

(b) *Trust assets administered by the association.*

[8] This definition covers loans and securities that a savings association or its consolidated subsidiary services but does not own. It excludes loans and securities for which the savings association or its consolidated subsidiary owns the servicing rights but for which it has subcontracted subservicing to a third party. It also excludes loans and securities serviced for a savings association by its consolidated subsidiary or a subsidiary depository institution.

[9] OTS recognizes that servicing rights are covered by the size component. However, the value of those rights, within the size component, is a very small percentage of the loan size. For example, in June 1998, no thrift reported servicing rights assets over 2.25% of loans serviced for others. Therefore, even to the extent that loan servicing is counted in two components, the amount counted twice is very small. Because the amount involved is so small, OTS does not believe that the deduction of these amounts is warranted.

The proposed rule would include an assessment under the complexity component on trust assets administered by a savings association. For purposes of this rule, OTS uses the trust assets identified in Line SI350 of the TFR. This covers assets in both discretionary and nondiscretionary accounts.

Two commenters pointed out that OTS currently charges an hourly examination fee for trust examinations. Commenters argued that this fee in addition to the complexity component's assessment of trust assets would be too burdensome. One, a state-chartered trust company, noted that it is subject to both state and OTS charges for trust examinations.[10] Another commenter argued that OTS should impose only a trust examination fee and should not impose any complexity component on trust assets.

OTS agrees that coverage of trust assets under the complexity component, when combined with the trust examination fee, is duplicative. OTS will not assess both against the same institution. Under the final rule, the complexity component will only apply when trust assets administered by an association exceed $1 billion. The trust examination fee, on the other hand, as set forth in a Thrift Bulletin issued today, will apply only to trust examinations of savings associations that administer $1 billion or less in trust assets. The final rule, at §§ 502.5(c) and 502.50(a), states that trust examination fees do not apply to associations that administer more than $1 billion in trust assets. This approach should alleviate concerns about overly burdensome assessments on savings associations that administer trust assets. At the same time, it will keep assessments and fees correlated to OTS's costs of supervising associations that administer trust assets.

(c) *Recourse obligations and direct credit substitutes.*

The proposed rule would impose an assessment, as part of the complexity component, on off-balance sheet activities that are recourse obligations and direct credit substitutes, if those activities exceed $1 billion. One commenter asked OTS to clarify what this assessment covers. For purposes of this rule, OTS uses the same definitions for recourse obligations and direct credit substitutes that OTS uses for the TFR line CC455. This definition includes the full value of assets covered, fully or partially, by a savings association's recourse obligations or direct credit substitutes. The final rule, at § 502.25(a)(3), contains this clarification. Generally, recourse obligations are arrangements by which an association retains credit risk on assets that it sells to a third party. Direct credit substitutes are arrangements by which an association assumes credit risk on assets that another institution sells to a third party.

One commenter specifically requested that OTS clarify its use of the phrase "off-balance sheet assets." This commenter noted that that some off-balance sheet assets, such as routine interest rate swaps, require less OTS oversight than other types, such as complex hedging strategies. The complexity component would not be assessed against all off-balance sheet activities, but only those identified in the regulation. To avoid confusion with other types of off-balance sheet activities, however, OTS has revised the rule text to delete the phrase "off-balance sheet assets."

Another commenter observed that some direct credit substitutes and recourse obligations are also on-balance sheet assets, and are subject to assessment twice, under the size and the complexity components. However, these items have an independent significant effect on OTS's costs. OTS's statistical analyses of examiner hours showed that institutions with recourse obligations or direct credit substitutes require more examiner hours than institutions of similar size and condition without such activities. Thus, even to the extent that some recourse obligations and direct credit substitutes are covered by the size component, the analysis demonstrates that the size component alone does not cover the supervisory costs for such activities.

(d) *Commercial and non-residential real estate loans.*

OTS asked for comment whether commercial and non-residential real estate loans should be included in the complexity component. The four commenters addressing this question advocated excluding these loan types from the complexity component's coverage. One pointed out that while these are more complex than other loans, they have higher balances and produce economies of scale in the examination process. Another commenter believed that all on-balance sheet assets should be subject to the same assessment rate no matter their complexity. Finally, one commenter believed that commercial and non-residential mortgages should not be included in the complexity component without sound empirical evidence that this lending entails more examination costs.[11]

OTS has decided against including commercial loans and non-residential real estate loans in the complexity component. OTS wishes to encourage thrifts to diversify their operations where they can do so safely and soundly. Additionally, commercial and non-residential real estate lending is currently a relatively minor part of the industry's overall activities. However, OTS will continue to collect empirical data on this lending activity. If in the future, OTS determines that its costs of supervision warrant the addition of commercial and non-residential loans to the complexity component, it will propose appropriate revisions to the assessment rule.

(e) *Loans sold with servicing released.*

OTS considered including another type of asset in the complexity component—loans sold with servicing released. Some savings associations originate large volumes of loans and immediately sell the loans and the servicing. Because the originators sell these loans quickly, only a portion of the loans appear on the savings association's September or March TFR and are subject to assessment under the size component. These associations, however, can incur serious risks to their safety and soundness and significant compliance obligations in producing and selling large volumes of these loans. As a consequence, examiners must expend considerable amounts of time examining these operations.

The final rule does not specifically address loans sold with servicing released. However, if OTS determines that a particular savings association is taking on additional risks with this type of activity, thus requiring OTS to incur extraordinary expenses to examine and supervise the activity, the agency may impose a fee under §§ 502.5(c) and 502.60(c).[12] If in the future, the risks

[10] This commenter felt that, while state and federal agencies acknowledge the desirability of working together, they generally do not coordinate trust examinations. The commenter would prefer to see a proposal aimed at finding remedies for these inefficiencies. OTS agrees that regulators should avoid duplicative examinations when possible. As a policy matter, OTS makes every effort to coordinate examinations with state regulators, but it is not always possible to do so. OTS will continue its efforts to coordinate examinations where appropriate.

[11] One commenter believed that commercial and non-residential mortgage loans only require extra supervisory efforts if they suffer from credit problems. This commenter argued that OTS's extra costs for such credit problem would be covered by the condition component and that covering the costs in the complexity component is unnecessary. OTS agrees that credit risk is a part of commercial lending, but it does not follow that savings associations exposed to some credit risk are necessarily rated a 3, 4, or 5. Thus, the condition component may not apply to associations with commercial loans that require extra supervision.

[12] One commenter opposed proposed §§ 502.5(c) and 502.60, arguing that the condition component

Continued

from this activity become more commonplace or more severe, OTS may consider amending this rule to specifically cover the activity.

2. $1 Billion Threshold

OTS proposed to assess the complexity component only when assets included in each category of complex assets (trust assets, loans serviced for others, and recourse obligations and direct credit substitutes) exceed $1 billion. OTS solicited comments on this proposed $1 billion threshold. One commenter believed the $1 billion proposed threshold is reasonable, while another thought it is too high. One commenter opined that complex assets require less supervisory attention in larger institutions than in smaller institutions. This commenter argued that the complexity component should apply when complex assets exceed a specified percentage of assets.

OTS's statistical analyses found that a $1 billion threshold is better correlated with the agency's examination workload than a percentage-of-assets threshold. Additionally, a threshold based on a percentage of assets would be more difficult to administer, and would be more uncertain for thrifts. For these reasons, OTS adopts the $1 billion threshold as proposed.

3. Assessment Rates for Complexity Component

OTS proposed to use the same assessment rate for all assets subject to the complexity component. The preamble to the proposed rule indicated that OTS expected to apply a flat rate of 0.0015% to all complex assets that exceed the $1 billion thresholds.

Several commenters questioned whether all complex assets warrant the same assessment rate. Commenters argued that different off-balance sheet assets may require differing levels of supervision.

In response to these comments, OTS reviewed its cost statistics. OTS found that loans serviced for others, trust assets, and recourse obligations and direct credit substitutes do not all have identical effects on examination hours. More specifically, OTS found that recourse obligations and direct credit substitutes have a greater effect on examiner hours than trust assets administered by a savings association, which, in turn, have a greater effect on examiner hours than loans serviced for others. OTS therefore believes different assessment rates should apply to the different activities within the complexity component. Initially, OTS will assess trust assets at a rate of 0.0015%, and recourse obligations and direct credit substitutes at 0.0030%. For loans serviced for others, OTS will use two different assessment rates to recognize economies of scale, as discussed immediately below.

OTS proposed no upper limit on the complexity component, but requested comment on whether there should be a cap on this component. Five commenters discussed economies of scale in administering or supervising complex activities. One thought a cap of $3 billion would avoid penalizing thrifts who have achieved economies of scale in their operations. Three favored a declining marginal assessment rate as asset size increases, and one of these suggested a flat fee together with a declining assessment rate. The fifth commenter did not suggest a specific method for addressing economies of scale. In addition, two commenters suggested some unspecified cap on the complexity component.

In response to comments, OTS reviewed its data, focusing on the extent to which economies of scale affect examiner workload for complex activities. The analysis demonstrates that OTS may realize some economies of scale in supervising loans serviced for others for portfolios above $10 billion.

OTS's experience with the examination of trust assets, recourse obligations and direct credit substitutes, on the other hand, does not support a conclusion that the economies of scale for these activities should be reflected in the assessment rates. Therefore, the agency continues to use a flat rate for each of these activities above the $1 billion threshold. OTS will continue to collect and analyze data concerning these activities to determine whether it should recognize economies of scale in the future.

Therefore, OTS has revised § 502.25 to indicate that it may establish one or more assessment rates for activities under the complexity component. OTS will set forth all assessment rates for the complexity component in a Thrift Bulletin and will revise theses rates periodically. Initially, OTS will use the following rates:

Complexity component category	*Assessment rate (percent)*
Loans serviced for others, over $1 billion, up to $10 billion	0.0010
Loans serviced for others, over $10 billion	0.0005
Trust assets administered	0.0015
Recourse obligations and direct credit substitutes	0.0030

D. Consolidation

OTS solicited comments on how it should assess savings associations that own depository institutions or non-depository institutions, or multiple savings associations owned by one holding company. Four commenters favored consolidating thrifts that own thrifts for assessment purposes, while one opposed this approach. One commenter opposed aggregating off-balance sheet activities of a thrift's consolidated subsidiary with the parent's off-balance sheet activities, believing that the parent-subsidiary structure insulates the thrift from risk. Two commenters thought OTS should adjust assessments to reflect economies of scale in supervising institutions within the same family structure. Finally, two commenters believed that non-lead thrifts owned by a multiple savings and loan holding company should get a discount on their assessments.

OTS will continue to include consolidated depository institution or other regulated subsidiaries in the assessment calculations for parent thrifts on the same basis as all other consolidated subsidiaries. This will incorporate economies of scale into the assessment of consolidated companies through the decreased assessment rates for larger associations. OTS believes recognizing these economies of scale is appropriate because it reflects OTS's costs of supervising consolidated entities. OTS will not, at this time, incorporate any discount for a non-lead thrift owned by a multiple savings and loan holding company, but will continue its practice of treating the sister thrifts as separate corporations. Because sister thrifts do not necessarily operate as one company, and can have very different operations and different types or amounts of risk, OTS does not realize the same economies of scale as it does with one larger thrift.

E. Other Matters

1. Semi-annual Assessment

Unlike the current rule, which provides for quarterly or semi-annual

should cover all extraordinary expenses. OTS continues to believe that the most appropriate treatment of extraordinary expenses is to charge the institution that causes OTS to incur the expenses. Contrary to the commenter's assertion, OTS does not always incur such costs in examining 3-, 4- or 5-rated institutions. Rather, extraordinary fees may be appropriate for recovering supervisory costs from any institution that poses an extraordinary burden, or requires OTS to obtain expert advice in areas beyond those that OTS normally encounters. Such costs might, for example, include the cost of an interpreter where numerous documents are in a foreign language. OTS might also assess a fee for extraordinary expenses if assets are nominally transferred to on affiliate to avoid assessments, but the savings association retains the risks and responsibilities of those assets. For these reasons, OTS adopts §§ 502.5(c) and 502.60(e) as proposed.

assessments, the proposed rule would collect all assessments on a semi-annual basis. Three commenters supported the semi-annual assessment, and none opposed it. OTS believes that a semi-annual assessment will impose the least burden on the thrift industry and the agency. Accordingly, the final rule requires semi-annual assessments.

One commenter requested that OTS clarify whether the complexity component would be imposed on a semiannual basis. The proposed rule stated, at § 502.10, ''OTS determines your semiannual assessment by totaling three components: your size, your condition and the complexity of your business.'' OTS calculates each component semiannually.

2. Publication of Assessment Schedules

The size component would use a chart to identify base assessment amounts for total assets at certain levels, and would impose marginal rates on assets above those levels. This is similar to the treatment under existing part 502. However, unlike the existing regulation, the proposed rule would not include specific base assessment amounts or marginal rates in the regulatory text. Rather, OTS proposed to publish the specific base amounts and marginal rates in publicly available Thrift Bulletins and on its web site. Similarly, OTS proposed to publish the assessment rate for the complexity component in the Thrift Bulletin and on its web site.

Three commenters agreed that this approach is reasonable. These commenters argued that this system eliminates delays, is more flexible, and will make rates more easily available. One commenter, however, argued that OTS should not increase the assessment rate schedule without publishing a proposal in the **Federal Register** for notice and comment. This commenter, however, would not object to the current system where the regulation reflects higher assessment levels that are subject to a reduction in a Thrift Bulletin. This commenter also argued that OTS may be required to publish a new proposal if the rates in the final regulation differ significantly from the proposal.

OTS currently publishes assessment rates in a Thrift Bulletin, under the authority in existing § 502.6 to set rates lower than those published in its regulation. Thus, since the early 1990s, thrift have been charged assessments that are different from those included in the regulation. Having outdated rates in the regulation has caused confusion. For this reason, OTS does not want to codify rates in a regulation that will quickly become obsolete.

Additionally, OTS's goals in this rulemaking are to keep its rates as low as it can while still providing OTS with essential resources, and to more closely tailor its rates to its costs. With actual rates in a Thrift Bulletin rather than in a regulation, OTS can readily revise the rates to lower them when it is appropriate, and can more readily align them to changes in OTS's costs of supervising the thrift industry. The industry has received an opportunity to comment on the structure through this rulemaking. Conducting new rulemakings for adjustments in rates would impede the agency's ability to adjust its rates to reflect increases in its supervisory workload, and thus could impair its ability to regulate the industry. For these reasons, OTS will announce the rates in Thrift Bulletins.

3. Refund and Proration of Assessments

In the proposed rule, OTS clarified the existing regulation and incorporated OTS's long-standing practice by stating that it will not refund or prorate assessments, even if an entity ceases to be a savings association. Further, OTS stated that it would not increase or decrease assessments based on events that occur after the date of the TFR upon which the assessment is based, except for errors in the TFR. One commenter believed that this approach avoids burden.

OTS believes that changing assessments for events after the relevant TFR date complicates the assessment process without adding any benefit. Accordingly, OTS adopts proposed § 502.40 without amendment. At the same time, however, assessments must be calculated accurately and should not be based on errors in the TFR. Therefore, consistent with its current practice, OTS will, where necessary, continue to adjust assessment to reflect corrections to errors contained in the TFR.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., applies to this rulemaking. Accordingly, OTS included in its notice of proposed rulemaking an initial regulatory flexibility analysis (IRFA). With this final rule, OTS includes the following final regulatory flexibility analysis, as required by section 604(a) of the Regulatory Flexibility Act, 5 U.S.C. 604(a). In the IRFA, OTS solicited comments on all aspects of the IRFA, including any significant impacts the proposed rule would have on small entities. OTS received no comments on its IRFA. However, OTS did receive comments discussing small savings associations and the proposed rule's special size component calculation for qualifying associations. These comments are discussed earlier in this preamble.

Reasons for rulemaking. OTS is issuing this final rule to revise its current assessments system to match assessments more closely with OTS's costs. As described in this preamble and in the notice of proposed rulemaking, OTS has found that, under its prior assessment system, OTS's costs of supervising some institutions are higher or lower than those associations pay in assessments. OTS believes it is inappropriate for some savings associations to subsidize the costs of others. Therefore, OTS is attempting, through this rule, to more closely associate its costs with assessments.

Objectives of and legal basis for the final rule. OTS has two primary objectives for this final rule: (1) establishing an assessment structure that keeps the agency's rates as low as possible, and (2) more closely tailoring rates to the agency's increased costs in supervising certain types of institutions. The Director of OTS is authorized by statute to impose assessments.[13]

Effect of the final rule on small savings associations. This final rule could affect small savings associations through its condition, size, or complexity components. The rule will have no effect on small businesses or small organizations other than small savings associations, and will not affect small governmental jurisdictions. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million.[14]

The condition component will affect small savings associations. As discussed earlier in this preamble and in the notice of proposed rulemaking, the condition component imposes an assessment equal to 25% of an association's size component for each 3-rated association, regardless of its size. Currently, there are 43 savings associations that are 3-rated and that have assets under $100 million. The smallest of these has assets of approximately $5 million, and the largest has approximately $100 million. Their assessments will increase due to the condition component by approximately $422 and $5464 annually, respectively. Other 3-rated small savings associations will see their assessments increase, depending on their size. The largest increase will be $5792 for a thrift with $69 million in assets. (Thrifts between $69 million and

[13] 12 U.S.C. 1462a, 1463, 1467, 1467a.

[14] 13 CFR 121.201 Division H (1998).

$100 million will realize a smaller asset-based assessment under the new rule, while thrifts below $69 million will see no change in their asset-based assessment. Because the condition component is a percentage of the asset-based assessment, it will be greater for a $69 million thrift than for a $100 million thrift.)

As discussed more fully in the notice of proposed rulemaking, 3-rated savings associations require more supervisory attention than 1- or 2-rated associations. OTS therefore has three alternatives: impose extra assessments on all 3-rated associations; require institutions not rated 3 to subsidize the extra supervisory costs of 3-rated institutions; or require some but not all 3-rated institutions to cover those costs. OTS believes it is most equitable to match assessments with OTS's supervisory costs, and therefore adopts a condition component for 3-rated associations. Furthermore, OTS believes that requiring 3-rated institutions to pay for their extra supervisory costs will provide an incentive for those institutions to improve their condition and their ratings. OTS believes that the condition component best accomplishes OTS's objective of closely tailoring assessment rates to OTS's increased costs in supervising 3-rated institutions while keeping assessment rates as low as possible.

OTS believes the size component will not have a significant economic impact on a small number of small entities. OTS specifically designed this rule to allow qualifying savings associations, generally those with assets under $100 million, to choose between calculating their size components under either the old regulation or the new regulation. These institutions can therefore avoid any increases in their size components.

If an institution increases above $100 million in assets then shrinks below $100 million, or for savings associations that are not yet formed, this choice would not be available. OTS cannot predict the number of savings associations that will exceed then shrink below $100 million in assets, and cannot predict the number of savings associations that will be formed in the future. Likewise, OTS cannot predict the economic impact of the final rule on such institutions. That is because OTS's assessment rates will vary in the future, as OTS's supervisory costs change.

OTS considered, as an alternative to the size component with protection for small institutions, leaving its assessment system unchanged. OTS believes this alternative would not meet OTS's objective of closely tailoring assessment rates to OTS's increased supervisory costs while keeping assessment rates as low as possible, while minimizing significant economic impacts on small savings associations.

The complexity component applies only to savings associations that have more than $1 billion in certain activities, mostly off balance sheet. For Regulatory Flexibility Act purposes, a small savings association is generally defined as one having less than $100 million in assets on its balance sheet. There are five savings associations that have less than $100 million in balance sheet assets that are subject to the complexity component. OTS believes that a regulatory flexibility analysis is not necessary regarding the complexity component for two reasons. First, OTS believes that five savings associations is not a substantial number of small savings associations. Second, for purposes of the regulatory flexibility analysis regarding the complexity component, OTS defines a small savings association as one with less than $100 million in assets including off-balance sheet assets. OTS received no public comments on this definition of small savings association. The Regulatory Flexibility Act is designed to protect the interests of small businesses, while the complexity component only affects savings associations with assets or activities in excess of $1 billion. OTS does not believe that institutions whose activities involve more than $1 billion in off-balance sheet assets need any particular protection from the complexity component.

In any event, OTS considered alternatives to the complexity component. OTS considered using no such component, and considered including different complex assets in the component, such as commercial and non-residential mortgage loans. With no complexity component, less complex thrifts would have to subsidize OTS's costs of supervising complex institutions. OTS believes the complexity component best accomplishes OTS's objective of tailoring assessments to match OTS's supervisory costs and keeping assessments as low as possible, while minimizing significant economic impacts on small savings associations.

Other matters. The final rule imposes no reporting, recordkeeping, or other compliance requirements. Assessments will continue to be based on Thrift Financial Reports that savings associations are otherwise required to file with OTS, and OTS will continue to collect assessments by its current procedures. Therefore, the final rule will impose no new or additional reporting, recordkeeping, or compliance requirements.

Finally, there are no federal rules that duplicate, overlap, or conflict with this rule.

V. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. This final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

VI. Paperwork Reduction Act of 1995

This final rule contains no new information collection requirements. The information collection requirements in § 502.70 are the same as those in the prior assessments regulation, 12 CFR 502.3 (1998), which the Office of Management and Budget has previously received and approved in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB Control No. 1550–0053.

VII. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 502

Assessments, Federal home loan banks, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, by revising part 502 to read as follows:

PART 502—ASSESSMENTS AND FEES

Sec.
502.5 Who must pay assessments and fees?

Subpart A—Assessments

502.10 How does OTS calculate my assessment?
502.15 How does OTS determine my size component?
502.20 How does OTS determine my condition component?

502.25 How does OTS determine my complexity component?
502.30 When must I pay my assessment?
502.35 How must I pay my assessment?
502.40 Can I get a refund or proration of my assessment?
502.45 What if I do not pay my assessment on time?

Subpart B—Fees

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Authority: 12 U.S.C. 1462a, 1463, 1467, 1467a.

§ 502.5 Who must pay assessments and fees?

(a) *Authority.* Section 9 of the HOLA, 12 U.S.C. 1467, authorizes the Director to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS ''s direct and indirect expenses in regulating savings associations and their affiliates.

(b) *Assessments.* If you are a savings association that OTS regulates on the last day of January or on the last day of July of each year, you must pay a semi-annual assessment due on that day. Subpart A of this part describes OTS's assessment procedures and requirements.

(c) *Fees.* Whether or not you are a savings association, if you make any filings with OTS or use OTS services, the Director may require you to pay a fee to cover the costs of processing your submission or providing those services. The filings for which the Director may charge a fee include notices, applications, and securities filings. Among the services for which the Director may charge a fee are publications, seminars, certifications for official copies of agency documents, and records or services requested by other agencies. The Director also assesses fees for examining and investigating savings associations that administer trust assets of $1 billion or less, and affiliates of savings associations. If you are a savings association and you or any of your affiliates cause OTS to incur extraordinary expenses related to your examination, investigation, regulation, or supervision, the Director may charge you a fee to fund those expenses. Subpart B of this part describes OTS's fee procedures and requirements.

Subpart A—Assessments

§ 502.10 How does OTS calculate my assessment?

OTS determines your semi-annual assessment by totaling three components: your size, your condition, and the complexity of your business. For the size and complexity components, OTS uses the September 30 Thrift Financial Report to determine amounts due at the January 31 assessment; and the March 31 Thrift Financial Report to determine amounts due at the July 31 assessment. For purposes of this subpart, total assets are your total assets as reported on Thrift Financial Reports filed with OTS. For the condition component, OTS uses the most recent composite rating, as defined in 12 CFR Part 516, of which you have been notified in writing before an assessment's due date.

§ 502.15 How does OTS determine my size component?

(a) *General.* (1) Unless you are a qualifying savings association under paragraph (b) of this section, OTS uses the following chart to calculate your size component:

If your total assets are:		Your size component is:		
Over—	But not over—	This amount—Base assessment amount	Plus—Marginal rate	Of assets over—Class floor
Column A	Column B	Column C	Column D	Column E
0	$67 million	C1	D1	0.
$67 million	215 million	C2	D2	$67 million.
215 million	1 billion	C3	D3	215 million.
1 billion	6.03 billion	C4	D4	1 billion.
6.03 billion	18 billion	C5	D5	6.03 billion.
18 billion	35 billion	C6	D6	18 billion.
35 billion		C7	D7	35 billion.

(2) To calculate your size component, find the row in Columns A and B that describes your total assets. Reading across in that same row, find your base assessment amount in Column C, your marginal rate in Column D, and your class floor in Column E. Calculate how much your total assets exceed your Column E class floor. Multiply this number by your Column D marginal rate. Add this number to your Column C base assessment amount. The total is your size component. OTS will establish the base assessment amounts and the marginal rates in columns C and D in a Thrift Bulletin.

(b) *Special size component calculation for qualifying savings associations.* If you meet all of the criteria set forth in paragraph (b)(1) of this section, you are a qualifying savings association and OTS will calculate your size component in accordance with paragraph (b)(2) of this section.

(1) *Criteria for qualifying savings association status.* (i) You were a savings association as of January 1, 1999.

(ii) Your total assets have never exceeded $100 million at the end of any quarter.

(2) *Size component for qualifying savings associations.* If you are a qualifying savings association, your size component is the lesser of:

(i) Your size component calculated under paragraph (a) of this section; or

(ii) Your assessment calculated using the general assessment table at 12 CFR 502.1(c) as contained in the 12 CFR, parts 500 to 599, edition revised as of January 1, 1998, as implemented in Thrift Bulletin 48–9, dated December 21, 1992.

§ 502.20 How does OTS determine my condition component?

OTS uses the following chart to determine your condition component:

If your composite rating is:	Then your condition component is:
1 or 2	zero.
3	25 percent of your size component.
4 or 5	50 percent of your size component.

§ 502.25 How does OTS determine my complexity component?

If your portfolio exceeds any of the thresholds in paragraph (a) of this section, OTS will calculate your complexity component according to paragraph (c) of this section. If your portfolio does not exceed any of the thresholds in paragraph (a) of this section, your complexity component is zero.

(a) *Thresholds for complexity component.* OTS uses three separate thresholds in calculating your complexity component. You exceed a threshold if you have more than $1 billion in any of the following:

(1) Trust assets you administer.

(2) The outstanding principal balance of assets covered, fully or partially, by your recourse obligations or direct credit substitutes.

(3) The principal amount of loans that you service for others.

(b) *Assessment rates.* OTS will establish one or more assessment rates for each of the types of activities listed in paragraph (a) of this section. OTS will publish those assessment rates in a Thrift Bulletin.

(c) *Calculation of complexity component.* OTS separately considers each of the thresholds in paragraph (a) of this section in calculating your complexity component. OTS first calculates the amount by which you exceed any of those thresholds. OTS multiplies the amount by which you exceed any threshold in paragraph (a) of this section by the applicable assessment rate(s) under paragraph (b) of this section. OTS then totals the results. This total is your complexity component.

§ 502.30 When must I pay my assessment?

OTS will bill you semiannually for your assessments. Assessments are due January 31 and July 31 of each year. At least seven days before your assessment is due, the Director will mail you a notice that indicates the amount of your assessment, explains how OTS calculated the amount, and specifies when payment is due.

§ 502.35 How must I pay my assessment?

(a) *Debit at Federal Home Loan Banks.* If you are a member of a Federal Home Loan Bank, you must maintain a demand deposit account at your Federal Home Loan Bank with sufficient funds to pay your assessment when due. OTS will notify your Federal Home Loan Bank of the amount of your assessment. OTS will debit your account for your assessments.

(b) *Direct billing.* If you are not a member of a Federal Home Loan Bank, OTS will directly debit an account you must maintain at your association.

§ 502.40 Can I get a refund or proration of my assessment?

OTS will not refund or prorate your assessment, even if you cease to be a savings association. If you are a savings association for whom a conservator or receiver has been appointed, you must continue to pay assessments in accordance with this part. OTS will not increase or decrease your assessment based on events that occur after the date of the Thrift Financial Report upon which your assessment is based.

§ 502.45 What if I do not pay my assessment on time?

The Director will charge interest on delinquent assessments. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter. Assessments under this subpart A are delinquent if you do not pay them when required by § 502.30.

Subpart B—Fees

§ 502.50 What fees does OTS charge?

(a) The Director assesses fees for examining or investigating savings associations that administer trust assets of $1 billion or less, and savings association affiliates. ''Affiliate'' has the meaning in 12 U.S.C. 1462(9), except that, for this part only, ''affiliate'' does not include any entity that is consolidated with a savings association on the Consolidated Statement of the Thrift Financial Report.

(b) The Director assesses fees for processing notices, applications, securities filings, and requests, and for providing other services.

§ 502.55 Where can I find OTS's fee schedule?

OTS will periodically publish a schedule of its fees in a Thrift Bulletin. OTS will publish these fees at least thirty days before they are effective.

§ 502.60 When will OTS adjust, add, waive, or eliminate a fee?

Under unusual circumstances, the Director may deem it necessary or appropriate to adjust, add, waive, or eliminate a fee. For example, the Director may:

(a) Reduce any fee to adjust for any inequities, efficiencies, or changed procedures that OTS projects will reduce its applications processing costs but that OTS did not consider in determining its fees;

(b) Reduce or waive any fee if OTS determines that the fee would unduly or unjustifiably discourage particular types of applications or applications for particular categories of transactions;

(c) Add a fee for a new type of application;

(d) Increase a fee for an application that presents unusual or particularly complex issues of law or policy or otherwise causes the agency to incur unusually high processing costs; or

(e) Charge a fee to recover extraordinary expenses related to examination, investigation, regulation, or supervision of savings associations or their affiliates.

§ 502.65 When is an application fee due?

(a) You must pay the application fee when you file an application. OTS will not process your application if you do not include the required fee.

(b) If OTS cannot complete its review of your application because the application is materially deficient and it refuses to accept your application for processing, you must pay a new application fee upon filing a revised application.

(c) If a transaction involves multiple applications, you must pay the appropriate fee for each application, unless OTS specifies otherwise by Thrift Bulletin.

§ 502.70 How must I pay an application fee?

You must pay an application fee to the Office of Thrift Supervision. You must include a statement of the fee and how you calculated the fee.

§ 502.75 What if I do not pay my fees on time?

(a) *Interest.* An examination or investigation fee is delinquent if OTS does not receive the fee within 30 days of the date specified in a bill. The Director will charge interest on a delinquent examination or investigation fee. Interest will accrue at a rate (that OTS will determine quarterly) equal to 150 percent of the average of the bond-equivalent rates of 13-week Treasury bills auctioned during the preceding calendar quarter.

(b) *Failure to pay.* If your holding company, affiliate, or subsidiary fails to pay any examination or investigation fee within 60 days of the date specified in a bill, the Director may assess that fee, with interest, against you and collect it from you. If any such entity is a holding company, affiliate, or subsidiary of more than one savings association, the Director may assess the fee against and collect it from each savings association as the Director may prescribe.

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31745 Filed 11–27–98; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 555, and 559

[No. 98–119]

RIN 1550–AB00

Electronic Operations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule that streamlines and updates its regulations relating to electronic operations. Under this rule, Federal savings associations may engage in prudent innovation through the use of emerging technology. The rule permits Federal savings associations to use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. The rule also requires each savings association (state- or federally-chartered) to notify OTS 30 days before it establishes a transactional web site. Savings associations that present supervisory or compliance concerns may be subject to additional procedural requirements. Finally, the rule includes a conforming change to OTS's service corporation regulation, reflecting a recent statutory change.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Karen A. Osterloh, Assistant Chief Counsel, (202) 906–6639; Paul D. Glenn, Special Counsel, Chief Counsel's Office, (202) 906–6203; Paul J. Robin, Program Analyst, Compliance Policy, (202) 906–6648; or Paul R. Reymann, Senior Policy Analyst, Supervision Policy, (202) 906–5645, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

A. Advance Notice of Proposed Rulemaking

On April 2, 1997, OTS published an advance notice of proposed rulemaking (ANPR) seeking comment on all aspects of banking affected by electronic operations.[1] The ANPR was designed to elicit information to enhance OTS's understanding of new electronic banking technologies and the impact of these technologies on the regulation of Federal savings associations.[2] The ANPR asked a series of questions concerning the types of restrictions or requirements OTS should impose on electronic operations, including Internet banking.

B. Notice of Proposed Rulemaking

Based on the comments received on the ANPR, on October 3, 1997, OTS published a notice of proposed rulemaking (NPR) to streamline and update its regulations relating to electronic operations.[3] The NPR proposed to amend OTS's electronic-related regulations to address advances in technology and to permit prudent innovation through the use of emerging technology by Federal savings associations. In crafting the proposed rule, OTS was guided by two broad principles suggested by commenters on the ANPR:

- The public and insured depository institutions will be best served if statutory and regulatory restrictions are kept to a minimum. The premature imposition of restrictive operational standards could impede the development of improved financial services.
- Federal savings associations should be permitted to compete effectively with other regulated financial institutions and unregulated firms offering financial and related services.

Consistent with these principles, OTS proposed a broad enabling regulation designed to allow Federal savings associations to engage in any activity through electronic means that they may conduct through more traditional delivery mechanisms. OTS proposed to eliminate three existing regulations: § 545.138 (Data-Processing Services), § 545.141 (Remote Services Units), and § 545.142 (Home Banking Services). The elimination of these sections would not take away the authority to engage in any activities described in these sections.

OTS made the proposal to enhance the ability of Federal savings associations to serve as financial intermediaries and to permit Federal savings associations to utilize fully their capacities and by-products generated in providing financial services. The proposal was consistent with the principles established in the Administration's electronic commerce policy statement.[4] The NPR noted, however, that OTS would continue to gain additional experience with electronic technology and might issue more specific guidance regulating particular elements of electronic operations.[5]

C. Comments on NPR—General Discussion

The comment period on the NPR closed on December 2, 1997. OTS received nine comment letters on the NPR from five Federal savings associations, two trade associations, and two technology firms.

All of the commenters recognized the need for the agency to revise or remove its existing regulations in this area. Seven commenters supported the proposal's overall flexible regulatory approach, while suggesting modifications or clarifications to particular aspects of the rule. Two commenters argued that for even greater flexibility the agency should not issue any new electronic banking regulations. These two commenters suggested the agency rely entirely on flexible guidelines and advisories as technology evolves. OTS has addressed specific comments on the NPR below.

D. Supplemental Notice of Proposed Rulemaking

One commenter on the NPR argued that OTS should establish a procedure to review and approve new products or services, in order to protect the safety and soundness of the industry. Another urged OTS not to require a Federal savings association to obtain OTS's prior approval before adopting new technologies ''unless absolutely necessary to ensure industry-wide safety and soundness.'' After considering these comments, OTS concluded that safety and soundness and compliance considerations warranted the agency receiving advance notice of industry use of one developing technology—transactional web sites. Such web sites allow savings association customers to use the Internet to conduct a wide variety of financial transactions. They may, however, also pose particular security, compliance, and privacy risks.

Accordingly, on August 13, 1998, OTS issued a supplemental notice of proposed rulemaking (Supplemental NPR) seeking comment on additional proposed rules that would require each savings association to notify OTS before

[1] 62 FR 15626 (April 2, 1997).

[2] *See* 62 FR at 15631 and 15633.

[3] 62 FR 51817 (October 3, 1997). The NPR contains a summary of the comments received on the ANPR.

[4] *See* ''Framework for Global Electronic Commerce'' (July 1, 1997).

[5] 62 FR at 51820.

it establishes a transactional web site.[6] OTS also proposed to give the Regional Offices discretion to impose additional requirements in appropriate circumstances.

Safety and soundness and compliance considerations are similar for state-chartered and federally-chartered institutions. Thus, the Supplemental NPR proposed to require every savings association to notify OTS before it established a transactional web site and to comply with additional requirements that the Regional Offices may impose in appropriate circumstances. Since the ANPR and NPR did not specifically discuss these requirements and applied only to Federal savings associations, OTS concluded that additional public comment would assist in the development of a final rule.

E. Comments on Supplemental NPR—General Discussion

The comment period on the Supplemental NPR closed on September 14, 1998. OTS received nine comment letters from six Federal savings associations, two trade associations, and one public interest organization.

Two commenters supported the notice requirement. Four commenters opposed the requirement. The other three commenters did not specifically support or oppose the requirement. OTS has addressed the specific comments on the Supplemental NPR below.

II. Today's Final Rule

Today's final rule incorporates the same broad principles and reflects the same supervisory concerns articulated in the NPR and Supplemental NPR. OTS continues to believe that it is important to have enabling regulations in this area. These regulations will help ensure that OTS has sufficient information to understand developing technologies, to provide appropriate guidance on these technologies, and to supervise electronic operations effectively. The proposed approach in the NPR and Supplemental NPR, with some modifications as discussed below, will provide both the industry and the agency with the appropriate amount of flexibility to adapt to changing conditions.

Today's final rule is meant to provide authority for Federal savings associations' electronic operations and a structure for all savings associations' use of electronic means and facilities.[7] Standing alone, it cannot, and does not purport to, answer all questions in this rapidly changing area. These operations, by their very nature, are evolving, presenting the industry and the agency with both old issues in a new form (*e.g.,* the appropriate documentation to open an account) and new issues unique to electronic operations (*e.g.,* treatment of stored value cards). The agency has issued, and will continue to issue, guidance as electronic operations evolve. This guidance has taken the form of letters to chief executive officers of savings associations, interagency examiner guidelines, revisions to the Thrift Activities Handbooks, conditions on the approval of applications, and responses to requests for legal interpretations.[8] The agency expects to continually update its guidance and to continue to make it available on OTS's web site at www.ots.treas.gov.

Further, while today's final rule removes §§ 545.138, 545.141, and 545.142, OTS emphasizes that the new rules continue to authorize all activities formerly authorized under these provisions.

III. Section-by-Section Discussion

Today's final rule creates a new part 555 to address electronic operations. In the NPR, OTS originally proposed to place the electronic operations regulations in a new subpart B to part 545. However, part 545 only applies to Federal savings associations. The notice requirements proposed in the Supplemental NPR and incorporated into this final rule, however, apply to all savings associations. Thus, as proposed in the Supplemental NPR, OTS is placing the electronic operations regulations in a new part 555.

A. What Does This Part Do? (§ 555.100)

Section 555.100 explains the purpose of part 555. Subpart A explains how a Federal savings association may provide products and services through electronic means and facilities. Subpart B contains the advance notice and other requirements applicable to all savings associations.

OTS received no specific comments on § 555.100 of the Supplemental NPR (or on § 545.140 of the NPR, which served a similar function). The section is unchanged from the Supplemental NPR.

B. Authority of Federal Savings Associations to Conduct Electronic Operations (Subpart A to Part 555)

1. How May I Use or Participate With Others to use Electronic Means and Facilities? (Proposed §§ 545.141, 545.142, and 545.143, Final § 555.200)

Final § 555.200 combines, with changes, proposed § 545.141, 545.142, and 545.143. Section 555.200(a) corresponds to proposed § 545.141, but merges part of proposed § 545.143. Section 555.200(b) corresponds to proposed § 545.142 and also merges part of proposed § 545.143. Sections 555.200(a) and 555.200(b) are discussed separately below.

Section 555.200(a)

Consistent with OTS's goal of minimizing regulatory restrictions on electronic operations, proposed § 545.141 would have specifically permitted Federal savings associations to use electronic means or facilities to perform any authorized function or provide any authorized product or service. Electronic means or facilities would include, but would not be limited to, automated teller machines (ATMs), automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices. The preamble explained that this authority would include the opening of savings or demand accounts and the establishment of loan accounts—functions previously excluded from the definition of remote service unit—because performing these functions electronically may enhance the operating flexibility of Federal savings associations.

Commenters generally supported this section. One commenter, however, a trade association, argued that proposed § 545.141 was too broad and did not sufficiently protect the safety and soundness of the industry. Instead, the commenter emphasized the need for a thorough risk assessment of any new delivery system to protect safety and soundness. The commenter urged OTS to establish a procedure whereby OTS would issue an approval or interpretation before a product or service was first offered electronically. Once one institution was approved to use an electronic delivery system,

[6] 63 FR 43327 (August 13, 1998).

[7] New § 555.200 is similar to the Office of the Comptroller of the Currency's (OCC) rule on furnishing of products and services by electronic means and facilities. *See* 12 CFR 7.1019 (1998).

[8] *See, e.g.,* Memorandum from Richard M. Riccobono, Deputy Director, for Chief Executive Officers (November 3, 1998) (Policy Statement on Privacy and Accuracy of Personal Customer Information); Memorandum from Richard M. Riccobono, Deputy Director, for Chief Executive Officers (July 23, 1998) (Interagency Guidance on Electronic Financial Services and Consumer Compliance); Memorandum from John Downey, Executive Director, Supervision, for Chief Executive Officers (June 23, 1997) (Statement on Retail On-Line Personal Computer Banking); Thrift Activities Regulatory Handbook, Section 341, Information Technology (October 1997) (Regulatory Bulletin 32–6, October 15, 1997); Federal Financial Institutions Examinations Council (FFIEC) Information Systems Examination Handbook (1996); OTS Order No. 95–88 (May 8, 1995) (application approval of Internet bank); OTS Op. Chief Counsel (September 19, 1997) (establishment of automated loan machines).

approval for subsequent institutions would not be required. Presumably, subsequent institutions would be required to provide the same protections and safeguards.

While OTS does not believe that a new procedure is necessary for most types of electronic operations, OTS has added subpart B to part 555, to deal with the special risks associated with transactional web sites. As discussed in Section III.C. below, subpart B will enhance OTS's ability to supervise electronic operations, particularly Internet banking activities.

Three Federal savings associations asked OTS to clarify whether the new regulation would permit specific products or services. As noted in the preamble to the proposed rule, by revising its rules, OTS intends to allow Federal savings associations to engage in any authorized activity through electronic means that they may conduct through more traditional delivery mechanisms.[9] To clarify this point, OTS has revised the language of § 555.200(a) to provide that a Federal savings association may use electronic means or facilities ''to perform any function, or provide any product or service, as part of an authorized activity.''

As with all activities of Federal savings associations, OTS's position, like that of its predecessor agency, the Federal Home Loan Bank Board (FHLBB), has been that if the Home Owners' Loan Act (HOLA)[10] authorizes an activity, a specific authorizing regulation is not necessary.[11] In some cases, the HOLA speaks clearly on an activity and institutions generally choose to act without obtaining agency concurrence. In other cases, where the authority is less clear or specific facts are more determinative, an application or an interpretive legal opinion may be the best route for resolving issues of first impression.

To assist the industry further, OTS will continue to provide both formal and informal guidance on authorized activities for Federal savings associations. If applicable statutes, regulations, court cases, and OTS opinions do not provide a sufficient basis for a Federal savings association to determine whether a product or service is authorized under the HOLA or the use of electronic means or facilities is appropriate, it may request an interpretive opinion[12] or consult with OTS's Regional Director for the Region in which its home office is located.

OTS has previously provided explicit guidance on several of the questions about specific products or services raised. For example, the preamble to the proposed rule stated that Federal savings associations could establish loan accounts and open savings or demand accounts through electronic means.[13] Similarly, the ANPR indicated that the term ''electronic means and facilities'' would clearly encompass new technologies that enable a depository institution to make risk-based judgments electronically.[14] This would include, for example, automated credit scoring and other forms of automated underwriting.

In addition, OTS and the FHLBB have long recognized that Federal savings associations may open accounts and transfer funds for persons overseas. For example, the FHLBB opined that Federal savings associations may solicit deposits and open accounts for individuals who are not citizens or residents of the United States by mail or electronic means.[15] Since this is an authorized activity under the HOLA, this final rule permits a Federal savings association to engage in this activity through electronic operations. However, Federal savings associations engaging in such electronic activities must comply with all applicable requirements, including addressing safety and soundness concerns and ensuring compliance with other federal laws and requirements.[16]

OTS has not opined on whether certain activities cited by commenters are authorized for Federal savings associations. Specifically, one commenter asked whether a Federal savings association may issue, use, and deal in all forms of electronic monetary value, including stored value and smart-card technologies. Another commenter asked whether a Federal savings association may use and participate in digital authentication and certification, including serving as a certificate authority (an entity certifying electronic signatures for use in electronic commerce).

OTS has not opined on whether every activity that could involve the use of electronic money or participation in digital authentication regimes is an authorized activity for Federal savings associations.[17] With any new activity, the factual context and the accompanying safeguards are often critical to determining whether and how an activity may be conducted, whether or not electronic means are involved. Thus, OTS believes that it is important that savings associations continue to consult with their Regional Offices to obtain up-to-date guidance as they move forward in the use of electronic means and facilities.

Another Federal savings association asked OTS to adopt an expansive

[9] 62 FR at 51818.

[10] 12 U.S.C. 1461–1468c.

[11] *See, e.g.*, 60 FR 44442, 44444 (August 28, 1995); 48 FR 23032 (May 23, 1983).

[12] *See* OTS Customer Service Plan—Interpretive Opinions (January 1996). Such questions may also be addressed in the context of an application process (*e.g., de novo* applications).

[13] 62 FR at 51818. However, all statutory and regulatory restrictions associated with offering a product or service continue to apply where electronic means and facilities are used.

One commenter asked whether a signed deposit application would have to be executed and transmitted with the initial deposit in hard copy. At one time, FHLBB regulations specifically imposed this type of signature card requirement. *See* 12 CFR 545.2(a) (1983). In May 1983, the FHLBB eliminated this specific requirement. 48 FR 23032 (May 23, 1983).

[14] 62 FR at 15632.

[15] *See* Memorandum from Jack D. Smith, Deputy General Counsel, FHLBB, to Alvin Smuzynski, Deputy Director, Supervisory Activities (December 7, 1987). Pursuant to that opinion, the institution was permitted to undertake the activity where the institution maintained the deposits in United States dollar denominations, offered standard money market and term certificate of accounts with interest rates and other terms and conditions that were the same as those offered by the institution to those residing in the United States, and complied with the requirements applicable to the type of accounts. *See also* FHLBB Op. General Counsel (May 10, 1984).

[16] OTS anticipates that it will shortly publish a proposed ''Know Your Customer'' rule, as part of an interagency rulemaking effort.

[17] With regard to electronic monetary value, OTS has opined that a Federal savings association has authority to market and sell prepaid telephone cards as agent for a telephone company. OTS Op. Chief Counsel (August 29, 1996). We also note that the other federal banking agencies have indicated that financial institutions may deal in other types of electronic monetary value. *See* OCC Interpretive Letter No. 718 (March 14, 1996) (national banks may dispense alternate media such as public transportation tickets, event and attraction tickets, gift certificates, prepaid phone cards, promotional and advertising materials, electronic benefits transfer scripts, and credit and debit cards) and Federal Deposit Insurance Corporation General Counsel's Op. No. 8, *published in*, 61 FR 40490 (Aug. 2, 1996) (discussing whether, and under what circumstances, funds underlying stored value cards may be considered deposits under the Federal Deposit Insurance Act, 12 U.S.C. 1811–1835a).

With regard to digital authentication and certification, Federal savings associations have incidental authority under the HOLA to guarantee customer signatures for documentary transactions in which an association has an interest as part of its deposit taking, lending, or trust business, as well as guarantees executed as a separate customer service with respect to stock transfers and similar transactions in which the association has no direct interest. FHLBB Op. General Counsel (August 11, 1981). In addition, the OCC has authorized a national bank operating subsidiary to act as a certification authority and repository for certificates that verify digital signatures. The authority was not limited to transactions in which the subsidiary had a direct interest. OCC Op. Chief Counsel (January 12, 1998) (Operating Subsidiary Application by Zions First National Bank, Salt Lake City, Utah).

OTS believes the reasoning of the other regulators appears persuasive. OTS will consider these opinions when it reviews a Federal savings association's authority to conduct such activities as these issues are presented to the agency.

interpretation of the phrase ''authorized product or service.'' The commenter's proposed interpretation would clarify that as long as the primary electronic product or activity is permitted, the Federal savings association may provide a minor ancillary application, even though the ancillary application is not specifically authorized by the HOLA. Federal savings associations possess powers that are incident to the express powers of Federal savings associations, as set forth in the HOLA.[18] Today's final rule allows Federal savings associations to use electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity, including activities authorized under the incidental powers doctrine. OTS will review whether particular activities are authorized as incidental powers on a case-by-case basis as these issues are presented to the agency.

As noted above, § 555.200(a) continues to permit Federal savings associations to perform all data processing and transmission services formerly authorized under § 545.138(a) and (b). When § 545.138 was promulgated in 1983, the FHLBB imposed certain data and customer restrictions designed to ensure that a Federal savings association would conduct data processing and transmission services consistent with the authority provided in HOLA.[19] OTS recognizes that the HOLA may authorize the provision of data processing services in additional circumstances. Accordingly, the final rule, like the OCC's rule, does not impose specific data or customer restrictions. Rather, final § 555.200(a) merely requires that services provided through electronic means and facilities must be a ''part of an authorized activity.'' This restriction means that data processing and transmission services provided must be authorized under the HOLA, either expressly or as an incidental power.

Final § 555.200(a) has also been revised to incorporate provisions in proposed § 545.143, entitled ''How may I participate with others in the use of electronic means and facilities?'' Proposed § 545.143 would have permitted a Federal savings association to participate with others to perform, provide, or deliver activities, functions, products, or services described in the proposed rule. A Federal savings association could have participated with an entity that is not subject to examination by a Federal agency regulating financial institutions only if that entity agreed, in writing, to permit OTS to examine its electronic means or facilities, to pay for any related OTS examination fees, and to make all relevant records in its possession, written or electronic, available to OTS for examination. OTS also indicated that if the participation by a Federal savings association was through a service corporation, OTS's service corporation rules would apply.[20]

The Examination Parity and Year 2000 Readiness for Financial Institutions Act,[21] has obviated the need for proposed § 545.143 as a separate section of the rule. Section 3 of this legislation provides:

> [I]f a savings association, a subsidiary thereof, or any savings and loan affiliate or entity, as identified by section 8(b)(9) of the Federal Deposit Insurance Act [12 U.S.C. 1818(b)(9)], that is regularly examined or subject to examination by the Director [of OTS], causes to be performed for itself, by contract or otherwise, any service authorized under [HOLA] * * *, such performance shall be subject to regulation and examination by the Director to the same extent as if such services were being performed by the savings association on its own premises.

In light of this legislation, today's final rule simply clarifies the authority of a Federal savings association to participate with others to perform any function, or provide any product or service, as part of an authorized activity, through electronic means and facilities. This language has been merged into final § 555.200(a). OTS is making a similar conforming change to § 555.200(b), discussed below.

In making these changes, OTS is removing the proposed requirement concerning record availability since this requirement is implicit in examinations authorized by the legislation. OTS is also removing the proposed requirement concerning examination fees. The other banking agencies do not charge fees specifically for examinations of service providers. OTS does not intend to impose fees for the examination of service providers, except as otherwise provided for under OTS's assessment rule and Thrift Bulletins.

While the relevance of many of the comments on proposed § 545.143 has been negated by this intervening legislation, it is useful to respond to some of the points raised by commenters on the NPR. Two commenters criticized the third party examination, fee, and record requirements as burdensome and unnecessary. In implementing the new legislation, OTS will focus its service provider examinations on those whose activities could have a direct impact on the safety and soundness of savings associations.[22] Data processing servicers and ATM servicers are among the types of service providers OTS examines because they provide functions critical to financial operations.

Another Federal savings association explained that the software industry is wary of providing unrestricted access to their information without explicit assurances of confidentiality to protect proprietary trade secrets. The commenter stated that, at a minimum, the final rule should provide that any information reviewed or gathered during an examination of a service provider will be treated as ''unpublished OTS information'' under 12 CFR 510.5 (1998), which provides confidentiality safeguards.

OTS treats service provider examination reports as confidential unpublished OTS information.[23] Consistent with this regulation, these reports are not publicly available, but OTS does share the examination reports of service providers with the Federal banking agencies. It also shares relevant portions of the examination reports with Federal and State savings associations that use the services of those service providers.

Section 555.200(b)

Former § 545.138(c) subjected marketing by-products and excess capacity of data processing and transmission services to significant restrictions. In contrast, under proposed § 545.142, a Federal savings association could market and sell electronic capacities and by-products to third parties if it acquired or developed the capacities and by-products in good faith as part of providing financial services. The proposed rule was substantially identical to the OCC rule on marketing and selling such capacities.[24]

Two commenters expressly supported the proposed section. Upon further review, OTS believes it is necessary to make two minor clarifications to § 555.200(b).

First, the final rule indicates that the marketing and selling of electronic capacities and by-products to third-parties is to enable Federal savings

[18] *See* OTS Op. Chief Counsel (August 29, 1996) at 2.

[19] *See* 48 FR 7428, 7429–7430 (February 22, 1983).

[20] *See* 12 CFR 559.4 (1998).

[21] Pub. L. No. 105–164 (enacted March 20, 1998).

[22] *See* Statement of Ellen Seidman, Director, Office of Thrift Supervision, concerning Examination Parity and Year 2000 Readiness for Financial Institutions Act, before the Committee on Banking and Financial Services, United States House of Representatives, February 5, 1998, at 8–10.

[23] *See* 12 CFR 510.5(a)(2)(ii) (1998).

[24] *See* 12 CFR 7.1019 (1998).

associations to optimize their resources. This language conforms the OTS rule more closely to the OCC's rule.

Second, the final rule indicates that a Federal savings association may also participate with others to market and sell electronic capacities and by-products to third-parties. Like the revision to § 555.200(a) discussed above, this change incorporates part of § 555.143 of the proposed rule.

One Federal savings association asked OTS to define the phrase ''electronic capacities and by-products'' to clarify that Federal savings associations may provide ''fully integrated solutions to a range of business needs.'' These solutions may involve a combination of software development, computer systems design and construction, electronic communication (including sending electronic mail), and data processing and storage.

OTS does not believe it is appropriate to make the clarification requested by the commenter. As long as a Federal savings association acquired or developed its electronic capacities and by-products in good faith as part of providing financial services, the Federal savings association may market and sell them to third-parties. OTS cautions, however, that to the extent a Federal savings association may wish to engage in additional activities in connection with the marketing and sale of such capacities and by-products, the additional activities must be authorized under the HOLA, either expressly or as an incidental power.

2. What Precautions Must I Take? (Proposed § 545.144, Final § 555.210)

Although OTS believes that it is vital that Federal savings associations establish appropriate internal controls for risks and security measures when they engage in electronic operations, it did not propose to codify static risk or security requirements. Because methods of electronic commerce and their attendant security measures are continually evolving, OTS's proposed rule reflected the view that it is impracticable to prescribe security measures that would remain useful for the indefinite future.

Instead, proposed § 545.144 would have required a Federal savings association to adopt standards and policies designed to ensure secure operations. In addition, the proposed rule would have required a Federal savings association to implement security measures adequate to prevent unauthorized access to its records and its customers' records, and to prevent financial fraud through the use of electronic means or facilities. The proposed rule also stated that a Federal savings association must comply with the current security devices requirements of part 568, if it provides an ATM, an automated loan machine, or another similar electronic device.

One Federal savings association noted that the banking industry has not yet embraced any particular standards with respect to encryption, authentication, digital signatures, and other technical matters affecting transmission over the Internet. Accordingly, the commenter urged OTS to avoid imposing unnecessary regulatory impediments or micro-managing system implementation or maintenance. While the commenter was not critical of proposed § 545.144, the commenter criticized OTS's imposition of certain security-related conditions on approvals of recent applications, such as requiring an applicant to have its delivery of services over the Internet tested and reviewed by independent computer security specialists before commencing operation. The commenter urged OTS to reconsider whether there is a need to impose such conditions.

In approving applications to commence operations, OTS requires proof that adequate security measures are in place for safe, sound, and secure operations. To date, these requirements routinely have included testing and review by independent computer security specialists. OTS tailors specific conditions on a case-by-case basis. It may be possible that future applications may not raise these security concerns. However, currently OTS believes such a condition in application approval orders remains essential to safe and sound internal operations. Similarly, under the notice procedures in subpart B to part 555 of this final rule (including the 30-day advance notice requirement), OTS will have an opportunity to consider, before any savings association establishes a transactional web site, whether the savings association will be able to conduct such operations in a safe, sound, secure, and compliant manner.

In the preamble to the proposed rule, OTS indicated that it ''expects Federal savings associations to establish security measures that are consistent with current industry standards, and to continually monitor and regularly update these security procedures to keep pace with changes to industry standards.'' [25] One trade association urged OTS to incorporate this statement in the final rule.

OTS believes that such interpretive statements are best contained in OTS policy statements, advisories, and other explanatory materials, rather than the regulation. For similar reasons, OTS has deleted from the final rule the proposed statement indicating that Federal savings associations should adopt standards and policies on security issues. Instead, the rule requires Federal savings associations to implement security measures designed to ensure secure operations.

Another trade association urged OTS to provide guidelines alerting Federal savings associations to security issues that should be addressed before a new electronic delivery mechanism is implemented. As summarized in Section II above, OTS has issued such guidelines and advisories to Federal savings associations, both on its own and as part of FFIEC.

OTS has made clarifying revisions to the section. These revisions require that the management of Federal savings associations identify, assess, and mitigate potential risks and establish prudent internal controls, in addition to implementing security measures that are designed to ensure secure operations.[26] These risks may be strategic, legal, regulatory, or operational.[27]

C. Requirements Applicable to All Savings Associations

1. Must I Inform OTS Before I Use Electronic Means or Facilities? (§ 555.300)

Proposed § 555.300(a) of the Supplemental NPR sets forth the general rule that a savings association does not have to inform OTS before it uses electronic means and facilities. However, two exceptions apply. First, proposed § 555.300(b) would require a savings association to file a written notice with OTS before it establishes a transactional web site. Second, proposed § 555.300(c) would provide that if the OTS Regional Office has informed a savings association of any supervisory or compliance concerns that may affect the savings association's use of electronic means or facilities, the savings association must follow any additional procedures the Regional Office has imposed in writing. Proposed § 555.300(a) also would encourage savings associations to consult with OTS even in circumstances not covered by the notice requirement or other procedures in § 555.300(b) or (c).

[25] 62 FR at 51819.

[26] Further guidance on these requirements is provided in Appendix A to Part 570, section 341 of the Thrift Activities Regulatory Handbook, and Statement on Retail On-Line Personal Computer Banking.

[27] *See* Statement on Retail On-Line Personal Computer Banking.

Four commenters indicated that the proposed notice requirement would help OTS to monitor adequately savings associations' technological innovations and to assess security, compliance, and privacy risks. Some commenters, however, expressed concerns.

Four commenters argued that the notice requirement would place savings associations at a competitive disadvantage, since other banking regulators do not impose a similar notice requirement. OTS does not anticipate that the notification requirement will place savings associations at a significant competitive disadvantage. As discussed below, in general, once an association has addressed any follow-up questions from the Regional Office and the 30-day period has expired, the association will be free to bring its transactional web site on-line. No affirmative authorization from OTS is necessary except where the Regional Office may otherwise indicate.

While providing this information will impose a minimal burden on savings associations, the process will allow individual associations, and the industry as a whole, to reap important benefits. The notice will make it easier for OTS to obtain information on the industry's use of transactional web sites. As a result, OTS will be better able to assist associations that are contemplating or already conducting Internet operations to identify and address the risks that accompany such activities. The information will also broaden OTS's awareness of trends in Internet banking operations, which OTS can share with institutions. It will also efficiently allow OTS to keep abreast of significant changes in the way particular savings associations interact with their existing or potential customers to enable OTS to issue appropriate guidance. Finally, the procedure responds to the concern raised by the commenter on the NPR who indicated that OTS should be vigilant about new electronic operations raising safety and soundness concerns, since the procedure will assist OTS to supervise effectively the electronic operations of savings associations.[28]

One commenter asserted that transactions conducted over the Internet pose no more risk than transactions performed using other technologies for which no prior notice is required. This commenter also asserted that the notice was unnecessary since the industry already fully understands the risks associated with the Internet.

OTS does not agree that transactions conducted over the Internet pose no more risk than transactions performed through other more established technologies.[29] While it is true that risks are inherent in all electronic capabilities, the use of an electronic channel such as the Internet to deliver products and services introduces unique risks due to the increased speed at which systems operate, user anonymity, and broad access in terms of geography, user groups, applications, databases, and peripheral systems.

As explained in the preamble to the Supplemental NPR, OTS has been, and continues to be, concerned with the adequacy of firewalls to prevent hackers from breaking into an association's computer systems and thereby jeopardizing the association's security.[30] OTS is also concerned about other operational and compliance risks presented by Internet banking and intends to increase its monitoring of web sites for compliance with disclosure laws and regulations.[31] Additionally, OTS is concerned about protecting the privacy of individuals submitting information (or about whom information has been submitted).[32]

Even traditional risks that are similar to those in customary banking activities must be considered in a new light. For example, if an association conducts lending or deposit gathering activities over an electronic channel, credit risks must be considered in the context of the high-speed, wide-access electronic environment. The collection of baseline information on transactional web sites is an important and integral part of OTS efforts to enhance its supervision of Internet banking activities.

Another commenter noted that the costs of developing a web site are substantial and would be incurred before the savings association files the notice. Consistent with § 555.300(a), OTS encourages associations concerned about expending resources to develop a transactional web site to consult with their Regional Office in the early stages of development, even before filing a notice.

In lieu of the notice requirement, several commenters urged OTS to continue to rely on existing supervisory guidance, examination oversight, and application processes to ensure that Internet activities are conducted in a safe, sound, secure, and compliant manner. One commenter encouraged OTS to address transactional web sites in the Statement on Retail On-Line Personal Computer Banking and in additional questions in the Pre-Examination Response Kit. Another commenter suggested that the additional guidance should address such issues as development costs, security and privacy issues, and compliance matters.

OTS has provided and will continue to provide important guidance to the industry. OTS has addressed development costs, security, privacy, and compliance matters in its Statement on Retail On-Line Personal Computer Banking and in section 341 of the Thrift Activities Regulatory Handbook. OTS will update and supplement this guidance as necessary. However, this guidance is not a substitute for OTS's obtaining information necessary for proper supervision.

OTS proposed to define a transactional web site as ''an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other products or services.'' [33] Four commenters supported OTS's proposed definition. Two commenters indicated that the Supplemental NPR adequately distinguished between transactional and informational web sites.

In light of the generally favorable comments, OTS does not believe significant changes to the definition are necessary. However, OTS is making one clarifying change to the definition of transactional web site in response to a comment. The commenter recommended clarifying the meaning of the phrase ''purchasing other products

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[28] A September 30, 1998 report prepared, at OTS's request, by the Office of Inspector General (OIG), United States Department of the Treasury, made several suggestions. Among these were that OTS: (1) develop a complete list of savings associations providing on-line and Internet banking services; (2) enhance monitoring of savings associations' web sites for compliance with federal disclosure regulations and laws, and (3) begin to focus more on the operational risks presented by on-line and Internet banking. The OIG recommended these steps to help OTS determine risks, plan strategic examination coverage, identify staff development needs, and foster examination uniformity and consistency. *See* Office of Inspector General, U.S. Dep't of the Treasury, *Consultative Report on the Office of Thrift Supervision Examination of On-Line and Internet Banking Risks,* (OIG–CA–98–003, 1998).

[29] *See* 63 FR at 43328.

[30] *Id.*

[31] As noted in the preamble to the Supplemental NPR, OTS is aware that advertising and disclosure problems may apply equally to transactional and informational web sites. OTS believes, however, that the need for advance notice is greater where such concerns are combined with the other compliance, security, and privacy issues related to transactional web sites. To minimize regulatory burden, OTS is limiting the advance notice requirement to transactional web sites. However, OTS will continue to examine both types of web sites for operational and compliance problems. *See* 63 FR at 43329 n. 11.

[32] 63 FR at 43328.

[33] 63 FR at 43330 (proposed § 555.300(b)).

or services'' used in the definition. The final rule clarifies that the phrase refers to any authorized products or services.

Another commenter asked OTS whether a new notice would be required when the type and level of activities conducted on a transactional web site are increased or substantially modified. A new notice will not be required in such circumstances. Once the savings association alerts OTS about its transactional web site, the agency will be able to monitor and examine the web site without a need for subsequent notices when changes are made.[34]

Other commenters, however, suggested further revisions or clarifications that OTS believes would be too limiting. One commenter indicated that the covered web sites should be those that transact business equivalent to a branch through which money passes. Another argued that a web site is not transactional if an applicant may only complete and return a loan application electronically, but would be transactional if the web site also permits the application to be processed through an automated credit scoring system and is used to notify the customer of an approval or denial.

OTS does not agree that transactional web sites subject to the notice requirement should be limited to those that are used for monetary transactions or are used to notify the customer of an application approval or denial. The same concerns about providing a secure environment apply where confidential information is exchanged in other circumstances that are transactional, but do not necessarily constitute a monetary transaction or notification on an application.

However, it is appropriate to clarify a related matter. OTS will not consider a web site to be transactional simply because it allows the sending of e-mail messages. For an association simply to include an e-mail address on its web site does not necessarily invite the public to attempt to conduct transactions with the association over the Internet or to submit confidential information. For example, the public may use the e-mail address for a variety of tasks (*e.g.*, inquiring about products or services offered, requesting that a customer service representative call, or asking that forms or information be mailed). In contrast, a web site that provides an electronic application form for transmission to the association by e-mail would be considered transactional. Such an application, by its nature, is designed to conduct a transaction and will likely actively elicit the submission of confidential information to the association over the Internet through the questions contained in the application.

One commenter recommended that OTS define an ''informational web site.'' OTS does not believe that a separate definition of this term is necessary. As noted in the preamble to the Supplemental NPR, an informational web site is a non-transactional web site, such as one limited to advertising and fee and rate posting.[35]

Six commenters opposed a notice requirement for electronic activities other than a transactional web site. Three commenters explained that OTS already has sufficient authority to examine any activity that raises safety and soundness concerns.

OTS is not requiring a notice under § 555.300(b) for any activities using electronic means or facilities other than transactional web sites. For example, a savings association would not be required to notify OTS before it establishes an informational web site.[36] As with other activities, OTS will continue to rely on its existing supervisory examinations and application processes to ensure the savings association's ability to engage in new activities in a safe, sound, secure, and compliant manner.[37]

As technologies emerge, OTS may revise the rule to require notice of activities other than establishing a transactional web site. Similarly, as technologies mature and the industry and OTS gain additional experience, OTS may revise the rule to no longer require notice before establishing a transactional web site.

OTS is also making an editorial change to § 555.300(a). The change clarifies that OTS encourages consultations with the Regional Office regardless of whether the notice requirement in § 555.300(b) or the additional procedures in § 555.300(c) apply.

2. How do I Notify OTS? (§ 555.310)

Proposed § 555.310 of the Supplemental NPR described the advance notice procedures. Proposed § 555.310(a) would require a savings association to provide a written notice to the appropriate Regional Office at least 30 days before establishing a transactional web site. Proposed § 555.310(b) contained a transition provision applicable to transactional web sites established after the date of the association's last regular onsite OTS safety and soundness examination but before the effective date of the rule.

Two commenters supported the 30-day advance notice period. Another commenter argued that the 30-day notice period would be too long and suggested a 10-day notice period. Another commenter urged OTS to permit a savings association to apprise OTS within 30 days *after* establishing a transactional web site. This notice would permit OTS to review the web site in an examination.

OTS has decided to retain the 30-day advance notice procedure as proposed. As discussed above, OTS does not anticipate this procedure will be burdensome. Thirty days is an appropriate time period to allow OTS to consider the notice and ask any follow-up questions that may be necessary.

In the Supplemental NPR, OTS did not propose to prescribe any particular form for the notice. Proposed § 555.310(a) would simply require that a savings association describe the transactional web site, indicate the date the transactional web site will become operational, and list a contact familiar with the deployment, operation, and security of the transactional web site. The preamble to the Supplemental NPR indicated that, upon receipt of the notice, the Regional Office may require additional information to ensure that the savings association will operate the transactional web site in a safe, sound, secure, and compliant manner.[38] The preamble further indicated that OTS contemplated that the notice may be brief. It contained sample language that read:

[*Name of savings association*] plans to establish a transactional web site on the Internet at [*URL*]. It will be operational on [*Date*]. The site will contain mortgage loan applications that can be transmitted securely

[34] However, as noted in the preamble to the Supplemental NPR, before a savings association may change an informational web site to a transactional web site, the savings association must file a notice with OTS. 63 FR at 43329 n. 9.

[35] 63 FR at 43329.

[36] However, OTS has implemented a change to the Thrift Financial Report (TFR). The electronic filing software now collects information on all savings associations' Internet web site addresses. This change was effective for the third quarter 1998 TFR.

[37] OTS reviews the safety and soundness of new activities, the appropriateness of the internal controls and security precautions, and compliance with applicable laws and regulations on a case-by-case and institution-by-institution basis in connection with applications and through the examination process. For institutions subject to an application process (*e.g., de novo* applications), these initial safety and soundness and compliance determinations will be made in the application review. After application approval or where no application is required, safety and soundness and compliance will generally be assessed as a part of the examination process. This process will review and assess the institution's identification of risks of the activity, the steps it has taken to mitigate these risks, the testing it has undertaken to ensure safety and soundness, and its compliance monitoring process.

[38] 63 FR at 43329.

to our loan processing office. For further information contact: [*Name* at *telephone number, e-mail*].[39]

Four commenters stated that OTS should not require any information in the notice beyond that described in the Supplemental NPR. One commenter specifically endorsed OTS's sample statement in the preamble as sufficient. One commenter, however, recommended that institutions describe how they will conduct the activity, the type of security they will use, the internal controls they will follow, and the program they will follow to ensure compliance with all applicable laws and regulations. Another commenter observed that an overview of controls and safeguards designed to preserve privacy and security and protect against financial fraud would be sufficient.[40] One commenter suggested that if OTS discovers that new information is necessary following this rulemaking, it should require this information in guidance, rather than in a revised rule.

OTS is adopting the requirements concerning the contents of the notice as proposed. It believes these requirements will provide sufficient information to the Regional Offices without being burdensome or inflexible. The guidance contained in the preamble to the Supplemental NPR, including the sample language set forth above, remains valid.

Several commenters sought clarification of the review procedures. One commenter sought assurance that the notice process was informational only. Two commenters sought clarification whether OTS would approve or disapprove notices (*e.g.*, where there are supervisory or compliance concerns). One noted that if prior OTS approval is required, the notice process would impose substantial financial, strategic, and compliance risks on institutions. Another commenter urged OTS to review all notices within the notice period and quickly act to prevent a savings association from establishing a transactional web site that could threaten its safety and soundness.

The procedure will work as follows: The savings association will file a written notice with the Regional Office. The Regional Office will review the notice and may ask follow-up questions. In general, once an association has addressed those follow-up questions from the Regional Office and the 30-day period has expired, the association will be free to bring its transactional web site on-line. No affirmative authorization from OTS is necessary except where the Regional Office may otherwise indicate. If, however, by the end of the 30-day period, the Regional Office informs the association that there are supervisory or compliance concerns that may affect the association's establishment of a transactional web site, the association must follow any procedures that the Regional Office imposes in writing. The procedures the Regional Office may impose could include, for example, requiring further information to be submitted or precautions to be taken before the savings association may establish the transactional web site, limiting in some fashion the ways in which the association may use the transactional web site, or prohibiting the association from establishing a transactional web site.

One commenter opposing notice procedures observed that the advance notice only made sense if the Regional Office would review the notice before the roll-out of the web site. This commenter, however, predicted that OTS Regional Offices may apply inconsistent standards and that this inconsistency could be problematic since web sites provide services nationwide. The commenter suggested that the final rule should require the Regional Office to notify the thrift of any conditions it would impose on web site operations. OTS will issue industry guidance to help a savings association deploy a transactional web site in a safe, sound, secure, and compliant manner. OTS will also issue uniform guidance to its Regional Offices to verify that transactional web sites are in compliance with the industry guidance and this regulation and that savings associations have established an adequate infrastructure for operating safe, sound, secure, and compliant transactional web sites.

One commenter urged OTS to require public notice and comment before a savings association may establish a transactional web site. This commenter indicated that, in some states, financial institutions must provide public notice and comment before opening a deposit-collecting branch or deposit-taking ATM.

OTS does not believe it is appropriate to require a public comment procedure. Moreover, OTS posts notices on its web site upon filing. The same policy will apply to notices for transactional web sites. This procedure will provide adequate information to the public.

IV. Other Rule Provisions

A. Conforming Amendment to Branch Offices Regulation

The proposed rule would revise OTS's branch office regulation to clarify that electronic facilities (such as automated loan machines) are not branch offices. Three commenters specifically supported this section, although two requested clarifications. One Federal savings association argued that the final rule should indicate that *all* electronic facilities and the Internet are excluded from the definition of ''branch office.'' The proposed rule would have excluded an ''electronic facility'' from the definition of ''branch office,'' but did not indicate that an ''electronic means'' was also excluded.

For consistency in terminology, the final rule has been revised to exclude all ''electronic means or facilities'' from the definition of ''branch office.'' Under § 555.200(a), the Internet continues to be an electronic means or facility and is not considered to be a branch.

Another Federal savings association asked whether a ''hybrid office'' would be treated as a branch office. This commenter defined a hybrid office as an office in which a Federal savings association conducts the majority of its operations electronically, but conducts some functions in person by appointment. The type of office the commenter has described may be either a branch office[41] or an agency[42] depending upon the types of services provided. A Federal savings association may request an OTS opinion if it requires further guidance on this topic.[43]

B. Conforming Amendment to Subordinate Organizations Rule

The Examination Parity and Year 2000 Readiness for Financial Institutions Act, discussed above, applies to Federal and State savings associations and provides OTS with the authority to examine service corporations. Accordingly, OTS is conforming the service corporation examination provision of its Subordinate Organizations regulation, 12 CFR 559.3(o)(2), to reflect this authority.

V. Other Issues Raised by Commenters

A. Preemption

One Federal savings association commenting on both the NPR and the

[39] *Id.*

[40] One commenter, however, noted that security information may be difficult to obtain when the web site is maintained by a service bureau. This commenter noted that service bureaus often claim that the release of such information will compromise their systems.

[41] 12 CFR 545.92 (1998).

[42] 12 CFR 545.96 (1998).

[43] OTS will shortly undertake another rulemaking to clarify the regulations governing various types of offices.

Supplemental NPR urged OTS to add specific preemption provisions stating that OTS's electronic operations regulations preempt state laws purporting to restrict or govern the electronic operations of federal savings associations. The commenter noted that various states have enacted such laws. The commenter argued that preemption would encourage Federal savings associations to participate in various electronic banking activities, facilitate the development of best industry practices, and prevent the development of a patchwork of conflicting state and local rules.

Electronic operations and related state and federal laws are still evolving. Thus, OTS believes it is premature to craft specific preemption regulations in the area of electronic operations. OTS intends to address specific state laws on a case-by-case basis as they are raised to the agency.

The commenter may have raised this matter, in part, because the electronic operations provisions will not be placed in part 545, but rather in a new part 555. Part 545 currently contains regulations pertaining to electronic operations [44] and also contains a general provision preempting state laws affecting "Operations." [45] However, the movement of the electronic operation provisions to a new part 555 does not indicate a substantive change. OTS will apply principles of preemption consistently with its prior interpretations of OTS's authority under the HOLA.[46] Accordingly, the regulations in subpart A to part 555 will have preemptive effect where appropriate to: (1) facilitate the safe and sound operations of a Federal savings association, (2) enable a Federal savings association to operate according to the best thrift institution practices in the United States, or (3) further other purposes of the HOLA.[47]

When evaluating preemption of a state law, OTS will focus first on the underlying activity affected by the state law. For example, if a state law affects a Federal savings association's ability to take deposits or lend using electronic means and facilities, OTS will apply the part 557 or part 560 preemption analysis for deposit or lending activities, respectively. OTS will evaluate other activities that may be conducted electronically, on a case-by-case basis.

While OTS intends to give Federal savings associations maximum flexibility to operate electronically according to a uniform federal scheme of regulation, OTS has recognized that some types of state laws, under certain circumstances, generally will not be preempted.[48] Consistent with this approach, OTS will determine that a state law regulating electronic operations is not preempted if it furthers a vital state interest, and either has only an incidental effect on Federal savings associations' ability to provide financial services electronically or is not otherwise contrary to the purposes of OTS's rule.

B. Community Reinvestment Act

Several commenters on the NPR addressed the impact of emerging electronic technologies on Community Reinvestment Act (CRA) requirements. The comments generally argued that the current CRA requirements do not: (1) provide adequate recognition of loans, investments and services generated outside of a Federal savings association's traditional assessment area (*i.e.* the area surrounding its branch network), or (2) permit Federal savings associations with Internet operations to define their CRA assessment areas more broadly than the branch network concept allows. Some commenters offered options intended to address these types of concerns. These included allowing Federal savings associations that engage in alternate delivery systems to be treated as limited purpose institutions or to define an assessment area in a manner that is tied to the customer base rather than a particular geography. One commenter on the Supplemental NPR expressed concern that financial institutions may use web sites to conduct business nationwide, but would be required to include only certain geographical areas in their CRA assessment areas.

Currently, OTS is working on an interagency basis to resolve these concerns and other CRA issues arising from the use of alternative methods of delivering financial products and services. The interagency effort involves revisiting the definition of an assessment area for institutions that use alternative delivery systems. Until this interagency effort is completed, OTS intends to allow the new electronic technologies to develop within the existing CRA regulatory framework. Specific CRA issues that arise in connection with an application will continue to be handled on a case-by-case basis in an effort to adapt existing laws to modern technologies and innovations.[49] An institution, of course, always has the option of taking advantage of the flexibility in the existing CRA regulation by developing and seeking approval of a strategic plan that would link CRA performance to its particular business strategy.[50]

C. Other Interagency Issues

Both trade association commenters on the NPR urged OTS, other Federal bank regulators, and the Treasury Department to coordinate their activities to ensure the development of consistent approaches to electronic operations issues, to minimize regulatory burdens, and to avoid potential conflicts. One commenter on the Supplemental NPR indicated it would only support the notice requirement for transactional web sites if all banking regulators imposed the same requirement on their regulated institutions.

As OTS issues rules and guidance on electronic operations, it continually strives for consistency with other Federal banking regulators. Accordingly, OTS will continue to participate in all interagency efforts to establish consistent regulatory approaches to electronic operations issues.

One Federal savings association noted that when the Federal banking agencies and the Department of Justice review a merger or acquisition for its impact on competition, the analysis focuses on the relevant product and geographic markets. These concepts generally require an analysis of deposits taken, loans made, and services provided in the geographic areas served by the combining institutions. The commenter urged the Federal banking agencies to view Internet banking activities as outside the scope of the traditional antitrust analysis and recognize that current technology gives Federal savings associations and banks the ability to conduct business with customers all over the country.

The entry of financial institutions into electronic operations raises a host of new issues. OTS has attempted through

[44] 12 CFR 545.138, 545.141, and 545.142 (1998).

[45] 12 CFR 545.2 (1998).

[46] *See* 12 CFR 545.2 (Operations), 557.11–557.13 (Deposits), and 560.2 (Lending and Investment) (1998).

[47] *Accord* 12 CFR 557.11(a) and 560.2(a) (1998).

[48] *See* 12 CFR 557.13 and 560.2(c) (1998).

[49] While not specifically involving electronic operations, the 1997 application from the Travelers Group is illustrative of an institution's efforts to develop a new approach on CRA. The Travelers Group filed an application to convert a state-chartered bank to a Federal savings association charter. The converted Federal savings association was to engage in consumer lending and trust services nationwide. In its application, Travelers stated that its CRA obligation extended throughout all the communities where it does business and made an initial pledge to make at least $430 million of home equity loans to low- and moderate-income borrowers over three years. OTS approved Travelers' application. *See* Order No. 97–120 (November 24, 1997).

[50] *See* 12 CFR 563e.27 (1998).

this rulemaking and guidelines to address issues that have arisen. To date, the antitrust issue cited by the commenter has not been a critical issue in an application. Currently, financial business through electronic operations constitutes a very small portion of financial services offered by Federal savings associations. OTS will consider providing guidance on this issue and other issues in the future should they emerge as prominent issues.

VI. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a ''significant regulatory action'' for the purposes of Executive Order 12866.

VII. Paperwork Reduction Act of 1995

The collection of information requirements in this rule have been submitted to and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under OMB control number 1550–0095.

Comments on all aspects of this information collection should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0095), Washington, DC 20503, with copies to the Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at 12 CFR 506.1.

The collection of information requirements are found in 12 CFR 555.300 and 555.310. OTS requires this information for the proper supervision of electronic operations by savings associations. The likely respondents/ recordkeepers are savings associations.

VIII. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this regulation will not have a significant impact on a substantial number of small entities. This final rule should make it easier for Federal savings associations, including small institutions, to engage in electronic operations. While it imposes a notice requirement on savings associations using one particular type of electronic means or facility (*i.e.,* a transactional web site) and allows Regional Offices to impose case-by-case restrictions for supervisory or compliance reasons, these requirements are the minimum necessary for proper supervision and should not have a significant impact on a substantial number of small institutions.

IX. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 555

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 559

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12 of the Code of Federal Regulations as set forth below:

PART 545—OPERATIONS

1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

2. Section 545.92 is amended by revising paragraph (a) to read as follows:

§ 545.92 Branch offices.

(a) *General.* A branch office of a Federal savings association is any office other than its home office, agency office, administrative office, data processing office, or an electronic means or facility under part 555 of this chapter.

* * * * *

§§ 545.138 through 545.142 [Removed]

3. Sections 545.138 through 545.142 are removed.

4. Part 555 is added to read as follows:

PART 555—ELECTRONIC OPERATIONS

Sec.
555.100 What does this part do?

Subpart A—Authority of Federal Savings Associations to Conduct Electronic Operations

555.200 How may I use or participate with others to use electronic means and facilities?
555.210 What precautions must I take?

Subpart B—Requirements Applicable to All Savings Associations

555.300 Must I inform OTS before I use electronic means or facilities?
555.310 How do I notify OTS?

Authority: 12 U.S.C. 1462a, 1463, 1464.

§ 555.100 What does this part do?

Subpart A of this part describes how a Federal savings association may provide products and services through electronic means and facilities. Subpart B of this part contains requirements applicable to all savings associations.

Subpart A—Authority of Federal Savings Associations to Conduct Electronic Operations

§ 555.200 How may I use or participate with others to use electronic means and facilities?

(a) *General.* A federal savings association (''you'') may use, or participate with others to use, electronic means or facilities to perform any function, or provide any product or service, as part of an authorized activity. Electronic means or facilities include, but are not limited to, automated teller machines, automated loan machines, personal computers, the Internet, the World Wide Web, telephones, and other similar electronic devices.

(b) *Other.* To optimize the use of your resources, you may market and sell, or participate with others to market and sell, electronic capacities and by-products to third-parties, if you acquired or developed these capacities and by-products in good faith as part of providing financial services.

§ 555.210 What precautions must I take?

If you use electronic means and facilities under this subpart, your management must:

(a) Identify, assess, and mitigate potential risks and establish prudent internal controls; and

(b) Implement security measures designed to ensure secure operations. Such measures must be adequate to:

(1) Prevent unauthorized access to your records and your customers' records;

(2) Prevent financial fraud through the use of electronic means or facilities; and

(3) Comply with applicable security devices requirements of part 568 of this chapter.

Subpart B—Requirements Applicable to All Savings Associations

§ 555.300 Must I inform OTS before I use electronic means or facilities?

(a) *General.* A savings association ("you") are not required to inform OTS before you use electronic means or facilities, except as provided in paragraphs (b) and (c) of this section. However, OTS encourages you to consult with your Regional Office before you engage in any activities using electronic means or facilities.

(b) *Activities requiring advance notice.* You must file a written notice as described in § 555.310 before you establish a transactional web site. A transactional web site is an Internet site that enables users to conduct financial transactions such as accessing an account, obtaining an account balance, transferring funds, processing bill payments, opening an account, applying for or obtaining a loan, or purchasing other authorized products or services.

(c) *Other procedures.* If the OTS Regional Office informs you of any supervisory or compliance concerns that may affect your use of electronic means or facilities, you must follow any procedures it imposes in writing.

§ 555.310 How do I notify OTS?

(a) *Notice requirement.* You must file a written notice with the appropriate Regional Office at least 30 days before you establish a transactional web site. The notice must do three things:

(1) Describe the transactional web site.

(2) Indicate the date the transactional web site will become operational.

(3) List a contact familiar with the deployment, operation, and security of the transactional web site.

(b) *Transition provision.* If you established a transactional web site after the date of your last regular onsite OTS safety and soundness examination but before January 1, 1999, you must file a notice describing your activity by February 1, 1999.

PART 559—SUBORDINATE ORGANIZATIONS

5. The authority citation for part 559 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1828.

6. Section 559.3 is amended by revising paragraph (o)(2) to read as follows:

§ 559.3 What are the characteristics of, and what requirements apply to, subordinate organizations of federal savings associations?

* * * * *

(o) * * *

(2) A service corporation is subject to examination by OTS.

* * * * *

Dated: November 20, 1998.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 98–31746 Filed 11–27–98; 8:45 am]

BILLING CODE 6720–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 900, 922, 931, 932, 933, 934, and 941

[No. 98–47]

RIN 3069–AA55

Election of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations on the election of Federal Home Loan Bank (Bank) directors. The final rule devolves responsibility for determining the eligibility of elective directors and administering the election process from the Finance Board to the Banks. The final rule is part of the Finance Board's continuing effort to transfer management and governance responsibilities to the Banks and is consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review.

EFECTIVE DATE: The Final Rule will become effective on December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia L. Sweeney, Program Analyst, Compliance Assistance Division, Office of Policy, 202/408–2872, or Roy S. Turner, Jr., Attorney-Advisor, Office of General Counsel, 202/408–2512, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Pursuant to section 7 of the Federal Home Loan Bank Act (Act), which sets forth the eligibility requirements and the procedures for electing and appointing Bank directors, and regulations promulgated thereunder, the Finance Board's predecessor, the former Federal Home Loan Bank Board (FHLBB), determined the eligibility of all Bank directors, administered the Bank director elections, and appointed public interest directors. *See* 12 U.S.C. 1427 (1989); 12 CFR part 522 (1989). After Congress abolished the FHLBB in 1989, *see* Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub.L. 101–73, sec. 401, 103 Stat. 183 (Aug. 9, 1989), the Finance Board adopted the FHLBB regulations on Bank directors, without change. *See* 54 FR 36757 (Sept. 5, 1989), *codified at* 12 CFR part 932. The Finance Board subsequently amended its regulations to implement the changes FIRREA made to the eligibility requirements for, and to apply the conflicts of interest limitations FIRREA imposed on, Bank directors. 55 FR 1393 (Jan. 16, 1990); 56 FR 55205 (Oct. 25, 1991); *see* FIRREA, secs. 707, 710(b)(4), 103 Stat. 417, 418, *codified at* 12 U.S.C. 1427.

Since the enactment of FIRREA the Finance Board has determined the eligibility of all Bank directors, has administered the election of Bank directors, and has appointed public interest directors. As part of its policy of removing itself from the management and governance functions of the Banks and devolving those responsibilities to the Banks, the Finance Board is transferring the administration of the elections, including the responsibility to determine the eligibility of elective directors, to the Banks. This action does not affect the appointment of public interest directors for the Banks, who will continue to be appointed in the sole discretion of the Finance Board.

The final rule amends, redesignates, or eliminates various provisions of part 932, and includes conforming amendments to parts 900, 931, 933, 934, and 941. The Finance Board also is repealing the current conflict of interest and financial disclosure requirements established by part 922 of its regulations for the appointed members of the Board of Directors of the Finance Board. All of the changes are consistent with the goals of the Regulatory Reinvention Initiative of the National Performance Review. *See* E.O. 12861, 58 FR 48255 (Sept. 11, 1993).

II. Analysis of the Public Comments and Final Rule

The Finance Board received seven comment letters in response to its proposal to devolve the management and administration of the election process to the Banks. The proposed rule was published in the **Federal Register**, with a 45-day period for public comment. 63 FR 26532 (May 13, 1998). Commenters included six Banks and one member. Most commenters supported the devolution of the election process to the Banks, though they also offered suggested revisions to the rule. Two commenters opposed the proposal, citing the potential administrative burden that could be placed on the Banks. One of these commenters also characterized the regulation as too detailed and restrictive and failing to devolve to the Banks any meaningful control over the election process.

Notwithstanding those concerns, the Board believes that the election of directors to serve on the board of a corporate entity is a responsibility more appropriately assigned to the entity than to its safety and soundness regulator. Accordingly, the Board is adopting the regulation largely as proposed, with revisions made to take into account a number of revisions proposed by the commenters. Those revisions are discussed below.

A. Definitions—§ 932.1

1. ''Bona Fide Resident''— § 932.1

The proposed definition of ''bona fide resident'' that appeared in the **Federal Register** included a typographical error, which prompted two commenters to question whether appointive directors need always have some residence within the district. The final rule corrects the error, making clear that an appointive director who does not maintain a principal residence within the district may, nonetheless, be a ''bona fide resident'' if he or she owns or leases in his or her own name a residence within the district and is employed within a voting state in the district. The same test applies to elective directors.

2. ''Voting State''—§ 932.1

Under the proposal, a member's ''voting state'' is the state in which the member's principal place of business, ''as determined in accordance with part 933,'' is located on the record date. One commenter contended that the definition might bar a member from voting if its principal place of business were located outside the district of the Bank in which the institution is a member. Because that scenario could occur only in rare circumstances, which would require Finance Board approval, and the existing regulations and statutes would address the matter, the final rule adopts the definition as proposed.

By statute, an institution must become a member of the Bank whose district includes the state in which the institution maintains its principal place of business, unless the institution requests membership in an adjoining district, which is permissible only if it is ''demanded by convenience'' and only if it is approved by the Finance Board. 12 U.S.C. 1424(b). Thus, a member could have its principal place of business outside of its normal Bank district only pursuant to the ''demanded by convenience'' provision. If such a transfer were to occur, it would be governed by the regulations of the Finance Board, principally Section 933.18(a) and (b). Those provisions authorize membership in another Bank under the ''demanded by convenience'' provision and provide that ''[e]xcept as otherwise designated in accordance with this section'' a member's principal place of business is the state in which it maintains its home office. The latter provision contemplates that the Finance Board may ''otherwise designate'' a state other than the one in which a member maintains its home office as its principal place of business, which the Finance Board would have to do if the home office were outside the district. As the regulations address the concern of the commenter, especially when read in conjunction with section 1427(c), which requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes, the Finance Board does not believe it is necessary to revise this definition.

B. Director Elections—§ 932.3

1. Responsibilities of the Banks

Consistent with the proposed rule, the final rule transfers the responsibility for the conduct and administration of the director elections from the Finance Board to the Banks. Two commenters believed that the regulatory language should expressly permit the Banks to use staff and contractors to run the elections process, even though the preamble to the proposal indicated that Bank staff could be used. As it was never the Finance Board's intent to have the board of directors personally perform those tasks, the final rule clarifies that the disinterested members of the board of directors, or a committee of disinterested directors, may use staff or an outside contractor to perform the ministerial and administrative tasks associated with the elections process. The final rule retains the language that the disinterested members, or committee of disinterested members, are responsible for overseeing the election process, which means that they must ensure that the persons administering the election are competent and act in accordance with these regulations.

Further, three commenters suggested that the Finance Board share information with, and offer the appropriate training to, the Banks as a part of its devolution of the election process. The Finance Board intends to provide the information and training necessary to ensure a smooth transition of the management of the election process from the Finance Board to the Banks and anticipates that it will do so in consultation with the Banks in advance of the 1999 election cycle. No regulatory changes are necessary to provide such assistance.

2. Designation of elective directorships.

For any Bank district with five or more states, the Act authorizes the Finance Board to increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. 12 U.S.C. 1427(a). The proposed rule had provided that in creating any additional appointive directorships under this authority the Finance Board may round up to the nearest whole number. Two Banks objected to the rounding provision, contending that it could result in a Bank having a number of appointive directors in excess of the three-fourths statutory limit.

The principal difficulty in applying the statutory limit is that it results in a whole number of appointive directors only when the number of elective directors is eight or twelve. If a Bank has nine, ten, or eleven elective directors, the formula results in a fractional cap on the number of appointive directors, *i.e.*, 6.75, 7.5, and 8.25, respectively. It is not clear from the statute how Congress intended the cap to be applied when it includes a fraction. The Finance Board could disregard all fractions altogether, meaning that it would have to ''round down'' to the nearest whole number in all cases. Alternatively, the Finance Board could follow standard rounding conventions and round to the nearest whole number in all cases. The Finance Board has determined that the most reasonable means of applying the limitation is to use standard rounding conventions whenever the ''three-fourths'' formula results in something other than a whole number. Thus, for any fraction of one-half or more the Finance Board will round up to the

nearest whole number, and for any fraction of less than one-half the Finance Board will round down to the nearest whole number.

The Finance Board believes that this interpretation is permissible and is in accord with the standards of statutory interpretation. *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council Inc.*, 467 U.S. 837, 844 (1984). The final rule amends the proposed language by deleting the term ''up,'' to make clear that fractions less than one-half will be rounded down, and adds a provision requiring the Finance Board to consult with the affected Banks prior to increasing the number of elective or appointive directorships.

One commenter suggested that the Finance Board establish separate seats on the board of directors of a Bank for co-operative banks and federal savings and loan associations, as those institutions are too small to have sufficient votes to elect their own representatives. The Finance Board cannot make such a change because it is not permitted by the statute. The Finance Board has no authority to set up separate classes of directors to represent different segments of the membership base.

C. Capital Stock Report—§ 932.4

The proposed rule would have required each Bank, by April 10 of each year, to submit to the Finance Board and to each member a capital stock report, which would indicate the minimum number of shares of Bank stock each member was required to hold at the end of the preceding calendar year. The proposal also would have allowed each member to obtain Finance Board review of the Bank's determination of its minimum stock holdings. Two commenters objected to this provision, contending that providing the capital stock report to the members would be confusing because the report would not indicate the number of votes each member would be entitled to cast in the election, and that the appeals process would delay the elections.

The Finance Board believes that there is some merit in the suggestion about member confusion, but also believes that it is important for each member to have the opportunity to review for itself and, if necessary, to obtain Finance Board review of the Bank's calculation of the member's minimum stock purchase requirement (which is used to determine the member's voting rights) and to confirm that the Bank has included the member in the appropriate voting state. To balance those concerns, the final rule relocates the reporting and review provisions from the election regulation to the membership regulation, at section 933.22(b)(1).

Section 933.22(b)(1) currently directs the Banks annually to calculate each member's minimum stock purchase requirement and to notify the member of any required adjustment. The final rule amends section 933.22(b)(1) to require the Banks to include as part of the notice a statement informing the member that the Bank's minimum stock calculation will be used to determine the number of votes the member may cast in that year's election, and identifying the state in which the member will vote. If a member does not agree with the Bank's calculation of the minimum stock holdings or the Bank's identification of the voting state, the member may request the Finance Board to resolve either matter. The Finance Board must do so promptly and its determination is final.

By requiring the Bank to notify the member of its voting state the final rule affords each member the opportunity to confirm that the records of the Bank correctly indicate the location of its principal place of business. This should minimize the possibility that a member may be assigned to vote in the wrong state, which might occasionally occur as members merge, consolidate, or relocate across state lines. Although the Banks do not designate the state in which a member is deemed to be located for voting purposes (that is done by the Finance Board), they do need to know promptly whenever a member relocates its principal place of business (*i.e.,* its home office) to another state. Toward that end, the final rule also amends § 933.18(a)(1) to require that a member promptly notify its Bank whenever it relocates its principal place of business to another state. The Bank, in turn, must inform the Finance Board of any such relocation.

Section 7(c) of the Act requires the Finance Board to designate the state in which each member is deemed to be located for voting purposes and, if the member has its principal place of business in a state within the district, the Finance Board must designate that state as its voting state for purposes of the election. 12 U.S.C. 1427(c). The Finance Board has made such a designation in its current regulations, 12 CFR 932.11(a) (1998), and the final rule retains a comparable provision, amending Section 932.3(d) to provide that for purposes of director elections a member is deemed to be located in its voting state.

D. Determination of Member Votes—§ 932.5

Section 7(b) of the Act provides that in electing directors, each member may cast a number of votes equal to the number of shares of capital stock in the Bank the member was required to hold as of the record date (December 31 of the prior year), but the number of votes may not exceed the average number of shares required to be held by all of the members in that state as of the record date. 12 U.S.C. 1427(b).

Because the statute establishes voting rights as of the record date, the proposal would not have terminated those rights based on events occurring subsequent to the record date, such as a merger or consolidation into a nonmember, transfer to another Bank, or withdrawal from the Bank. Consequently, in the event of such a transaction the proposed rule would have allowed the legal successor to the member to exercise whatever voting rights the member possessed as of the record date, but only for the election occurring in the year of the merger or other transaction. In subsequent years the successor's right to vote, if any, would be determined by its own membership status.

Three commenters objected to any provision that might allow institutions that were not members at the time of the election to vote in the election for Bank directors. One commenter questioned whether a member that was subject to the maximum cap on the number of votes it may cast (*i.e.*, not to exceed the average stock purchase requirement for all members) would be permitted to cast the votes belonging to another member that had merged into the first member subsequent to the record date.

The final rule retains the provisions under which voting rights are to be determined as of the record date. The Finance Board has decided not to introduce a number of exceptions to this rule that would terminate a member's voting rights based on corporate transactions occurring after the record date. The Finance Board is mindful of the concerns expressed about entities that are not members being allowed to vote in the election of directors for the Banks, but is persuaded that the Banks should conduct their elections in the same manner as other corporate entities, which use a record date to determine which shareholders may vote for directors. If the concept of the record date is to be applied in a meaningful fashion, events occurring subsequently should not alter the voting rights that existed as of the record date. Thus, if a member merges into a nonmember subsequent to the record date but prior

to the election, or if a member relocates its home office to another Bank district or withdraws from the Bank System, the successor or the former member may vote those shares if it wishes to do so. Similarly, if a member that has reached the maximum number of votes that a single member may cast in an election acquires by merger or consolidation another member that was entitled to vote in the election, and in the same state, as of the record date, the resulting member would be entitled to cast its own votes, as well as those of the acquired member, but only in the election occurring in the year of the merger. Thereafter, the voting rights of the member would be determined by the number of shares it was required to hold as of the next following record date.

Moreover, as a practical matter the Finance Board is not persuaded that terminating the voting rights of members that merge, relocate, or withdraw from the System after the record date can be done in a manner that would treat each such member the same. At some point prior to the distribution of the ballots the Banks must finalize their lists of institutions that are entitled to vote in the election, even though there may be a period of several weeks '' during which time other mergers could occur '' before the balloting closes. Thus, there always could be some institutions receiving ballots that no longer would be members at the time of the election. In addition, terminating the voting rights of even a single member that has participated in such a transaction will affect the voting rights of every other member that is subject to the cap on the maximum number of votes that it may cast in the election, because the cap—the average stock holdings of all members—will increase or decrease depending on the size of the former member.

At some point, the voting membership and the number of votes per member must be fixed. To select any date other than the record date may result in disparate treatment of similarly situated members, hamper the ability of the Banks to administer the election process, and subject the election to challenge by some members. Given those difficulties, the Finance Board believes that reliance solely on the record date is consistent with general corporate practice and best ensures that all members having voting rights on the record date will be treated equitably in the election for the subsequent year.

One commenter suggested that the Finance Board be made the sole authority to resolve ''voting determination disputes,'' such as vote tabulation, principal residence requirement, and record date stock requirement. Aside from the determination of the number of shares of stock each member is required to maintain as of the record date and the state in which the member may vote, for which Finance Board review is available as noted previously, the Finance Board believes that these matters are best left to the Banks as a part of the devolution of the election process. The Banks may adopt dispute resolution procedures and make elective director eligibility and voting determinations, as they deem appropriate, consistent with the Act and these regulations.

E. Eligibility Requirements for Elective Directors—§ 932.7

The proposed rule, at § 932.7, would have required the Banks to verify that a director nominee meets the statutory and regulatory eligibility requirements before placing the name of the nominee on the ballot. One commenter suggested that the regulation be revised to require the Banks to rely on the director eligibility certification form (''Form E–1'') and to refer as well to any successor forms, so that the Banks have clear guidance as to the source of information from which they are required to assess a potential nominee's eligibility. The final rule modifies the proposal to indicate that the Banks are required to determine eligibility based on the forms provided by the directors. It also amends the rule to refer to an executed ''director eligibility certification'' as prescribed by the Finance Board rather than to refer to the form by its current designation.

F. Conflicts of Interest Policy for Bank Directors—§ 932.11

To prevent conflicts of interest that may affect a Bank director in the performance of his or her official duties, the final rule includes a conflicts of interest provision that would replace the financial disclosure requirements and the prohibitions on service, financial interests, financial relationships, and gifts in the current regulation. *See* 12 CFR 932.18(b)-(d), 932.21(b)-(c)(1998). Like the proposal, the final rule requires each Bank to adopt a written conflicts of interest policy and specifies the minimum contents for the policy. The final rule also requires directors to disclose conflicts of interest to the board of directors and to refrain from voting on matters in which they have a financial interest.

One commenter suggested that § 932.11(a) (requiring the adoption of the policy and specifying its minimum contents) be deleted as being duplicative of the Act and common law duties and lacking any practical enforcement mechanism. The commenter believed that the disclosure and recusal provisions in proposed § 932.11(b) to be sufficient. The Finance Board believes that the Banks, like other business corporations, are well served by having clear corporate policies on matters such as conflict of interests of their directors. The final rule includes only two provisions, § 932.11(a)(1) and (2), that parallel provisions of the Act, but does not otherwise duplicate the Act or common law. The Finance Board believes the inclusion of these provisions is appropriate to remind directors of the obligations imposed by the Act. Indeed, the provision relating to appointive directors was added to the final rule on the basis of comments received on the proposal. The remaining provisions in § 932.11(a) describe what the Finance Board believes to be minimal requirements for an effective conflict of interests policy, which the individual Banks are free to supplement as they believe appropriate.

Some commenters criticized various aspects of § 932.11(b), the disclosure and recusal provisions, which prompted the Finance Board to revise that paragraph in its entirety. The final rule requires full disclosure of any conflicts to the board of directors, applies to the personal financial interests of the director and those of certain family members and business associates, and requires recusal from consideration or voting on matters in which a director has such an interest. The interests of family members and business associates require disclosure only if they are known to the director and arise in connection with any matter to be considered by the board of directors or any matter in which the other party does, or proposes to do, business with the Bank. A director is required to disclose the full nature of his or her interest, and should provide whatever information that he or she has about the matter to the board. The definition of ''financial interest'' has been revised in the final rule to make clear that it does not include deposits or savings accounts maintained with a member or loans obtained in the ordinary course of business. This exception was added in order that the provision barring appointed directors from having any financial interest in a member not be read as prohibiting ordinary business transactions with the member in which there would be no real risk of conflict or abuse.

One commenter suggested that the disclosure requirements apply only to

financial interests that would materially affect board decisions. The definition of ''financial interest'' has been modified as noted above, to exclude certain ordinary business transactions.

One commenter suggested that the rule incorporate the conflict of interests provisions applicable to the Federal Reserve Banks. The Finance Board reviewed those provisions, as well as those of other corporate entities, in considering the proposed and final rules, but does not believe it necessary to adopt the same policies that apply to the Reserve Banks. If any Bank wishes to include provisions comparable to those applicable to the Reserve Banks in their own conflict policies they are free to do so.

III. Regulatory Flexibility Act

The final rule implements statutory requirements binding on all Banks, all Bank members, and all prospective and incumbent Bank directors. The Finance Board is not at liberty to make adjustments in those requirements to accommodate small entities. The Finance Board has not imposed any additional regulatory requirements that will have a disproportionate impact on small entities. In addition, in an effort to reduce the reporting burden on prospective and incumbent Bank directors, the Finance Board has streamlined Form E–1, the Elective Director Eligibility Certification Form, and Form A–1, the Appointive Director Eligibility Certification Form, eliminated Forms E–2 and A–2, and will allow individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form. Thus, in accordance with the provisions of the Regulatory Flexibility Act, the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

As part of the proposed rulemaking, the Finance Board published a request for comments concerning the collection of information contained in proposed rule. *See* 63 FR 26532 (May 13, 1998). The Finance Board received one comment in support of the Finance Board's efforts to reduce the burden of regulatory reporting requirements. The Finance Board submitted an analysis of the information collection to the Office of Management and Budget (OMB) for review in accordance with section 2507 of the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3507. OMB assigned a control number, 3069–0002, and approved the information collection without conditions with an expiration date of June 30, 2001. Potential respondents are not required to respond to the collection of information unless the regulation collecting the information displays a currently valid control number assigned by OMB. *See id.* 3512(a). Although the final rule does not modify the approved information collection, the revised collection reduces the reporting and recordkeeping burden imposed on many respondents by streamlining Forms E–1 and A–1 and eliminating Forms E–2 and A–2 and permitting individuals to certify that no changes have occurred since they last submitted required information rather than completing anew the entire form.

The following table discloses the estimated annual reporting and recordkeeping burden:

a. Number of respondents	3442
b. Total annual responses	3442
Percentage of these responses collected electronically	0
c. Total annual hours requested	1,172
d. Current OMB inventory	376
e. Difference	796

The estimated annual reporting and recordkeeping cost burden is:

a. Total annualized capital/startup costs	$180,000.00
b. Total annual costs (O&M)	24,000.00
c. Total annualized cost requested	0
d. Current OMB inventory	0
e. Difference	$204,000.00

Any comments concerning the information collection should be submitted to Elaine L. Baker, Executive Secretary, Federal Housing Finance Board, 1777 F. Street, NW, Washington, DC 20006, and the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Federal Housing Finance Board, Washington, DC 20503.

List of Subjects

12 CFR Part 900

Organization and functions (Government agencies).

12 CFR Part 922

Conflict of interests.

12 CFR Part 931

Banks, Banking, Federal home loan banks.

12 CFR Part 932

Banks, Banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

12 CFR Part 933

Credit, Federal home loan banks, Reporting and recordkeeping requirements.

12 CFR Part 934

Federal home loan banks, Securities, Surety bonds.

12 CFR Part 941

Federal home loan banks, Organization and functions (government agencies).

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, parts 900, 922, 931, 932, 933, 934, and 941 of the Code of Federal Regulations as follows:

PART 900—[Amended]

1. The authority citation for part 900 continues to read as follows:

Authority: 5 U.S.C. 552;(12 U.S.C. 1422b(a).

§ 900.51 [Amended]

2. Amend § 900.51 by removing ''A–2—Appointive Directors—Personal Certification and Disclosure Form'' and ''E–2—Elective Directors—Personal Certification and Disclosure Form.''

PART 922—[Removed]

1. Under the authority in 12 U.S.C. 1422a and 1422b, remove part 922.

PART 931—DEFINITIONS

1. The authority citation for part 931 continues to read as follows:

Authority: 12 U.S.C. 1422a and 1422b.

§§ 931.13 through 931.40 [Removed]

2. Remove §§ 931.13 through 931.40.

§§ 931.11 and 931.12 [Redesignated as §§ 931.5 and 931.6]

3. Redesignate §§ 931.11 and 931.12 as §§ 931.5 and 931.6, respectively.

PART 934—OPERATIONS OF THE BANKS

1. The authority citation for part 934 continues to read as follows:

Authority: 12 U.S.C. 1422a, 1422b, 1431(g), 1432(a), and 1442.

§ 932.3 [Redesignated as § 934.17]

2. Redesignate § 932.3 as § 934.17.

PART 932—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. Revise the heading of part 932 to read as set forth above.

2. Revise the authority citation for part 932 to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432; 42 U.S.C. 8101 *et seq.*

3. Revise the table of contents of part 932 to read as follows:

Subpart A—Definitions

Sec.
932.1 Definitions.
932.2 Dates.

Subpart B—Bank Directors

Sec.
932.3 Director elections.
932.4 Capital stock report.
932.5 Determination of member votes.
932.6 Elective director nominations.
932.7 Eligibility requirements for elective directors.
932.8 Election process.
932.9 Prohibition on actions to influence director elections.
932.10 Selection of appointive directors.
932.11 Conflict of interests policy for Bank directors.
932.12 Reporting requirements for Bank directors
932.13 Ineligible Bank directors.
932.14 Vacant Bank directorships.
932.15 Minimum number of elective directorships.
932.16 Site of board of directors and committee meetings.
932.17 Compensation and expenses of Bank directors.

Subpart C—Selection of Bank Officers and Employees

Sec.
932.18 Selection of Bank officer and employees
932.19 Compensation of Bank officers and employees

4. Designate §§ 932.1 and 932.2 as subpart A and add a subpart heading to read as follows:

Subpart A—Definitions

5. Revise § 932.1 to read as follows:

§ 932.1 Definitions.

For purposes of this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 *et seq.*).

Bank or *Banks* means a Federal Home Loan Bank or the Federal Home Loan Banks.

Bona fide resident of a Bank district means an individual who:

(1) Maintains a principal residence within the Bank district; or

(2) If serving as an elective director, owns or leases in his or her own name a residence within the Bank district and is an officer or director of a member located in a voting state within the Bank district; or

(3) If serving as an appointive director, owns or leases in his or her own name a residence within the Bank district and is employed within a voting state within the Bank district.

Docket number means the number assigned to each member by the Finance Board and used by the Finance Board and the Banks to identify a particular member.

Finance Board means the agency established as the Federal Housing Finance Board.

Member means an institution admitted to membership and owning capital stock in a Bank.

Record date means December 31 of the calendar year immediately preceding the election year.

Voting state means the District of Columbia, Puerto Rico, or the state of the United States in which a member's principal place of business, as determined in accordance with part 933 of this chapter, is located as of the record date. The voting state of a member with a principal place of business located in the U.S. Virgin Islands as of the record date shall be Puerto Rico, and the voting state of a member with a principal place of business located in American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands as of the record date shall be Hawaii.

6. Add § 932.2 to subpart A to read as follows:

§ 932.2 Dates.

If any date specified in this part, or specified by a Bank pursuant to this part, falls on a Saturday, Sunday, or federal holiday, the relevant time period shall be deemed to include the next business day.

7. Designate §§ 932.3 through 932.17 as subpart B and add a subpart heading to read as follows:

Subpart B—Bank Directors

8. Add § 932.3 to subpart B to read as follows:

§ 932.3 Director elections.

(a) *Responsibilities of the Banks.* Each Bank annually shall conduct an election the purpose of which is to fill all elective directorships designated by the Finance Board as commencing on January 1 of the calendar year immediately following the year of the election. Subject to the provisions of the Act and in accordance with the requirements of this part, the disinterested members of the board of directors of each Bank, or a committee of disinterested directors, shall administer and conduct the annual election of directors. In so doing, the disinterested directors may use Bank staff or independent contractors to perform ministerial and administrative functions concerning the elections process. The term of office of each elective directorship shall be two years and shall commence on January 1 of the calendar year immediately following the year in which the election is held. Each Bank shall complete the election in sufficient time to allow newly elected directors to assume their seats on January 1 of the year immediately following the election.

(b) *Designation of elective directorships.* The Finance Board annually shall establish the number of elective directorships for each Bank, which are to be allocated as follows:

(1) One elective directorship shall be allocated to each state within the Bank district;

(2) If the total number of elective directorships allocated pursuant to paragraph (b)(1) of this section is less than eight, the Finance Board shall allocate additional elective directorships among the states, using the method of equal proportions, until the total allocated for the Bank equals eight;

(3) If the number of elective directorships allocated to any state pursuant to paragraphs (b)(1) and (2) of this section is less than the number allocated to that state on December 31, 1960, as specified in § 932.15, the Finance Board shall allocate such additional elective directorships to that state until the total allocated equals the number allocated to the Bank on December 31, 1960;

(4) Pursuant to section 7(e) of the Act, the Federal Home Loan Bank of New York is hereby allocated one additional elective directorship, which is designated as representing the members in the Commonwealth of Puerto Rico;

(5) Pursuant to section 7(a) of the Act, in any Bank district that includes five or more states, the Finance Board, after consultation with the affected Banks, may increase the number of elective directorships up to thirteen, and the number of appointive directorships up to three-fourths of the number of elective directorships. In determining the number of appointive directorships, the Finance Board may round to the nearest whole number.

(c) *Notification.* On or before June 1 of each year, the Finance Board shall notify each Bank in writing of the total number of elective directorships established for the Bank and the number of elective directorships designated as representing the members in each voting state in the Bank district. The annual designation of elective directorships shall not cause any incumbent director to surrender his or her directorship prior to the expiration of the full term of office.

(d) In accordance with section 7(c) of the Act, unless otherwise designated by the Finance Board, for purposes of election of directors a member shall be deemed to be located in its voting state.

(e) *Transition.* The term of office of each elective directorship existing on the effective date of this section shall continue to its scheduled expiration date, and the Banks may not thereafter alter the commencement or expiration date for any elective directorship in conducting the annual election of directors.

9. Add § 932.4 to Subpart B to read as follows:

§ 932.4 Capital stock report.

(a) On or before April 10 of each year, each Bank shall submit to the Finance Board, for its use in designating the elective directorships a capital stock report that indicates, as of the record date, the number of members in each voting state in the Bank's district, and the number of shares of capital stock required to be held by each member (identified by docket number), and the aggregate total number of shares of capital stock required to be held by all members in each voting state in the Bank's district. The Bank shall certify to the Finance Board that to the best of its knowledge the information provided in the capital stock report is accurate and complete, and that it has notified each member of its minimum capital stock holdings pursuant to § 933.22(b)(1) of this chapter.

(b) A Bank shall determine the number of shares of capital stock each member is required to hold as of the record date in the following manner:

(1) The number of shares of capital stock shall be equal to the greater of the advances-to-capital stock requirement under § 935.15(a) of this chapter, or the minimum capital stock requirement under § 933.20(a) of this chapter.

(2) If a member has elected to purchase its minimum required capital stock in installments under § 933.20(b)(2) of this chapter, the number of shares of capital stock required to be held as of the record date shall be the cumulative total of shares of capital stock actually purchased as of the record date.

10. Add § 932.5 to subpart B to read as follows:

§ 932.5 Determination of member votes.

(a) *Authority.* The Bank shall determine, in accordance with this section, the number of votes each member of the Bank may cast in the election of directors.

(b) *Determination.* The number of votes a member may cast for any elective director nominee shall be the lesser of the number of shares of capital stock the member was required to hold as of the record date, as determined in accordance with § 932.4(b), or the average number of shares of capital stock required to be held by all of the members in its voting state as of the record date.

11. Add § 932.6 to subpart B to read as follows:

§ 932.6 Elective director nominations.

(a) *Election announcement.* Within a reasonable time in advance of an election, a Bank shall provide to each member in its district a written notice of the election that includes:

(1) The number of elective directorships designated as representing the members in each voting state in the Bank district;

(2) The name of each incumbent Bank director, the name and location of the member at which each elective director serves, and the name and location of the organization with which each appointive director is affiliated, if any, and the expiration date of each Bank director's term of office;

(3) An attachment indicating the name, location, and docket number of every member in the member's voting state, and the number of votes each such member may cast in the election, as determined in accordance with § 932.5(b); and (4) A nominating certificate.

(b) *Nominations.* (1) Any member that is entitled to vote in the election may nominate an eligible individual to fill each available elective directorship for its voting state by submitting to its Bank, prior to a deadline to be established by the Bank, a nominating certificate duly adopted by the member's governing body or by an individual authorized to act on behalf of the member's governing body.

(2) The nominating certificate shall include the name of the nominee and the name, location, and docket number of the member at which the nominee serves as an officer or director.

(3) The Bank shall establish a deadline for submitting nominating certificates, which shall be no earlier than 30 calendar days after the date on which the Bank mails the notice required by paragraph (a) of this section, and the Bank shall not accept certificates received after that deadline. The Bank shall retain all nominating certificates for at least two years after the date of the election.

(c) *Accepting nominations.* A Bank shall notify in writing any person nominated for an elective directorship promptly upon receipt of the nominating certificate. A person may accept the nomination only by submitting an executed director eligibility certification, as prescribed by the Finance Board, to the Bank prior to the deadline established by the Bank. A Bank shall allow each nominee at least 30 calendar days after the date of the notice of nomination within which to submit the executed form. A nominee may decline the nomination by so advising the Bank in writing, or by failing to submit a properly executed director eligibility certification prior to the deadline. Each Bank shall retain all information received under this paragraph for at least two years after the date of the election.

12. Add § 932.7 to subpart B read as follows:

§ 932.7 Eligibility requirements for elective directors.

(a) *Eligibility verification.* Based on the information provided on the director eligibility certification form prescribed by the Finance Board, a Bank shall verify that each nominee meets all of the eligibility requirements for elective directors set forth in the Act and this part before placing that nominee on the ballot prepared by the Bank under § 932.8(a).

(b) *Eligibility requirements.* Each elective director, and each nominee, shall be:

(1) A citizen of the United States;

(2) A bona fide resident of the Bank district; and

(3) An officer or director of a member that is located in the voting state to be represented by the elective directorship, that was a member of the Bank as of the record date, and that meets all minimum capital requirements established by its appropriate federal regulator or appropriate state regulator. For purposes of this paragraph (b)(3), the term *appropriate federal regulator* has the same meaning as the term ''appropriate Federal banking agency'' in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and, for federally insured credit unions, shall mean the National Credit Union Administration, and the term *appropriate state regulator* means any state officer, agency, supervisor, or other entity that has regulatory authority over, or is empowered to institute enforcement action against, a member.

(c) *Restrictions.* A nominee is not eligible if he or she:

(1) Is an incumbent elective director, unless:

(i) The incumbent director's term of office would expire before the new term of office would begin; and

(ii) The new term of office would not be barred by the term limit provision of section 7(d) of the Act.

(2) Is a former elective director whose service would be barred by the term limit provision of section 7(d) of the Act.

(3) Is an incumbent appointive director.

13. Revise § 932.8 to read as follows:

§ 932.8 Election process.

(a) *Ballots.* Promptly after verifying the eligibility of all nominees in accordance with § 932.7(a), a Bank shall prepare a ballot for each voting state for which an elective directorship is to be filled and shall mail the ballot to all members within that state that were members as of the record date. A ballot shall include at least the following provisions:

(1) An alphabetical listing of the names of each nominee for the member's voting state, the name, location, and docket number of the member at which each nominee serves, the nominee's title or position with the member, and the number of elective directorships to be filled by members in that voting state in the election;

(2) A statement that write-in candidates are not permitted; and

(3) A confidentiality statement prohibiting the Bank from disclosing how a member voted.

(b) *Lack of nominees.* If, for any voting state, the number of nominees is equal to or less than the number of elective directorships to be filled in the election, the Bank shall notify the members in the affected voting state in writing (in lieu of providing a ballot) that the directorships are to be filled without an election due to a lack of nominees. The Bank shall declare elected any eligible nominee, who shall be included as a director-elect in the report of election required under paragraph (e). If necessary, the board of directors shall fill, any elective directorship that has become vacant due to a lack of a nominee in accordance with § 932.14(a).

(c) *Voting.* For each directorship to be filled, a member may cast the number of votes determined by the Bank pursuant to § 932.5. A member may not split its votes among multiple nominees for a single directorship, nor, where there are multiple directorships to be filled for a voting state, may it cumulatively vote for a single nominee. Any ballots cast in violation of this subsection shall be void. To vote, a member shall:

(1) Mark on the ballot the name of not more than one of the nominees for each elective directorship to be filled in the member's voting state. Each nominee so selected shall receive all of the votes that the member is entitled to cast.

(2) Execute the ballot by resolution of the member's governing body, or by an appropriate writing signed by an individual authorized to act on behalf of the governing body.

(3) Deliver the executed ballot to the Bank on or before the closing date that has been established by the Bank, which shall be no earlier than 30 calendar days after the date the ballots are mailed in accordance with paragraph (a) of this section. A member may not change a ballot after it has been delivered to the Bank.

(d) *Counting ballots.* A Bank shall not open any ballot until after the closing date, and may not include in the election results any ballot received after the closing date. Promptly after the closing date, each Bank shall tabulate, by each voting state, the votes cast in accordance with paragraph (c) of this section, and shall declare elected the nominee receiving the highest number of votes.

(1) If more than one elective directorship is to be filled in a voting state, the Bank shall declare elected each successive nominee receiving the next highest number of votes until all open elective directorships for that voting state are filled.

(2) In the event of a tie for the last available seat, the incumbent board of directors of the Bank shall, by a majority vote, declare elected one of the nominees for whom the number of votes cast was tied.

(3) The Bank shall retain all ballots it receives for at least two years after the date of the election, and shall not disclose how any member voted.

(e) *Report of election.* Promptly following the election, each Bank shall provide written notice to its members, to each nominee, and to the Finance Board of the following:

(1) The name of each director-elect, the name and location of the member at which he or she serves, and his or her title or position at the member;

(2) The voting state represented by each director-elect;

(3) The expiration date of the term of office of each director-elect;

(4) The number of members voting in the election and the total number of votes cast, both reported by state; and
(5) The number of votes cast for each nominee.

14. Revise § 932.9 to read as follows:

§ 932.9 Prohibition on actions to influence director elections.

(a) *Prohibition.* Except as provided in paragraph (b) of this section:

(1) No director, officer, attorney, employee, or agent of the Finance Board or of a Bank may:

(i) Communicate in any manner that a director, officer, attorney, employee, or agent of the Finance Board or of a Bank, directly or indirectly, supports the nomination or election of a particular individual for an elective directorship; or

(ii) Take any other action to influence votes for a directorship.

(2) No member may take any action prohibited by paragraph (a)(1)(i) of this section.

(b) *Exception for incumbent Bank directors.* A Bank director acting in his or her personal capacity may support the nomination or election of any individual for an elective directorship, provided that no Bank director shall purport to represent the views of the Bank, the Finance Board, any other director, or any officer, attorney, employee, or agent of the Bank or of the Finance Board concerning the nomination or election of a particular individual for an elective directorship.

15. Revise § 932.10 to read as follows:

§ 932.10 Selection of appointive directors.

(a) *Selection.* In accordance with the Act, the Finance Board, in its sole discretion, shall select all appointive directors.

(b) *Term of office.* The term of office of each appointive directorship shall commence on January 1.

16. Revise § 932.11 to read as follows:

§ 932.11 Conflict of interests policy for Bank directors.

(a) *Adoption of conflict of interests policy.* Each Bank shall adopt a written conflict of interests policy that shall apply to all Bank directors. At a minimum, the conflict of interests policy of each Bank shall:

(1) Require the directors to administer the affairs of the Bank fairly and impartially and without discrimination in favor of or against any member or nonmember borrower;

(2) Prohibit appointed directors from serving as an officer of any Bank or as an officer or director of any member, and from owning any equity or debt security issued by a member or from having any other financial interest in a member;

(3) Prohibit the use of a director's official position for personal gain;

(4) Require directors to disclose actual or apparent conflict of interests and establish procedures for addressing such conflicts;

(5) Provide internal controls to ensure that reports are filed and that conflicts are disclosed and resolved in accordance with this section; and

(6) Establish procedures to monitor compliance with the conflict of interests policy.

(b) *Disclosure and recusal.* A director shall disclose to the board of directors any personal financial interests he or she has, as well as any financial interests known to the director of any immediate family member or business associate of the director, in any matter to be considered by the board of directors and in any other matter in which another person or entity does, or proposes to do, business with the Bank. A director shall fully disclose the nature of his or her interest in the matter and shall provide to the board of directors any information requested to aid in its consideration of the director's interest. A director shall refrain from considering or voting on any issue in which the director, any immediate family member, or any business associate has a financial interest.

(c) *Confidential Information.* Directors shall not disclose or use confidential information received by them solely by reason of their position with the Bank to obtain a financial interest for themselves or for any other person.

(d) *Gifts.* Directors shall not accept, and shall discourage their immediate family members from accepting, any substantial gift where the director has reason to believe that the gift is given in order to influence the director's actions as a member of the Bank's board of directors, or where acceptance of such gift gives the appearance of influencing the director's actions as a member of the board.

(e) *Compensation.* Directors shall not accept compensation for services performed for the Bank from any source other than the Bank for which the services are performed.

(f) *Definitions.* For purposes of this section:

(1) *Immediate family member* means parent, sibling, spouse, child, or dependent, or any other relative sharing the same residence as the director.

(2) *Financial interest* means a direct or indirect financial interest in any activity, transaction, property, or relationship that involves receiving or providing something of monetary value, and includes, but is not limited to any right, contractual or otherwise, to the payment of money, whether contingent or fixed. It does not include a deposit or savings account maintained with a member, nor does it include a loan or extension of credit obtained from a member in the normal course of business on terms that are generally available to the public.

(3) *Business associate* means any individual or entity with whom a director has a business relationship, including, but not limited to:

(i) Any corporation or organization of which the director is an officer or partner, or in which the director beneficially owns ten percent or more of any class of equity security, including subordinated debt;

(ii) Any other partner, officer, or beneficial owner of ten percent or more of any class of equity security, including subordinated debt, of any such corporation or organization; and

(iii) Any trust or other estate in which a director has a substantial beneficial interest or as to which the director serves as trustee or in a similar fiduciary capacity.

(4) *Substantial Gifts* includes:

(i) Gifts of more than token value;

(ii) Entertainment or hospitality, the cost of which is in excess of what is considered reasonable, customary, and accepted business practices; or

(iii) Any other items or services for which a director pays less than market value.

17. Revise § 932.12 to read as follows:

§ 932.12 Reporting requirements for Bank directors.

(a) *Annual reporting.* On or before March 1 of each year, each director shall submit to his or her Bank the appropriate executed director eligibility certification, as prescribed by the Finance Board. (The forms are available pursuant to 12 CFR 900.51). The Bank shall promptly forward to the Finance Board a copy of the certification filed by each appointive director.

(b) *Report of noncompliance.* If an elective or appointive director knows or has reason to believe that he or she no longer meets the eligibility requirements set forth in the Act or this part, the director shall so inform the Bank in writing within 30 calendar days of first learning of the facts causing the loss of eligibility. An appointive director also shall inform the Finance Board in writing at the same time that he or she informs the Bank.

18. Revise § 932.13 to read as follows:

§ 932.13 Ineligible Bank directors.

(a) *Elective directors.* Upon a determination by the Finance Board or a Bank that an elective director no longer satisfies the eligibility requirements set forth in the Act or this part, or has failed to comply with the reporting requirements of § 932.12, the elective directorship shall immediately become vacant. Any elective director that is determined to have failed to comply with the eligibility or reporting requirements shall not continue to act as a Bank director.

(b) *Appointive directors.* Except as provided herein, upon a determination by the Finance Board that an appointive director no longer satisfies the eligibility requirements set forth in the Act, or has failed to comply with the reporting requirements of § 932.12, the appointive directorship shall immediately become vacant. Notwithstanding the vacancy, an appointive director may continue to serve until a successor assumes the directorship or the term of office expires, whichever occurs first, and the Finance Board, in its sole discretion, may allow an appointive director up to 90 calendar days to comply with the eligibility or reporting requirements.

19. Revise § 932.14 to read as follows:

§ 932.14 Vacant Bank directorships.

(a) *Vacant elective directorships.* (1) As soon as practicable after a vacancy occurs, a Bank shall fill the unexpired term of office of a vacant elective directorship by a majority vote of the remaining Bank directors regardless of whether the remaining Bank directors constitute a quorum of the Bank's board of directors.

(2) An individual so selected to fill a vacant elective directorship shall satisfy all of the eligibility requirements for elective directors set forth in the Act and this part, and shall provide to the Bank an executed director eligibility certification. The Bank shall verify the individual's eligibility in accordance with § 932.7(a) before allowing the individual to assume the directorship, and shall retain the information it receives in accordance with § 932.6(c).

(3) Promptly after verifying the individual's eligibility under paragraph (a)(2) of this section, a Bank shall notify the Finance Board and each member located in the Bank's district in writing of the following:

(i) The name of the new elective director, the name, location and docket number of the member at which the new director serves, and the new director's title or position with the member;

(ii) The voting state that the new elective director represents; and

(iii) The expiration date of the new elective director's term of office.

(b) *Vacant appointive directorships.* (1) As soon as practicable after a vacancy occurs, the Finance Board shall fill the unexpired term of office of a vacant appointive directorship.

(2) Promptly after filling a vacant appointive directorship, the Finance Board shall notify the affected Bank in writing of the following:

(i) The name of the new appointive director, the name and location of the organization with which the new director is affiliated, if any, and the new

director's title or position with such organization; and

(ii) The expiration date of the new appointive director's term of office.

(3) Promptly after receiving the notice required by paragraph (b)(2) of this section, a Bank shall provide each of its members with the information described in paragraphs (b)(2)(i) and (ii) of this section.

§§ 932.15 through 932.19 [Removed]

20. Remove §§ 932.15 through 932.19.

§§ 932.20 [Redesignated as § 932.15]

21. Redesignate § 932.20 as § 932.15 and revise the second sentence and table to read as follows:

§ 932.15 Minimum number of elective directorships

* * * The following list sets forth the states whose members held more than one (1) seat on December 31, 1960:

State	No. of elective directorships on December 31, 1960
California	3
Colorado	2
Illinois	4
Indiana	5
Iowa	2
Kansas	3
Kentucky	2
Louisiana	2
Massachusetts	3
Michigan	3
Minnesota	2
Missouri	2
New Jersey	4
New York	4
Ohio	4
Oklahoma	2
Pennsylvania	6
Tennessee	2
Texas	3
Wisconsin	4

§§ 932.21 through 932.25 [Removed]

22. Remove §§ 932.21 through 932.23.

§ 932.26 [Redesignated as § 932.16]

23. Redesignate § 932.26 as § 932.16 of subpart B.

§ 932.27 [Redesignated as § 932.17]

24. Redesignate § 932.27 as § 932.17 of subpart B.

§§ 932.28 through 932.39 [Removed]

25. Remove §§ 932.28 through and 932.39.

26. Designate §§ 932.18 and 932.19 as subpart C and add a subpart heading to read as follows:

Subpart C—Selection of Bank Officers and Employees

§ 932.40 [Redesignated as § 932.18]

27. Redesignate § 932.40 as § 932.18 of subpart C, remove paragraph (d), and revise the section heading and paragraph (a) introductory text to read as follows:

§ 932.18 Selection of Bank officers and employees.

(a) *Bank presidents.* The board of directors of each Bank may appoint a president, who shall be the chief executive officer of the Bank, subject to the following limitations:

* * * * *

§ 932.41 [Redesignated as § 932.19]

28. Redesignate § 932.41 as § 932.19 of subpart C and revise the section heading to read as follows:

§ 932.19 Compensation of Bank officers and employees.

* * * * *

§§ 932.42 through 932.62 [Removed]

29. Remove §§ 932.42 through 932.62.

PART 933—MEMBERS OF THE BANKS

1. The authority citation for part 933 continues to read as follows:

Authority: 12 U.S.C. 1422, 1422a, 1422b, 1423, 1424, 1426, 1430, 1442.

2. Part 933 is amended by removing ''§ 932.3'' wherever it appears and adding ''§ 934.17'' in its place in the following locations:

a. 933.24(b)(3)
b. 933.25(e)
c. 933.26(d)
d. 933.27(f)
e. 933.28(c)

§ 933.18 [Amended]

3. Amend § 933.18 by adding a sentence to paragraph (a)(1) and revising paragraph (e) as follows:

§ 933.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) * * * A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform the Finance Board in writing of any such relocation.

* * * * *

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Act or §§ 933.26, 933.27, and 933.28, nor the restriction on reacquiring Bank membership within 10 years set forth in § 933.30.

* * * * *

4. Amend § 933.20 by revising paragraph (e) to read as follows:

§ 933.20 Stock purchase.

* * * * *

(e) *Reports.* The Bank shall make quarterly reports to the Board setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section.

5. Amend § 933.22 by adding three sentences to paragraph (b)(1) as follows:

§ 933.22 Adjustments in stock holdings.

* * * * *

(b)(1) *Annual Adjustment.* * * * The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request the Finance Board to review the Bank's determination. The Finance Board shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

* * * * *

§ 933.24 [Amended]

6. Amend § 933.24 by removing paragraph (b)(4).

§ 933.25 [Amended]

7. Amend § 933.25 by removing paragraph (f).

§ 933.26 [Amended]

8. Amend § 933.26 by removing paragraph (e).

§ 933.27 [Amended]

9. Amend § 933.27 by removing paragraph (g).

§ 933.28 [Amended]

10. Amend § 933.28 by removing paragraph (d).

PART 941—OPERATIONS OF THE OFFICE OF FINANCE

1. The authority citation for part 941 continues to read as follows:

Authority: 12 U.S.C. 1422b, 1431.

2. Amend § 941.7 by revising paragraph (f)(2) to read as follows:

§ 941.7 Office of Finance Board of Directors.

* * * * *

(f) * * *

(2) *Private Citizen member.* The Office of Finance shall pay compensation and expenses to the Private Citizen member of the OF board of directors in accordance with the requirements for payment of compensation and expenses to Bank directors set forth in § 932.17 of this chapter, except that, for these purposes:

(i) The Office of Finance policy on director compensation must be approved by the board of directors of the Finance Board;

(ii) Section 932.17(a)(3) and (c)(1)(ii) of this chapter shall not apply; and

(iii) The terms ''average compensation per director'' and ''ACPD,'' as used in § 932.17 of this chapter, shall be deemed to mean ''maximum compensation of the Private Citizen member''.

Dated: October 28, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairperson.

[FR Doc. 98–31786 Filed 11–27–98; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 938 and 943

[No. 98–49]

RIN 3069–AA61

Federal Home Loan Bank Standby Letters of Credit

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board is codifying its existing policy on Federal Home Loan Bank (FHLBank) standby letters of credit (LOCs) in a regulation and amending the policy to allow for broader use of standby LOCs by FHLBank members and eligible nonmember mortgagees. This final rule also eliminates or modifies some of the restrictions currently imposed on standby LOCs issued or confirmed by FHLBanks that limit the usefulness of these products to members and eligible nonmember mortgagees.

DATES: This final rule is effective on December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Associate Director, Program Development, Office of Policy, (202) 408–2576; or Eric M. Raudenbush, Attorney-Advisor, Office of General Counsel, (202) 408–2932, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background

On May 8, 1998, the Federal Housing Finance Board (Finance Board) published, and requested public comments on, a proposed rule to add to its regulations a new part 938, governing the issuance and confirmation of standby LOCs by FHLBanks. *See* 63 FR 25726 (May 8, 1998). The rulemaking proposed to amend the Finance Board's existing policy on FHLBank standby LOCs to provide the FHLBanks with greater flexibility to respond to member needs for these products in a manner that would be consistent with the FHLBank System's housing and community investment mission, and to codify the amended policy into regulatory form.

The ninety day public comment period closed on August 6, 1998. The Finance Board received a total of 24 comments: eleven from FHLBanks, two from FHLBank Advisory Councils, eight from trade associations, and one each from an executive agency of the U.S. Government, a FHLBank member, and a private law firm. The FHLBanks that commented generally supported the proposed rule. The executive agency, FHLBank member and several trade associations opposed the rule.

The proposed rule established uniform standards for the issuance of standby LOCs that addressed eligible purposes, collateral requirements, nonmember use of LOCs, maturity limits, FHLBank capital stock, and other policy requirements. The purpose of the proposal, and of the final rule, is to provide the FHLBanks with greater flexibility and discretion, consistent with safe and sound operation, than exist under the Finance Board's current Interim Policy Guidelines for FHLBank Standby LOCs (Interim Guidelines).

Specifically, the Finance Board proposed that the enumeration of specific permissible uses for FHLBank LOCs that is set forth in the Interim Guidelines be replaced with a provision authorizing the FHLBanks to issue or confirm standby LOCs for any of four general purposes: to assist members in facilitating residential housing finance; to assist members in facilitating community lending (so-called in the final rule, this was referred to as ''targeted economic development'' in the proposed rule); to assist members with asset/liability management; and to assist members with liquidity and other funding.

The proposed rule permitted FHLBanks to issue and confirm standby LOCs on behalf of nonmember borrowers for the same purposes as members if such LOCs were secured by Federal Housing Administration (FHA) insured loans or Government National Mortgage Association (GNMA) securities backed by FHA loans. Under the proposed rule, FHLBanks could issue or conform standby LOCs on behalf of nonmember borrowers that are state housing finance agencies (SHFAs) for residential or economic development lending that benefits individuals or families meeting the income requirements in sections 142(d) or 143(f) of the Internal Revenue Code, 12 U.S.C. 142(d), 143(f), if these LOCs were secured by collateral with which an SHFA may secure advances under section 10B(b) of the Federal Home Loan Bank Act (Bank Act). 12 U.S.C. 1430b(b).

Under the proposed rule, all LOCs were required to be fully collateralized at the time of issuance by collateral eligible to secure advances to members (or, as appropriate, nonmember mortgagees) and, in the case of standby LOCs issued or confirmed on behalf of members for housing or community lending purposes, also by certain other high-quality collateral. Unlike the existing Interim Guidelines, the proposed rule neither required nor permitted outstanding LOCs to be taken into account in the computation of a member's advances-to-FHLBank capital stock ratio.

Finally, the proposed rule required that: LOCs have a specific expiration date or be for a definite term; LOC renewals be conditioned upon the member/applicant meeting the FHLBank's credit criteria at the time of renewal; and the FHLBank issuing an LOC would approve any transfer of the LOC.

The final standby LOC regulation remains unchanged on most substantive points from the rule as proposed, although the Finance Board has made several amendments for purposes of clarity and in order to make the regulation conform to the final Community Investment Cash Advances (CICA) regulation, (published in the November 27, 1998 edition of the **Federal Register**), to which the community lending provisions of the rule are tied. These changes are described in detail below. Also provided below are clarifications of certain issues that were raised in the comment letters.

II. Statutory Basis for FHLBank Standby Letter of Credit Authority

Nine commenters explicitly addressed the statutory authority of FHLBanks to issue and confirm LOCs pursuant to the terms set forth in the proposed rule.

Three of these (two FHLBanks and one trade association) expressly supported the view that, under the Bank Act, 12 U.S.C. 1421–49, FHLBanks have such statutory authority. Six commenters (one FHLBank member, the executive agency and four trade associations) questioned the statutory bases underlying the proposed rule. Two of the trade associations, in letters that were nearly identical, queried whether the FHLBanks have statutory authority to issue standby LOCs under any circumstances. The Finance Board has reviewed the legal reasoning underlying the provisions of the proposed rule and has concluded that there is ample authority under the Bank Act to permit the FHLBanks to issue and confirm standby LOCs under the terms of the final rule.

A. Legal Determinations of the FHLBB Regarding FHLBank LOCs

Although the Bank Act does not expressly address LOCs, the FHLBanks have been explicitly permitted to engage in standby LOC transactions since 1983, when the predecessor agency to the Finance Board, the former Federal Home Loan Bank Board (FHLBB), first adopted Policy Guidelines for Issuance of FHLBank Standby Letters of Credit (FHLBB Policy). Underlying the adoption of the FHLBB Policy was an opinion rendered by the FHLBB General Counsel that, because a FHLBank standby LOC is the functional equivalent of a loan between the FHLBank and its member, FHLBanks have authority to issue standby LOCs as part of their power to make advances under section 10 of the Bank Act, 12 U.S.C. 1430, provided that the member has the unconditional obligation to reimburse the FHLBank for any payment made thereunder. As an alternative, the FHLBB further concluded that the issuance by a FHLBank of a standby LOC on behalf of a member and payment by the FHLBank of a draft presented by the beneficiary thereunder is incidental to a FHLBank's payment instrument processing authority under section 11(e)(2) of the Bank Act, 12 U.S.C. 1431(e)(2), so long as the disbursement process under the LOC is directly linked to the member's FHLBank demand deposit account. However, having relied on the section 10 advances authority as its primary rationale, the FHLBB imposed upon each FHLBank standby LOC at the time of issuance all statutory requirements that applied to outstanding advances, including requirements as to capital stock ratio and purchase, purpose and collateral. (The Finance Board later permitted FHLBanks to issue standby LOCs on behalf of eligible nonmember mortgagees pursuant to the FHLBanks' section 10b advances authority. *See* 12 U.S.C. 1430b.)

After numerous requests over a period of years from several FHLBanks, the Finance Board undertook a comprehensive legal and policy review of the Interim Guidelines in order to determine whether any of these advances-related restrictions could be eliminated, so as to make FHLBank LOCs more useful to their members and eligible nonmember mortgagees. As a result of its legal review, the Finance Board's Office of General Counsel (OGC) determined that, while the legal authority for issuing LOCs articulated in the original FHLBB legal analysis remains valid, it is not necessary to view a LOC as an outstanding advance at the time the LOC is issued, nor is it necessary as a matter of law to subject LOCs to all of the statutory restrictions and limitations that apply to outstanding advances. OGC concluded that the authority to engage in standby LOC transactions also arises from the FHLBanks' authority to accept deposits and process payments under section 11(e) of the Bank Act, 12 U.S.C. 1431(e), and from their incidental authority to enter into commitments to make advances under sections 9, 10(a), and 11(a) of the Bank Act. *Id.* 1429, 1430(a), 1431(a).

B. FHLBank Deposit Taking and Payment Processing Authorities

Section 11(e)(1) of the Bank Act authorizes each FHLBank to accept deposits from members, upon such terms and conditions as the Finance Board shall prescribe. *Id.* 1431(e)(1). In addition, section 11(e)(2)(A) authorizes the Finance Board to permit FHLBanks, among other things, to be drawees of drafts drawn on members of any FHLBank and to have such incidental powers as the Finance Board shall find necessary for the exercise of such powers. *Id.* 1431(e)(2)(A).

A FHLBank that has issued a standby LOC on behalf of a member would be the drawee of—that is, the financial institution directed to make payment upon—any draft presented to it thereunder. Although the funds paid by a FHLBank to a beneficiary pursuant to a LOC draft technically are considered to be paid from the FHLBank's own funds, a LOC draft may be regarded as being drawn on the member's deposit account at the FHLBank where: (1) The FHLBank maintains an absolute right, either by contract or operation of law, to offset the member's FHLBank deposit account in the amount of the LOC draft; and (2) the member assumes an absolute obligation to the FHLBank to have available in its account sufficient funds to cover the amount of the LOC draft at the time of the FHLBank's payment thereon. Because a primary purpose of a standby LOC is to transfer the risk of default by the applicant from the beneficiary to the issuer, it is consistent with the reality of a standby LOC transaction to consider payment on a LOC draft to result in a draw on a member/applicant's deposit account. These requirements have been imposed upon FHLBank LOC transactions since they were first permitted in 1983 and, in commercial practice, are common to standby LOC transactions generally.

The plain language of section 11(e)(2) makes clear that the Finance Board's powers to authorize FHLBank activity thereunder is to be interpreted broadly, empowering the Finance Board both to implement definitions of terms used therein and to permit the FHLBanks to engage in such incidental activities as the Finance Board finds necessary for the exercise of any authorities thereunder. *See id.* 1431(e)(2)(A). The legislative history of section 11(e)(2) also stresses the broad range of activities that may be authorized thereunder, explaining that ''it is important that the [FHL]Banks have the ability to service the broad and evolving financial service needs of members.'' H.R. Rep. No. 842, 96th Cong., 2nd Sess. 74 (1980). Given this expansive language, and considering that section 11(e)(2) contains no limitation as to the subject matter of the transaction of which the draft is a part, section 11(e)(2) permits the Finance Board to authorize FHLBanks to act as drawee on drafts drawn on a member's FHLBank deposit account as part of a standby LOC transaction.

Regardless of the purpose for which a standby LOC is issued, the sole substantive undertaking by the issuer is to honor any conforming draft that is presented by the beneficiary. All other apparent aspects of a standby LOC transaction are merely by-products of this central obligation. For example, while one might characterize the issuance of a standby LOC as a guarantee of the applicant's obligation, or as a lending of credit to the applicant, such characterizations are merely means of describing the effect of the issuer's agreement to honor a conforming draft presented by the beneficiary. In that, under section 11(e)(2) of the Bank Act, the Finance Board may authorize FHLBanks to execute this central obligation by making payment on a conforming draft presented by the beneficiary, the power to agree to undertake such an obligation (by

contracting therefore with the member) and the power to undertake the obligation (by issuing the standby LOC) are well within the FHLBanks' incidental authority to engage in activities necessary to facilitate the exercise of the FHLBanks' authority to make payment on the LOC draft. Accordingly, under both the express terms and the incidental powers clause of section 11(e)(2) of the Bank Act, the Finance Board is authorized to permit FHLBanks to contract with members to issue standby LOCs, to issue standby LOCs, and to honor conforming drafts presented by a beneficiary pursuant to a standby LOC issued by a FHLBank.

C. FHLBanks' Incidental Power To Enter Commitments To Make Advances

While the Finance Board has concluded that section 11(e) provides sufficient independent authority to permit a FHLBank to engage in a standby LOC transaction, it has not rejected the FHLBB's position that such activity is also authorized as part of the FHLBanks' statutory advances powers. However, the Finance Board has concluded that, in applying the statutory advances provisions to a standby LOC transaction, a standby LOC is characterized more logically as a form of advance commitment than as an outstanding advance. Section 9 of the Bank Act authorizes any FHLBank member to apply in writing for advances. *See* 12 U.S.C. 1429. In turn, section 10(a) authorizes each FHLBank to extend to members advances that are fully secured at the time of origination or renewal by a security interest in one or more of the types of eligible collateral that are listed in that section. *See id.* 1430(a). In addition to these express powers, section 11(a) of the Bank Act authorizes the FHLBanks to do all things necessary for carrying out the provisions of the Bank Act and ''all things incident thereto.'' *See id.* 1431(a).

D. Legal Authority for Nonmember LOCs

Because the power to enter into a contractual commitment to extend an advance is convenient and useful in connection with the FHLBanks' express authority to make advances and to accept applications for advances, such power is incidental to both of these express authorities. A standby LOC is a form of advance commitment in that both may: (1) Involve the FHLBank entering into an obligation, intended to benefit its member, to disburse funds at some future date; (2) require reimbursement by the member in the event that the commitment to fund is exercised; and (3) result in an advance. The proposed regulation further tied standby LOC authority to the FHLBanks' power to enter into advance commitments by authorizing the FHLBanks to issue standby LOCs only when: (1) the member has assumed an unconditional obligation to reimburse the FHLBank for any amounts paid to the beneficiary pursuant to a LOC draft; and (2) prior to agreeing to issue a standby LOC, the FHLBank performs the same type of credit analysis of the member that would occur before entering into a traditional commitment. Accordingly, the FHLBanks' incidental power to enter into commitments to make advances provides an alternative source of authority for the FHLBanks to engage in standby LOC transactions.

Because the FHLBanks' express deposit taking and payment processing authorities set forth in section 11(e) of the Bank Act apply only to dealings with members and those eligible to make application to become members, the power of the FHLBanks to issue standby LOCs on behalf of nonmember mortgagees arises only from the FHLBanks' authority, detailed in section 10b of the Bank Act, 12 U.S.C. 1430b, to make and to commit to make advances to nonmember mortgagees. Because the Finance Board cannot authorize the FHLBanks, as part of this payment processing power, to be a drawee on a draft drawn on the deposit account of a nonmember, the provisions of the proposed rule authorizing FHLBanks to issue standby LOCs on behalf of nonmembers is grounded entirely in the FHLBanks' powers to make advances to nonmember mortgagees and to enter into commitments to make such advances.

III. Comments on Proposed Rule and Analysis of Changes Made in Final Rule

A. Definitions

Section 938.1 of both the proposed and final rules set forth the definitions of terms used in part 938. One of the purposes for which FHLBank members, and certain nonmembers, may issue standby LOCs under both the proposed and final rules is to assist members in facilitating the financing of community lending eligible for any of the FHLBanks' CICA programs under part 970 of the Finance Board's regulations. Because, at the time that the proposed LOC rule was published, the CICA regulation had not been codified as a final rule, the Finance Board included definitions of all CICA-related terms explicitly in the proposed LOC rule for purposes of clarity. However, because the Finance Board has now promulgated a final CICA rule, the Finance Board has removed most of the CICA-related definitions from the final LOC rule and has merely cross-referenced the CICA regulation, where appropriate.

The one remaining CICA-related term that is set forth in § 938.1 is ''community lending,'' which is intended to refer to non-housing activities addressed in the CICA regulation. In the proposed LOC rule, these activities were referred to as ''economic development projects that would benefit families with incomes at or below a targeted income level'' (the individual terms in this phrase were each defined separately in the proposed rule). This terminology has been changed in the final LOC rule so that it remains consistent with that used in the CICA regulation. Aside from the elimination of the CICA-related definitions and the substitution of the term ''community lending,'' § 938.1 remains unchanged in the final rule.

B. Purposes for Which a FHLBank May Issue or Confirm a Standby LOC

Sections 938.2 and 938.3 of the proposed and final rules govern FHLBank issuance and confirmation of standby LOCs on behalf of members and eligible nonmembers, respectively. Sections 938.2(a) (1)–(4) set forth the four general purposes for which a FHLBank may issue or confirm a standby LOC on behalf of a member, while §§ 938.3(a) (1)–(4) enumerate the same four general purposes with respect to standby LOCs issued or confirmed on behalf of eligible nonmember mortgagees that are not SHFAs. In the final rule, both § 938.2(a)(2) and § 938.3(a)(2) have been amended to refer to community lending that is eligible for any of the FHLBanks' CICA programs under part 970 of the regulations, as opposed to ''economic development projects that benefit families with incomes at or below a targeted income level.'' This was done in order to make clear the connection between the LOC and CICA regulations, to eliminate the need to address in the LOC regulation terms of art that are defined in detail in the CICA regulation and, as explained above, to conform to the terminology used in the final CICA rule.

Although this amended wording was not intended to result in a substantive change, changes made to the community lending (*i.e.*, non-housing) provisions of the CICA regulation in the final CICA rule have resulted in a slightly altered scope for both §§ 938.2(a)(2) and 938.3(a)(2) in the final standby LOC rule. These changes, as well as comments received regarding the scope of what is now termed ''community lending,'' are addressed in detail in the preamble to the final CICA rule.

Four commenters (the executive agency and three trade associations) criticized the enumerated purposes for which FHLBanks would be permitted to issue or confirm standby LOCs. All four commenters expressed concern that the breadth of the proposed purposes would allow the FHLBanks to finance, with government subsidized funds, a wide array of economic activities and other transactions that may have little or no relation to the FHLBank System's mission. All four also stated that the Finance Board had failed to show that expanding the FHLBanks' authority to issue LOCs is necessary to overcome a market failure and that the regulation appeared to allow the FHLBanks to intrude into private markets for credit enhancements by unfairly taking advantage of their funding subsidy to supplant, rather than supplement, the role of private sector financial services providers. Two of the trade associations and the executive agency also stated that FHLBank LOCs will serve merely as a substitute for advances.

There exists no statutory provision that limits the FHLBanks to providing to their members and eligible nonmembers only those products or services for which there has been a failure of the market. Moreover, the FHLBanks have been issuing LOCs on behalf of members since 1983, and on behalf of nonmember mortgagees since 1993, and such issuance has not resulted in a diversion of attention or funds from the FHLBanks' advances programs. Although a FHLBank LOC technically could be structured so as to serve as a substitute for an advance, there are many instances where it is more logical to provide a LOC to support a particular transaction than an advance. For example, a LOC may be issued to support the issuance of bonds, to guarantee a member's performance in a swap transaction, or to secure public unit deposits. The use of an advance to support any of these transactions would be both cumbersome and not in keeping with modern business practices. The Finance Board's decision to permit FHLBanks to issue or confirm LOCs for such purposes, and for asset/liability management and liquidity purposes generally, is in keeping with Congress's expressed desire to allow the FHLBanks to service the broad and evolving financial service needs of their members. *See* H.R. Rep. No. 842, 96th Cong., 2nd Sess. 74 (1980); 108 Cong. Rec. H4994 (daily ed. Aug. 3, 1989) (statement of Rep. Garcia).

The only truly new use that has been authorized for FHLBank LOCs under the proposed and final rules is for CICA-defined community lending activities, which clearly is consistent with the System's housing and community lending mission, and is expressly mentioned in the Bank Act as an authorized use of advances. *See* 12 U.S.C. 1430(j)(10). Even this authorization is not a wholesale departure from past practice, as the FHLBanks have been permitted since 1993 to issue LOCs to support targeted economic development activities under their Community Investment Programs. In addition, by permitting only mission-related LOCs to be secured by collateral that would not be eligible to secure advances (discussed more thoroughly below), the Finance Board is encouraging the FHLBanks to concentrate on providing LOCs to support mission-related activities.

C. Collateral for Standby LOCs

1. Full Collateralization

Sections 938.2(b) and 938.3(b) of the proposed rule, addressing collateralization of member and nonmember LOCs, respectively, required that all LOCs be fully collateralized at the time of issuance. The Finance Board specifically requested comment on: (1) Whether there are any circumstances under which the FHLBanks could safely and soundly issue LOCs that are not fully collateralized; and (2) whether there are other assets, in addition to those enumerated in the proposed rule, that should be considered as eligible collateral for LOCs and whether the Finance Board should establish limits on these additional types of collateral. Three FHLBanks supported continuing to require full collateralization of LOCs and stated that they were unaware of any circumstance where less than full collateralization would be appropriate or prudent. These FHLBanks also stated that they believed the expanded types of collateral provided sufficient flexibility to members and that maintenance of the AAA rating of each FHLBank and the FHLBank System as a whole far outweighed any possible perceived benefit to permitting issuance of less than fully secured LOCs.

Three FHLBanks supported giving the FHLBanks the authority to issue LOCs that are not fully collateralized. One FHLBank stated that commercial banks issue unsecured LOCs based on their credit underwriting and their assessment of the business relationship with the applicant and that FHLBanks similarly should be permitted to use their business judgment in determining the assets it will accept as collateral. Another FHLBank recommended that the FHLBanks be permitted to take into account the probability of actual loss on a LOC in determining the level of collateralization necessary.

Sections 938.2(b) and 938.3(b) of the final rule continue to require that LOCs issued or confirmed on behalf of members or nonmembers, respectively, be fully collateralized at the time of issuance or confirmation. Requiring that LOCs be fully collateralized at the time of issuance provides protection from credit risk and ensures that a FHLBank is not involved in underwriting the transaction that is supported by the LOC.

2. Collateral Eligible To Secure FHLBank Standby LOCs for Members

Section 938.2(c) of the proposed rule authorized a FHLBank, at its discretion, to accept from members as collateral for LOCs for housing and community lending purposes, in addition to the section 10(a) collateral required for advances: secured or federally guaranteed loans to small businesses; investment-grade obligations of state or local government agencies; and ''other real estate-related'' collateral in excess of the ''30 percent of capital'' limitation applicable to such collateral used for advances, *see* 12 CFR 935.9(a)(4). Sections 938.2(c)(1) and (2) have been amended in the final rule to make clear that standby LOCs that are confirmed on behalf of a member, as well as those that are issued on behalf of a member, must be secured by assets that fall within the enumerated categories of eligible collateral. The words ''or confirmed'' had been omitted inadvertently from both sections in the proposed rule.

In addition, the last sentence of paragraph (c)(1) has been amended to eliminate reference to ''outstanding advances,'' so as not to imply that an FHLBank standby LOC is, or must otherwise be treated as, an outstanding advance. The first sentence of § 938.2(c)(1) permits the FHLBanks to accept as collateral for standby LOCs any collateral that is eligible to secure advances under § 935.9(a) of the regulations. Under § 935.9(a)(4) of the regulations, and as required by section 10(a)(4) of the Bank Act, 12 U.S.C. 1430(a)(4), a FHLBank may not accept as collateral for advances so-called ''other real estate related collateral'' in an amount exceeding 30 percent of the borrowing member's capital. *See* 12 U.S.C. 1430(a)(4), 12 CFR 935.9(a)(4). As discussed above, the Finance Board has concluded that statutory requirements pertaining to FHLBank advances need not be applied to LOCs at the time of issuance. Therefore, as a legal matter, the Finance Board may permit the FHLBanks to accept ''other real estate

related collateral'' as security for standby LOCs without regard to the statutory ''30 percent of capital'' limitation that applies to advances, to the extent that the acceptance of such collateral is consistent with the safe and sound operation of the FHLBanks.

However, as a matter of regulatory policy, the Finance Board is permitting FHLBanks to accept ''other real estate-related collateral'' in excess of the ''30 percent of capital'' limitation only where the LOC being secured is issued or confirmed for one of the mission-related purposes enumerated in §§ 938.2(a)(1) and (2). This policy is expressed in negative terms in the second sentence of § 938.2(c)(1), which qualifies the presumption that LOCs must be secured by collateral that is eligible to secure advances by stating that only those LOCs that are issued or confirmed for the non-mission-related purposes enumerated in §§ 938.2(a)(3) and (4) are subject to the ''30 percent of capital limitation.'' In other words, § 938.2(c)(1) requires that the combined amount of advances and outstanding standby LOCs issued or confirmed for purposes enumerated in §§ 938.2(a)(3) and (4) that are secured by ''other real estate-related collateral'' may not exceed 30 percent of a member's capital. The intent behind the second sentence of § 938.2(c)(1) is to permit FHLBanks to accept without limitation as security for mission-related standby LOCs—that is, those issued or confirmed to assist members in facilitating residential housing finance or community lending—''other real estate related collateral'' referred to in § 935.9(a)(4) of the regulations.

Seven commenters (five FHLBanks and two trade associations) supported the expanded types of eligible collateral identified in the proposed rule. One commenter noted in particular that residential acquisition, development and construction loans that otherwise would be subject to the ''30 percent of capital'' limitation applied to ''other real estate related collateral'' have proven to be profitable and performed quite well. In addition, requiring the FHLBanks to establish policies and procedures for valuing and securing this collateral could allay any safety and soundness concerns. Five commenters (four FHLBanks and one advisory council) supported leaving the eligible collateral to the discretion of the FHLBank. Three commenters (the executive agency and two trade associations) opposed expanding the categories of eligible collateral for LOCs.

In the final rule, the Finance Board has retained the collateral requirements that were included in the proposed rule. Because the Bank Act does not specify the types of collateral that may be used to secure LOCs, the Finance Board has the discretion to specify the eligible types of collateral, consistent with the safe and sound operation of the FHLBanks, and even to authorize the FHLBanks themselves to determine the appropriate types of collateral. The proposed rule identified additional types of collateral that may be used only to finance activities that are clearly linked to the FHLBanks' mission of supporting housing and community lending. Accordingly, the Finance Board's determination to allow FHLBanks to accept such collateral is clearly tied to a beneficial public policy goal. In addition, the expanded types of collateral (secured or federally guaranteed loans to small businesses, investment-grade obligations of state or local government agencies and ''other real estate-related'' collateral in excess of the 30 percent of capital limitation) build upon the experience the FHLBanks currently have in valuing and securing such collateral.

The FHLBanks already are permitted to accept ''other real-estate related collateral'' to secure LOCs and advances (within the ''30 percent of capital'' limitation). Thus, the FHLBanks already manage the credit, liquidity and marketability risks, as well as other risks, associated with these types of collateral. There is no evidence that permitting the FHLBanks to accept these types of collateral for LOCs in excess of that which is allowed for advances will subject the FHLBanks to underwriting tasks that are beyond their ability to manage.

With regard to the FHLBanks' acceptance of small business loans as collateral, the Finance Board requires that the FHLBanks have underwriting expertise and credit policies in place before accepting such loans as collateral. Specifically, § 935.5 of the Finance Board's advances regulation, 12 CFR 935.5, requires that the FHLBanks establish written procedures for determining the value of collateral and to follow these procedures in ascertaining the value of particular assets used as collateral. This requirement has been applied to LOC transactions in § 938.5(a)(1)(ii) of the proposed and final rules. Under § 935.12 of the regulations, which has also been made to apply to LOCs under § 938.5(b)(2) of the proposed and final rules, the FHLBanks also are permitted to require a member to support the valuation of any collateral with an appraisal or other investigation of the collateral as the FHLBank deems necessary.

The Finance Board is requiring each FHLBank to review its collateral procedures, and amend them as necessary to reflect the changes made in the final rule before accepting any newly authorized assets as collateral for LOCs. The Finance Board also expects that the FHLBanks, as a matter of practice, will conduct careful review and, if necessary, require an appraisal of such collateral, taking into account the additional risks inherent in small business lending and each FHLBank's own capability to evaluate those risks. In addition, the FHLBanks generally require that members pledge additional collateral if the value of their original collateral declines.

Finally, as the regulator of the FHLBanks, the Finance Board's primary responsibility is to ensure that the FHLBanks operate in a financially safe and sound manner. *See* 12 U.S.C. 1422a(a)(3)(A). The Finance Board's oversight of the FHLBanks includes annual on-site examinations and regular off-site review of FHLBank operations. Emphasis is placed on areas of FHLBank operation that could potentially expose the FHLBank and the FHLBank System to risk. As part of the examination process, the Finance Board reviews and evaluates the FHLBanks' management of collateral. Examiners review valuation methodology, discounts applied to collateral, and frequency of re-valuation for various types of collateral. In short, the above-described FHLBank practices, regulatory requirements, and Finance Board examination oversight, all serve to ensure that the safety and soundness of the FHLBanks would not be compromised by authorizing the expanded collateral options in the final rule.

3. Collateral Securing Nonmember Standby LOCs

Under § 938.3 of the proposed rule, nonmember borrowers were permitted to secure LOCs with the same types of collateral that they may use to secure advances. Under proposed § 938.3(a), nonmember borrowers (including SHFAs) were permitted to use FHA-insured loans or GNMA securities backed by FHA-insured loans as collateral for LOCs used for any of the same four purposes permitted for LOCs on behalf of members. Under § 938.2(b), a SHFA may secure LOCs with collateral eligible to secure advances under section 10(a) of the Bank Act, 12 U.S.C. 1430(a), provided the LOCs are used to facilitate residential or commercial lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code.

See 26 U.S.C. 142(d), 143(f). Both of these provisions remain unchanged in the final rule.

Noting that the proposed rule would permit members to use investment grade debt securities of a SHFA as eligible collateral for LOCs, one commenter (a private law firm) recommended that nonmember SHFAs be permitted to obtain LOCs backed only by an investment-grade general obligation of the SHFA, where the obligation is secured by a statutory lien on the SHFA's unencumbered assets. The commenter stated that the ability to combine collateral types (the SHFA's investment grade obligation and the statutory lien, and the option of the mortgage being financed) may be the only way to provide economical tax-exempt financing for housing and economic development projects. While this suggestion has logical merit, as explained above, the Finance Board has concluded that, as a matter of law, LOCs may be issued or confirmed on behalf of nonmembers only under the same conditions that apply to nonmember advances. *See* 12 U.S.C. 1430b, 12 CFR 935.24. Therefore, under the Bank Act, the Finance Board may not authorize a nonmember SHFA to offer as collateral its general obligation, even under the conditions recommended by this commenter.

D. Additional Provisions Applying to FHLBank Standby LOCs

1. Special Pricing Provisions in FHLBank Standby LOC Policies

In the final rule, § 938.5(a)(1)(iii), regarding pricing criteria that must be set forth in each FHLBank's standby LOC policy, has been amended to cross-reference the codified CICA regulation, thereby eliminating the need to use and define in the LOC regulation terms of art that are explained thoroughly in the CICA regulation.

2. Cost of Capital Adjustment Factor

In the proposed rule, the Finance Board requested comments on whether FHLBank fees for LOCs may be subject to a cost of capital adjustment factor under section 11(e)(2) of the Bank Act, 12 U.S.C. 1431(e)(2), given that the FHLBanks' power to make payments upon standby LOCs arises partially from the FHLBanks' payment processing powers. Five commenters (three FHLBanks, one advisory council and one trade association) opposed applying the adjustment factor to LOC fees.

Section 11(e)(2)(B) of the Bank Act requires FHLBanks to make charges for payment processing services provided under section 11(e)(2), including the payment of drafts, in a manner consistent with the criteria established for pricing of Federal Reserve Bank payment processing under section 11A(c) of the Federal Reserve Act. 12 U.S.C. 248a(c). This statutory requirement has been implemented through part 943 of the Finance Board's regulations. 12 CFR part 943. Specifically, the pricing of services is addressed in § 943.6(b), which requires that the FHLBanks apply a cost of capital adjustment factor to their payment processing charges in order to take into account all direct and indirect costs of such services and the imputed rate of return that would have been earned and the taxes that would have been paid if the FHLBanks were wholly private corporations. *See id.* 943.6(b).

Accordingly, the Finance Board has concluded that, for any draw made by a beneficiary under a standby LOC, the applicant must be charged a processing fee calculated in accordance with the requirements of § 943.6(b) of the Finance Board's regulations. In the final rule, § 938.5(a)(1) has been amended to add a new paragraph (iv) requiring that each FHLBank's standby LOC policy require such a charge. This requirement does not extend to fees, periodic or otherwise, charged to a customer to issue, confirm, or renew a standby LOC.

In addition, in the final rule, the Finance Board has amended § 943.6(c) of its regulations to exempt fees collected for draws upon a LOC from the publication requirement set forth therein. The Bank Act does not require that FHLBank payment processing fees be published in the **Federal Register**.

3. Members' FHLBank Capital Stock

Section 938.5(b)(2) has been amended in the final rule to make clear that the provisions regarding advances collateral that are set forth in §§ 935.9(d) and 935.10 of the Finance Board's regulations apply also to collateral pledged to secure a FHLBank LOC. Section 935.9(d) of the regulations provides that each FHLBank shall have a lien upon the stock of its members for all indebtedness of the member to the FHLBank. The cross-reference to this section that has been added to § 938.5(b)(2) of the final rule is intended to make clear that each FHLBank shall have a lien upon its member's FHLBank stock for any indebtedness that may result from a draw upon a LOC issued or confirmed by the FHLBank on behalf of that member. This reference is intended only to require a lien on FHLBank stock that the member already owns and should not be read as requiring or permitting a FHLBank to include standby LOCs in the calculation of its members' capital stock-to-advances leverage ratio. Stock purchase would be required only if and when an LOC is drawn and the FHLBank and its member agree to fund any resulting overdraft of the member's deposit account with an advance.

Seven commenters (five FHLBanks, one advisory council and one trade association) supported this provision. One FHLBank noted that the elimination of the stock purchase requirement contained in the current policy would improve the FHLBank's leverage position and make the program more attractive to shareholders. Four commenters (one FHLBank and three trade associations) believed LOCs, like advances, should be subjected to a stock purchase requirement. One FHLBank noted that this minimizes risk to the FHLBank if the LOC must be drawn upon. One of the trade associations stated that the proposal could exacerbate the risks to which the FHLBanks would be exposed by permitting them to deduct LOCs from their capital calculation and from their reported balances of outstanding advances, permitting a dangerous leveraging of FHLBank balance sheets which would be undetectable to the Finance Board and outside analysts. The other two trade associations stated that unlike commercial banks or other private financial service providers, the FHLBanks operate without an adequate cushion of permanent stock. Most members are free to redeem their stock and give up their membership, and in times of financial difficulty, the Finance Board is unlikely to be able to prevent these members from fleeing the FHLBank System. Further, they believed that the FHLBanks would issue or confirm a much higher volume of LOCs if they are free from requirements to reserve capital to protect taxpayers from the consequences of any mistakes.

The Finance Board's decision not to require that LOCs be included in a member's advances-to-capital stock ratio calculation will not undermine the safety and soundness of the FHLBank System. Under the capital requirements of the FHLBanks specified in the Bank Act, members must purchase capital in their FHLBank equal to the greater of 1 percent of their residential mortgage assets, 0.3 percent of total assets, or 5 percent of their outstanding advance balances. See 12 U.S.C. 1426. These statutory capital requirements, together with the Finance Board's regulation limiting the FHLBank System's debt to 20 times capital, assure that the FHLBanks have capital-to-asset ratios which approximates the 5 percent ratio for well-capitalized depository

institutions and is about twice the 2.5 percent capital-to-asset requirements for Fannie Mae and Freddie Mac.

On a risk-adjusted basis, the FHLBanks are even better capitalized than the raw numbers would indicate. To be considered well-capitalized, depository institutions must have total risk-based capital of 10 percent and, as of year-end 1997, insured depository institutions held 12.65 percent risk-based capital on average. By comparison, the FHLBanks held over 22 percent risk-based capital at year-end 1997. As of year-end 1997, advances outstanding to members totaled $202.2 billion and LOCs outstanding totaled $2.9 billion. Even if, as a result of the changes in policy implemented by this final rule, the total amount of LOCs outstanding increased, FHLBanks would remain well-capitalized.

Because a LOC must be fully collateralized at time of issuance, a FHLBank would have secured sufficient collateral to reimburse the FHLBank for any draw, minimizing the financial risk to the FHLBank. In fact, unlike commercial financial institutions, the FHLBanks generally have required members to secure LOCs with collateral in excess of the value of the LOC. Because the regulation clarifies that the contingent liability of an LOC is covered by section 10(c) of the Bank Act that provides a FHLBank shall have a lien upon the stock of a member as further collateral security for all indebtedness of the member to the FHLBank, the FHLBank's position would be further secured. In addition, § 938.5(a)(1)(ii) provides that a member or nonmember requesting an LOC is subject to the same underwriting criteria that applies to the making of advances. It is anticipated that FHLBanks will use this information to minimize their exposure to credit risk. Therefore, eliminating the requirement that LOCs be supported by the purchase of capital stock does not present any safety and soundness concerns.

4. Priority Lien on Member Collateral

The cross-reference to § 935.10 that has been added to § 938.5(b) is intended to make clear that the statutory priority lien that applies to any security interest granted by a member, or an affiliate of a member, to a FHLBank, see 12 U.S.C. 1430(f), applies to security interests in collateral pledged to secure standby LOCs.

IV. Regulatory Flexibility Act

The final rule applies only to the FHLBanks, which do not come within the meaning of ''small business,'' as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

12 CFR Part 938

Federal home loan banks, Credit, Letters of credit, Community development and housing.

12 CFR Part 943

Federal home loan banks, Checks, Price controls, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, as follows:

1. Add part 938 to read as follows:

PART 938—STANDBY LETTERS OF CREDIT

Sec.
938.1 Definitions.
938.2 Standby letters of credit on behalf of members.
938.3 Standby letters of credit on behalf of nonmember mortgagees.
938.4 Obligation to Bank under all standby letters of credit.
938.5 Additional provisions applying to all standby letters of credit.

Authority: 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

§ 938.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421–49).

Applicant means a person or entity at whose request or for whose account a standby letter of credit is issued.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Beneficiary means a person or entity who, under the terms of a standby letter of credit, is entitled to have its complying presentation honored.

Community Lending has the meaning set forth in § 970.4 of this chapter.

Confirm means to undertake, at the request or with the consent of the issuer, to honor a presentation under a standby letter of credit issued by a member or nonmember mortgagee.

Document means a draft or other demand, document of title, investment security, certificate, invoice, or other record, statement, or representation of fact, law, right, or opinion that is presented under the terms of a standby letter of credit.

Finance Board means the agency established by the Act as the Federal Housing Finance Board.

Issuer means a person or entity that issues a standby letter of credit.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.20 and 933.24 of this chapter.

Nonmember mortgagee means an entity certified as a nonmember mortgagee pursuant to § 935.22(b) of this chapter.

Nonmember SHFA means a nonmember mortgagee that is a ''state housing finance agency,'' as that term is defined in § 935.1 of this chapter, and that has met the requirements of § 935.22(d) of this chapter.

Presentation means delivery of a document to an issuer, or an entity that has undertaken a confirmation at the request or with the consent of the issuer, for the giving of value under a standby letter of credit.

Residential housing finance means:

(1) The purchase or funding of ''residential housing finance assets,'' as that term is defined in § 935.1 of this chapter; or

(2) Other activities that support the development or construction of residential housing.

Small business means a ''small business concern,'' as that term is defined by section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and implemented by the Small Business Administration at 13 CFR part 121, or any successor provisions.

Standby letter of credit means a definite undertaking by an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation: to repay money borrowed by, advanced to, or for the account of the applicant; to make payment on account of any indebtedness undertaken by the applicant; or to make payment on account of any default by the applicant in the performance of an obligation. The term *standby letter of credit* does not include a commercial letter of credit, or any short-term self-liquidating instrument used to finance the movement of goods.

§ 938.2 Standby letters of credit on behalf of members.

(a) *Authority and purposes.* Each Bank is authorized to issue or confirm on behalf of members standby letters of credit that comply with the requirements of this part, for any of the following purposes:

(1) To assist members in facilitating residential housing finance;

(2) To assist members in facilitating community lending that is eligible for

any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist members with asset/liability management; or

(4) To provide members with liquidity or other funding.

(b) *Fully secured.* A Bank, at the time it issues or confirms a standby letter of credit on behalf of a member, shall obtain and maintain a security interest in collateral that is sufficient to secure fully the member's unconditional obligation described in § 938.4(a)(2) of this part, and that complies with the requirements set forth in paragraph (c) of this section.

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured by collateral that is eligible to secure advances under § 935.9(a) of this chapter. Only standby letters of credit issued for the purposes described in paragraphs (a)(3) or (a)(4) of this section shall be counted in making the calculation required under § 935.9(a)(4)(iii).

(2) A standby letter of credit issued or confirmed on behalf of a member for a purpose described in paragraph (a)(1) or (a)(2) of this section may, in addition to the collateral described in paragraph (c)(1) of this section, be secured by:

(i) Secured or federally-guaranteed loans to small businesses or securities representing interests in such loans; or

(ii) Obligations of state or local government units or agencies, rated as investment grade by a nationally-recognized rating agency.

§ 938.3 Standby letters of credit on behalf of nonmember mortgagees.

(a) *Nonmember mortgagees.* Each Bank is authorized to issue or confirm on behalf of nonmember mortgagees standby letters of credit that are fully secured by collateral described in §§ 935.24(b)(1)(i) or (ii) of this chapter, and that otherwise comply with the requirements of this part, for any of the following purposes:

(1) To assist nonmember mortgagees in facilitating residential housing finance;

(2) To assist nonmember mortgagees in facilitating community lending that is eligible for any of the Banks' CICA programs under part 970 of this chapter;

(3) To assist nonmember mortgagees with asset/liability management; or

(4) To provide nonmember mortgagees with liquidity or other funding.

(b) *Nonmember SHFAs.* Each Bank is authorized to issue or confirm on behalf of nonmember SHFAs standby letters of credit that are fully secured by collateral described in § 935.24(b)(2)(i)(A), (B) or (C) of this chapter, and that otherwise comply with the requirements of this part, for the purpose of facilitating residential or commercial mortgage lending that benefits individuals or families meeting the income requirements in section 142(d) or 143(f) of the Internal Revenue Code (26 U.S.C. 142(d) or 143(f)).

§ 938.4 Obligation to Bank under all standby letters of credit.

(a) *Obligation to reimburse.* A Bank may issue or confirm a standby letter of credit only on behalf of a member or nonmember mortgagee that has:

(1) Established with the Bank a cash account pursuant to §§ 934.5, 935.24(b)(2)(i)(B) or 935.24(d) of this chapter; and

(2) Assumed an unconditional obligation to reimburse the Bank for value given by the Bank to the beneficiary under the terms of the standby letter of credit by depositing immediately available funds into the account described in paragraph (a)(1) of this section not later than the date of the Bank's payment of funds to the beneficiary.

(b) *Prompt action to recover funds.* If a member or nonmember mortgagee fails to fulfill the obligation described in paragraph (a)(2) of this section, the Bank shall take action promptly to recover the funds that such member or nonmember mortgagee is obligated to repay.

(c) *Obligation financed by advance.* Notwithstanding the obligations and duties of the Bank and its member or nonmember mortgagee under paragraphs (a) and (b) of this section, the Bank may, at its discretion, permit such member or nonmember mortgagee to finance repayment of the obligation described in paragraph (a)(2) of this section by receiving an advance that complies with sections 10 or 10b of the Act and part 935 of this chapter.

§ 938.5 Additional provisions applying to all standby letters of credit.

(a) *Written policy; other requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Be issued or confirmed only in compliance with a written policy, developed and implemented by the Bank to govern its standby letter of credit programs, that:

(i) Is consistent with the provisions of the Act and this part;

(ii) Sets forth credit underwriting criteria, consistent with the provisions of § 935.5 of this chapter, to be applied in evaluating applications for standby letters of credit and renewals thereof;

(iii) Sets forth criteria regarding the pricing of standby letters of credit, including any special pricing provisions for letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 970 of this chapter; and

(iv) Provides that, for any draw made by a beneficiary under a standby letter of credit, the applicant will be charged a processing fee calculated in accordance with the requirements of § 943.6(b) of this chapter;

(2) Contain a specific expiration date, or be for a specific term; and

(3) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity;

(b) *Additional collateral provisions.* (1) A Bank may take such steps as it deems necessary to protect its secured position on standby letters of credit, including requiring additional collateral, whether or not such additional collateral conforms to the requirements of §§ 938.2 or 938.3 of this part.

(2) Collateral pledged by a member or nonmember mortgagee to secure a letter of credit issued or confirmed on its behalf by a Bank shall be subject to the provisions of §§ 935.9(b), 935.9(d), 935.9(e), 935.10, 935.11 and 935.12 of this chapter.

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

2. The authority citation for part 943 continues to read as follows:

Authority: 12 U.S.C. 1430, 1431.

3. Amend § 943.6 by revising paragraph (c) to read as follows:

§ 943.6 Pricing of services.

* * * * *

(c) *Review and publication.* The Finance Board shall from time to time and at least annually review the cost of capital adjustment factor and review prices for services authorized in this part for compliance with the principles set forth in paragraphs (a) and (b) of this section. All prices for Bank services authorized in this part will be published annually in the **Federal Register**, except those for fees charged to an applicant for draws made by a beneficiary under a standby letter of credit.

Dated: October 28, 1998.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 98–31837 Filed 11–27–98; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–29–AD; Amendment 39–10914; AD 98–24–27]

Airworthiness Directives; First Technology Fire and Safety Ltd. Toilet Compartment Fire Extinguishers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to First Technology Fire and Safety Ltd. toilet compartment fire extinguishers. This amendment requires inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if the extinguisher is found to be leaking. This amendment is prompted by reports of leakage at the fire extinguisher's eutectic tip. The leakage is the result of a design change. The actions specified by this AD are intended to prevent fire extinguisher failure due to leakage, which in the event of a toilet compartment fire could result in an uncontained fire and damage to the aircraft.

DATES: Effective January 29, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 29, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain First Technology Fire and Safety Ltd. toilet compartment fire extinguishers, approved for installation on Airbus A320, A330, A340; British Aerospace Bae 146, Bombardier CL–600–2B19 (CRJ), Dornier 328, Embraer EMB 145, and all Fokker series airplanes, was published in the **Federal Register** on July 1, 1998 (63 FR 35884). That action proposed to require, within three months after the effective date of this AD, inspection of suspect fire extinguishers for leakage, and removal from service and replacement with serviceable parts if found leaking.

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

Two commenters indicate that they do not operate any of the affected airplanes.

One commenter does not concur with the 3 month compliance time. The initial compliance deadline, for the First Technology fire and Safety Service Bulletin (SB) No. 26–110, Revision 1, dated January 1998, was April 1998. This allowed a sufficient amount of time since issuance of the UK CAA AD to comply with the FAA AD. The commenter has since withdrawn the request for an extended compliance period. The commenter also requests that reference to Revision 1 of SB 26–110, dated January 1998, be made in the final rule since the SB dated January 1998, referenced in the Notice for Proposed Rulemaking (NPRM) is Revision 1. The FAA concurs. SB No. 26–110, Revision 1, dated January 1998 has been listed in the Applicability section.

One commenter disagrees with the 3 minute inspection compliance time. The 3 minute reference was for weighing the extinguisher. A reasonable time period for inspection, weighing, and replacement of the extinguisher is 20 minutes. The FAA concurs. The economic impact statement has been revised.

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

There are approximately 1,500 fire extinguishers of the affected design installed on the worldwide fleet. There are an unknown number of fire extinguishers installed on aircraft of U.S. registry. The FAA estimates that it would take approximately 20 minutes per fire extinguisher to accomplish the actions, and that the average labor rate is $60 per work hour. The manufacturer has advised the CAA that replacement parts would be provided at no charge to the operator. Based on these figures, the total cost impact of the AD on worldwide operators is estimated to be $30,000.

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–24–27 First Technology Fire and Safety Ltd.: Amendment 39–10914. Docket No. 98–ANE–29–AD.

Applicability: First Technology Fire and Safety Ltd. toilet compartment fire extinguisher, identified by serial and model number in First Technology Fire and Safety Ltd. Service Bulletin (SB) No. 26–110, Revision 1, dated January 1998. These fire

extinguishers are installed on but not limited to Airbus A320, A330, A340; British Aerospace Bae 146, Bombardier CL–600–2B19 (CRJ), Dornier 328 Embraer EMB 145, and all Fokker Series aircraft.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fire extinguisher failure due to leakage, which could result in an uncontained fire and damage to the aircraft, accomplish the following:

(a) Within 3 months after the effective date of this AD, perform a one time inspection of fire extinguishers for leakage, and replace leaking fire extinguishers with serviceable parts, in accordance with First Technology Fire and Safety Ltd. SB No. 26–110, Revision 1, dated January 1998.

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

(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) The actions required by this AD shall be done in accordance with First Technology Fire and Safety Ltd. SB:

Document No.	Pages	Revision	Date
26–110	1–4	1	January, 1998.
Total pages: 4			

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 Percival Aviation Ltd., The Sidings, Knowle, Fareham, Hampshire PO17 5LZ England; telephone 011 44 1329 833814, fax 011 44 1329 834013. Copies may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on January 29, 1999.

Issued in Burlington, Massachusetts, on November 18, 1998.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service

[FR Doc. 98–31607 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29389; Amdt. No. 1901]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office when originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by

publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 13, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [AMENDED]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

FDC Date	State	City	Airport	FDC No.	SIAP
10/20/98	WI	Fond Du Lac	Fond Du Lac County	FDC 8/7439	GPS Rwy 36, Orig...
10/28/98	TX	Arlington	Arlington Muni	FDC 8/7624	VOR/DME Rwy 34, Orig...
10/29/98	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7648	ILS Rwy 12R, Amdt 6A...
10/29/98	MN	Minneapolis	Minneapolis-St. Laul Intl (Wold-Chamberlain).	FDC 8/7649	ILS Rwy 30L (CAT I & II), Amdt 42A...
10/29/98	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7650	ILS PRM Rwy 30L, Amdt 3A...
10/29/98	MN	Minneapolis	Minneapolis-St Paul Intl (Wold-Chamberlain).	FDC 8/7651	ILS PRM Rwy 12R, Amdt 2A...
10/31/98	MA	Plymouth	Plymouth Muni	FDC 8/7664	GPS Rwy 6 Amdt 2...
10/31/98	OH	Shelby	Shelby Community	FDC 8/7692	VOR or GPS–A, Amdt 4...
11/09/98	LA	Ruston	Ruston Regional	FDC 8/7950	NDB Rwy 18, Orig-A...
11/02/98	CA	Los Angeles	Los Angeles Intl	FDC 8/7739	ILS Rwy 24L Amdt 22...
11/03/98	CA	Merced	Merced Muni-MacReady Field	FDC 8/7757	ILS Rwy 30 Amdt 14...
11/03/98	TX	Houston	Ellington Field	FDC 8/7747	GPS Rwy 22, Orig...
11/03/98	TX	Houston	Ellington Field	FDC 8/7748	ILS Rwy 35L, Amdt 4...
11/03/98	TX	Houston	Ellington Field	FDC 8/7749	ILS Rwy 17R, Amdt 4...
11/03/98	TX	Houston	Ellington Field	FDC 8/7750	ILS Rwy 22, Amdt 2...
11/04/98	AK	Anchorage	Merrill Field	FDC 8/7836	GPS–A Orig...
11/04/98	AK	Nome	Nome	FDC 8/7824	GPS Rwy 2, Orig...
11/04/98	AK	Nome	Nome	FDC 8/7825	GPS Rwy 9, Orig...
11/04/98	AK	Nome	Nome	FDC 8/7842	GPS Rwy 27, Orig
11/04/98	GA	Savannah	Savannah Intl	FDC 8/7845	MLS Rwy 27, Orig...
11/05/98	GA	Portland	Portland Intl	FDC 8/7875	ILS Rwy 10L Amdt 1A...This replaces TL 98–24

FDC Date	State	City	Airport	FDC No.	SIAP
11/10/98 ...	AL	Dothan	Dothan	FDC 8/7972	LOC BC Rwy 14 Amdt 6C...
11/10/98 ...	AL	Dothan	Dothan	FDC 8/7973	VOR Or TACAN Or GPS–A Amdt 11B...
11/10/98 ...	MA	Plymouth	Plymouth Muni	FDC 8/7968	NDB Rwy 6 Amdt 4...
11/10/98 ...	OK	Duncan	Halliburton Field	FDC 8/7984	VOR Rwy 35, Amdt 10A...
11/10/98 ...	PA	Chambersburg	Chambersburg Muni	FDC 8/7982	VOR/DME Or GPS–B Amdt 1...
11/10/98 ...	PA	Easton	Easton	FDC 8/7983	VOR/DME Or GPS–D Orig–A...

. . . Effective Upon Publication.

[FR Doc. 98–31784 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29388; Amdt. No. 1900]

RIN 2120–AA65

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availiability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists

for making some SIAPs effective in less than 30 days.

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on November 13, 1998.

Richard O. Gordon,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective 3 December, 1998*

Chino, CA, Chino, NDB OR GPS–C, Amdt 1, Cancelled
Riverside, CA, Riverside Muni, ILS RWY 9, Amdt 7
Kankakee, IL, Greater Kankakee, ILS RWY 4, Amdt 6
Louisville, KY, Louisville-Standiford Field, ILS RWY 17L, Amdt 2
Louisville, KY, Louisville-Standiford Field, ILS RWY 35L, Amdt 1
Louisville, KY, Louisville-Standiford Field, ILS RWY 35R, Amdt 2
New York, NY, LaGuardia, ILS RWY 13, Orig
New York, NY, Laguardia, ILS/DME RWY 13, Amdt 2A, Cancelled
Cleveland, OH, Burke Lakefront, LOC RWY 24R, Amdt 10, Cancelled
Cleveland, OH, Burke Lakefront, ILS RWY 24R, Orig
Austin, TX, Austin Executive Airpark, GPS RWY 18, Orig
Austin, TX, Austin Executive Airpark, VOR/DME RWY 18, Amdt 2, Cancelled
Austin, TX, Lakeway Airpark, VOR/DME–A, Orig
Austin, TX, Lakeway Airpark, VOR/DME OR GPS–C, Amdt 1, Cancelled
Austin, TX, Lakeway Airpark, GPS RWY 16, Orig
Austin, TX, Lakeway Airpark, VOR/DME RNAV OR GPS RWY 16, Amdt 1, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR TACAN OR GPS RWY 13R, Amdt 9, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR TACAN OR GPS RWY 17, Amdt 8, Cancelled
Austin, TX, Robert Mueller Muni, VOR/DME OR GPS RWY 31L, Orig, Cancelled
Austin, TX, Robert Mueller Muni, NDB RWY 31L, Amdt 33, Cancelled
Austin, TX, Robert Mueller Muni, ILS RWY 13R, Amdt 10
Austin, TX, Robert Mueller Muni, ILS RWY 13L, Amdt 33
Austin, TX, Robert Mueller Muni, GPS RWY 13R, Orig
Austin, TX, Robert Mueller Muni, GPS RWY 31L, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, NDB RWY 1, Amdt 5
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 1, Amdt 1
Burnet, TX, Burnet Muni Kate Craddock Field, GPS RWY 19, Orig
Burnet, TX, Burnet Muni Kate Craddock Field, VOR/DME RNAV OR GPS RWY 19, Amdt 3, Cancelled
College Station, TX, Easterwood Field, LOC BC RWY 16, Amdt 5
College Station, TX, Easterwood Field, ILS RWY 34, Amdt 11
College Station, TX, Easterwood Field, GPS RWY 10, Orig
College Station, TX, Easterwood Field, GPS RWY 34, Orig
Georgetown, TX, Georgetown Muni, NDB OR GPS RWY 18, Amdt 5
Giddings, TX, Giddings-Lee County, VOR/DME OR GPS–A, Amdt 3
Giddings, TX, Giddings-Lee County, VOR/DME RNAV OR GPS RWY 35, Amdt 1
Lago Vista, TX, Lago Vista TX-Rusty Allen, GPS RWY 15, Orig
Lockhart, TX, Lockhart Muni, VOR/DME OR GPS RWY 18, Orig, Cancelled
New Braunfels, TX, New Braunfels Muni, GPS RWY 17, Amdt 1
San Antonio, TX, San Antonio Intl, NDB RWY 3, Amdt 38
San Antonio, TX, San Antonio Intl, NDB RWY 3, Amdt 18
San Marcos, TX, San Marcos Muni, VOR/DME OR GPS–A, Amdt 5, Cancelled
San Marcos, TX, San Marcos Muni, GPS RWY 12, Orig
Taylor, TX, Taylor Muni, VOR/DME RWY 17, Orig
Taylor, TX, Taylor Muni, VOR/DME OR GPS–A, Orig, Cancelled
Waco, TX, McGregor Muni, GPS RWY 15, Amdt 1

* * * *Effective 31 December, 1998*

Orlando, FL, Orlando Sanford, NDB RWY 27R, Orig
Joplin, MO, Joplin Regional, ILS/DME RWY 18, Orig

* * * *Effective 28 January, 1999*

Decatur, AL, Pryor Field Rngl, VOR OR GPS RWY 18, Amdt 12
Alma, GA, Bacon County, VOR OR GPS RWY 33, Amdt 7
Waynesville, MO, Waynesville Regional Airport at Forney Field, VOR RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, VOR RWY 32, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, LOC RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, NDB/DME RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, NDB RWY 32, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, GPS RWY 14, Orig
Waynesville, MO, Waynesville Regional Airport at Forney Field, GPS RWY 32, Orig
Chambersburt, PA, Chambersburg Muni, GPS RWY 24, Orig
Reedsville, PA, Mifflin County, GPS RWY 24, Orig
Richmond, VA, Richmond Intl, VOR OR GPS RWY 16, Amdt 26
Richmond, VA, Richmond Intl, VOR RWY 20, Orig
Richmond, VA, Richmond Intl, VOR/DME RWY 20, Orig, Cancelled
Richmond, VA, Richmond Intl, VOR OR GPS RWY 25, Amdt 15
Richmond, VA, Richmond Intl, VOR RWY 34, Amdt 22
Saluda, VA, Hummel Field, GPS RWY 36, Orig
Lewisburg, WV, Greenbrier Valley, VOR OR GPS–A, Amdt 7, Cancelled

[FR Doc. 98–31782 Filed 11–27–98; 8:45 am]
BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50627A; FRL–6033–6]

RIN 2070–AB27

Significant New Uses of Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for four chemical substances which were the subject of premanufacture notices (PMNs). Today's action requires persons who intend to manufacture, import, or process these substances for a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the substance for a use designated by this SNUR as a significant new use. The required notice will provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

DATES: This rule is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document are available from the EPA Home Page at the **Federal Register**-Environmental Documents entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

This SNUR will require persons to notify EPA at least 90 days before commencing manufacturing or processing of a substance for any activity designated by this SNUR as a significant new use. The supporting rationale and background to this rule are more fully set out in the preamble to EPA's first direct final SNUR published in the **Federal Register** of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the rules and on the basis for significant new use designations including provisions for developing test data.

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under § 721.10.

II. Applicability of General Provisions

General provisions for SNURs appear under 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of TSCA section 5(b) and 5(d)(1), the exemptions authorized by section 5 (h)(1), (2), (3), and (5) of TSCA, and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5 (e), 5(f), 6, or 7 of TSCA to control the activities on which it has received the SNUR notice. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret TSCA section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Background

EPA proposed SNURs for four chemical substances, which were the subject of PMNs P–95–1584, P–96–1674/1675, and P–97–267 in the **Federal Register** of August 13, 1997 (62 FR 43297) (FRL–5720–2). The background and reasons for the SNURs are set forth in the preamble to the proposed rule. EPA received no comments regarding P–96–1674/1675 and will issue the rules as proposed. EPA received comments concerning P–97–267 and P–95–1584. EPA's response to the comments is discussed in this unit. EPA is issuing P–97–267 as proposed and is issuing P–95–1584 as a modified final rule.

The submitter of P–97–267 was the only commenter for the proposed SNUR. While the commenter did not object to the specific language required in the material safety data sheet (MSDS) in the proposed SNUR, the commenter did object to EPA's requiring any language in an MSDS under TSCA such as those requirements for SNURs at § 721.72. The commenter's position is that development and preparation of MSDS's fall under the criteria set forth under the Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard, 29 CFR part 1910.1200. The commenter stated that requiring specific language on an MSDS under TSCA would interfere with the ongoing process of developing the MSDS under OSHA's Hazard Communication Standard as new toxicological information is developed.

EPA strongly disagrees with this position for several reasons. The hazard communication requirements at § 721.72 were designed to parallel OSHA's hazard communication standard as closely as possible. For further background consult the preamble to EPA's General Provisions for New Chemical Follow-Up, published July 27, 1989 (54 FR 31298). The language dictated by this SNUR does not affect the ongoing process of modifying or updating an MSDS with other statements as new information is received.

In the unlikely event that the commenter develops new toxicological data contradicting the acute toxicity studies already conducted on the substance demonstrating potential lethality via the oral, dermal, inhalation, and ocular routes of exposure, the submitter may submit a significant new use notice or can petition for modification of the SNUR based on the new toxicity data.

In order to prevent potential unreasonable risks or significant changes in exposure under TSCA, EPA will require specific hazard communication warnings in TSCA 5(e) consent orders and SNURs. EPA thinks it is especially important in this case to warn workers of the potentially lethal hazard. It is EPA's position that any delay in updating the specific MSDS language mandated by the SNUR is far outweighed by the potential change in exposure by not adequately warning potentially exposed workers of the lethality of this compound.

The submitter of P–95–1584 was the only commenter for the proposed SNUR. The commenter objected to the molecular weight designation in the proposed SNUR, stating that commencement of manufacture or

import of the PMN substance with a number average molecular weight in the range from 707–1051 daltons as described in the PMN had already occurred. As this is an existing use, EPA concurs that it is unable to finalize the SNUR as proposed. However, in order to prevent potential exposures to low molecular weight forms of this PMN substance, EPA is issuing a final SNUR requiring 90-day notification before any manufacture, processing, or use of the substance with a number average molecular weight less than 700 daltons.

The commenter stated that EPA's concerns for the PMN substance arose solely from the low molecular weight species (LMWS) and EPA had no objection to importation of the high molecular weight species (HMWS).

EPA disagrees with this statement. Based on the existing toxicity and exposure data, EPA was unable to make an unreasonable risk finding for the HMWS of the PMN substance. While it is true that the potential toxicity of the HMWS decreases as the molecular weight increases, EPA would have preferred significant new use notification at the molecular weight stated in the proposed SNUR to ensure that no significant new exposures occurred. The HMWS can have a number average molecular weight as low as 700 daltons. As the molecular weight approaches 700 daltons the potential toxicity of the PMN substance becomes more like that of the LMWS.

The commenter stated that the specific uses referenced in the proposed SNUR, a phenolic resin substitute for wood adhesives, rubber tackifier, and brake pads; an additive to enhance degradibility of polymer blends; and a moisture barrier for paper lamination were projected uses for the HMWS of the PMN substance and should not be considered when estimating potential exposures to the LMWS. The commenter also noted that after substantially lowering its estimated production volume of the HMWS of the PMN substance and eliminating completely its production volume estimate of the LMWS, EPA's risk assessment remained the same and stated that any exposure estimates should be based on the revised production volume limit of the HMWS. The commenter also stated that information based on existing uses of the HMWS of the PMN substance cannot be used as a basis for a SNUR applying to the LMWS of the PMN substance.

Before addressing each comment specifically, EPA is reiterating the following considerations it made when deciding to issue a SNUR for the PMN substance:

1. As a polymeric substance that is already on the TSCA Inventory, the PMN substance may be manufactured or imported at any molecular weight or range of molecular weights without further notification even when the different molecular weight species can and do exhibit different physical and toxicological properties.

2. The stated purpose of the SNUR was to require 90-day notification before any release of the LMWS of the PMN substance to the environment.

3. When considering the potential change in exposures and production volumes for a SNUR, EPA must consider all potential manufacturers, importers, and processors and not just the PMN submitter.

The commenter questioned the applicability of the specific uses cited in the proposed SNUR to the LMWS of the PMN substance. It is EPA's finding that any use of the LMWS warrants notification in order to evaluate potential releases. The original PMN submitted for the LMWS and the uses of the HMWS are merely evidence that usage of the LMWS is possible.

The commenter also questioned why, when the estimated production volume was reduced, that the risk assessment remained the same. EPA did not change its risk assessment because its analysis of the potential market for the PMN substance did not agree with the submitter's revised estimate. In addition, when notifying the Agency of its reduced estimated production volume, the commenter also informed EPA of the estimated production volume of its potential customers who would import the PMN substance directly. The estimated production volume of the PMN substance imported directly by customers was high enough that EPA's original risk assessment was not changed.

The commenter stated that information, such as use and production volume information, specific to a chemical substance for an existing use cannot be used as a basis for a SNUR for another substance. EPA strongly disagrees with this statement. While it is true that a significant new use cannot be designated when the use is ongoing, EPA can and does use information regarding existing use of similar chemicals as a basis for a SNUR for other chemicals. When evaluating new chemical substances under section 5(a)2 or 5(e) of TSCA, reasonable estimates of production volume, use, and exposure can only be based on past experience with other chemicals and their existing uses.

This paragraph summarizes and reiterates EPA's findings for P–95–1584. Based on a structure-activity relationship analogy to similar phenols and aldehydes, EPA is concerned for environmental toxicity effects at concentrations as low as 10 parts per billion (ppb) in surface waters, especially the LMWS of the PMN substance. Because the substance is a polymer, once it is placed on the TSCA Inventory, any manufacturer, importer, or processor may use the PMN substance of any molecular weight. This is true even if different molecular weights have different physical and toxicological properties. Based on the potential uses and production volume of the PMN substance, EPA finds that exposures may result in toxicity to the aquatic environment. To prevent any significant change in exposures, EPA is designating any manufacture, import, or processing of the PMN substance at a number average molecular weight less than 700 daltons as a significant new use. This designation of molecular weight is different from the proposed rule because existing use of the PMN substance occurred at a number average molecular weight no lower than 707 daltons.

IV. Objectives and Rationale of the Rule

During review of the PMNs submitted for the chemical substances that are subject to this SNUR, EPA determined that one or more of the criteria of concern established at § 721.170 were met. EPA is issuing this SNUR for specific chemical substances which have undergone premanufacture review to ensure that:

1. EPA will receive notice of any company's intent to manufacture, import, or process a listed chemical substance for a significant new use before that activity begins.

2. EPA will have an opportunity to review and evaluate data submitted in a SNUR notice before the notice submitter begins manufacturing, importing, or processing a listed chemical substance for a significant new use.

3. When necessary, to prevent unreasonable risks, EPA will be able to regulate prospective manufacturers, importers, or processors of a listed chemical substance before a significant new use of that substance occurs. Issuance of a SNUR for a chemical substance does not signify that the substance is listed on the TSCA Inventory. Manufacturers, importers, and processors are responsible for ensuring that a new chemical substance subject to a final SNUR is listed on the TSCA Inventory.

V. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require developing any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. The preamble to the proposed SNUR lists recommended tests (if any) that would address the potential risks of the substances.

The recommended studies may not be the only means of addressing the potential risks of the substance. However, SNUNs submitted for significant new uses without any test data may increase the likelihood that EPA will take action under TSCA section 5(e), particularly if satisfactory test results have not been obtained from a prior submitter. EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substances.
2. Potential benefits of the substances.
3. Information on risks posed by the substances compared to risks posed by potential substitutes.

VI. Procedural Determinations

EPA is establishing through this rule some significant new uses which have been claimed as Confidential Business Information (CBI). EPA is required to keep this information confidential to protect the CBI of the original PMN submitter. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI. This procedure appears in § 721.1725(b)(1) and is similar to that in § 721.11 for situations where the chemical identity of the substance subject to a SNUR is CBI. This procedure is cross-referenced in each of these SNURs.

A manufacturer or importer may request EPA to determine whether a proposed use would be a significant new use under this rule. Under the procedure incorporated from § 721.1725(b)(1), a manufacturer or importer must show that it has a bona fide intent to manufacture or import the substance and must identify the specific use for which it intends to manufacture or import the substance. If EPA concludes that the person has shown a bona fide intent to manufacture or import the substance, EPA will tell the person whether the use identified in the bona fide submission would be a significant new use under the rule. Since most of the chemical identities of the substances subject to these SNURs are also CBI, manufacturers and processors can combine the bona fide submission under the procedure in § 721.1725(b)(1) with that under § 721.11 into a single step.

VII. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

To establish a significant ''new'' use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule have recently undergone premanufacture review. In cases where EPA has not received a notice of commencement (NOC) and the substance has not been added to the Inventory, no other person may commence such activities without first submitting a PMN. For substances for which an NOC has not been submitted at this time, EPA has concluded that the uses are not ongoing. However, EPA recognizes in cases when chemical substances identified in this SNUR are added to the Inventory prior to the effective date of the rule, the substances may be manufactured, imported, or processed by other persons for a significant new use as defined in this rule before the effective date of the rule. However, all four of the substances contained in this rule have CBI chemical identities, and since EPA has received a limited number of post-PMN bona fide submissions, the Agency believes that it is highly unlikely that any of the significant new uses described in the following regulatory text are ongoing.

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of section 5(a)(1)(B) of TSCA is best served by designating a use as a significant new use as of the date of publication rather than as of the effective date of the rule. Thus, persons who begin commercial manufacture, import, or processing of the substances regulated through this SNUR will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between publication and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

VIII. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50627A).

IX. Public Record

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–50627A (including comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC.

X. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' subject to review by the Office of Management and Budget (OMB). In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), nor does it involve special considerations of environmental justice related issues as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or additional OMB review in accordance with Executive Order 13045, entitled *Protection of*

Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note).

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval.

If an entity were to submit a significant new use notice to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review and submit the required significant new use notice.

Send any comments about the accuracy of the burden estimate, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the Director, OPPE Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M St., SW., Washington, DC 20460, with a copy to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Please remember to include the OMB control number in any correspondence, but do not submit any completed forms to these addresses.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency has previously certified, as a generic matter, that the promulgation of a SNUR does not have a significant adverse economic impact on a substantial number of small entities. The Agency's generic certification for promulgation of new SNURs appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), 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 OMB, 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 officials 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. This rule does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XI. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: November 16, 1998.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR part 721 is amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.555 to subpart E to read as follows:

§ 721.555 Alkyl amino nitriles (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substances identified generically as alkyl amino nitriles (PMNs P–96–1674 and P–96–1675) are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63

(a)(2)(iii), (a)(4), (a)(5)(i), (a)(6)(ii),(a)(6)(v), and (c). A full face shield is required if splashing or spraying occurs.

(ii) *Hazard communication program.* Requirements as specified in § 721.72 (c)(1) and (c)(2)(iv). The MSDS required by this paragraph shall include the following statement: Ocular exposure may cause death.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (g) and (l).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (d), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

3. By adding new § 721.2077 to subpart E to read as follows:

§ 721.2077 Substituted carbazate (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as a substituted carbazate (PMN P–97–267) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Hazard communication program.* Requirements as specified in § 721.72 (c)(1) and (c)(2)(iv). The MSDS required by this paragraph shall include the following statements: Overexposure to this material may cause severe acute toxicity including death. This concern is particularly true with respect to direct contact to the eyes. Exposure to the eyes may cause severe acute toxicity including death.

(ii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80 (a), (b), (c), and (j).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), (h), and (i) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to this section.

4. By adding new § 721.5460 to subpart E to read as follows:

§ 721.5460 Organosolv lignin.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as an organosolv lignin (PMN P–95–1584; CAS No. 8068–03–9) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any manufacture, processing, or use of the substance with a number average molecular weight less than 700 daltons.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125 (a), (b), (c), and records documenting compliance with the designated molecular weight requirements are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

[FR Doc. 98–31680 Filed 11-27-98; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–43

[FPMR Amendment H–198]

RIN 3090–AG64

Excess Personal Property Reporting Requirements

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; withdrawal.

SUMMARY: Federal Property Management Regulations (FPMR) Amendment 198 (FR Document 98–20010) published at 63 FR 40058, July 27, 1998, and effective on December 1, 1998, is withdrawn. The reason is that an issue has been raised that calls into question some aspects of the rule: one aspect being the reference to the label ''Excellent'' when coding property for disposal and the implications this has for Federally-owned, contractor-held inventory. A revised regulation will be published in the **Federal Register** as a proposed rule with a 60-day request for comment.

EFFECTIVE DATE: The final rule published at 63 FR 40058 is withdrawn November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Martha Caswell, Director, Personal Property Management Policy Division (MTP) 202–501–3828.

Dated: November 23, 1998.

David J. Barram,

Administrator of General Services.

[FR Doc. 98–31827 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–24–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–123, RM–8875]

Radio Broadcasting Services; Tullahoma, Lynchburg, and Petersburg, TN.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document denies a proposal by Tri-County Broadcasting, Inc. for a Channel 296A allotment at Tullahoma, Tennessee, as well as counterproposals filed by Petersburg Broadcasting for a Channel 296A allotment at Petersburg, Tennessee, and Hopkins-Hall Broadcasting, Inc., and Big River Broadcasting Corporation for Channel 296A at Lynchburg, Tennessee. *See* 61 FR 55781, October 29, 1996. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* adopted November 18, 1998, and released November 20, 1998. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3805, 1231 M Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

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

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

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 98–31687 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 63, No. 229

Monday, November 30, 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

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV98–981–4]

Almonds Grown in California; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a referendum be conducted among eligible growers of California almonds to determine whether they favor continuance of the marketing order regulating the handling of almonds grown in the production area.

DATES: The referendum will be conducted from February 1 through February 19, 1999. To vote in this referendum, growers must have been producing California almonds during the period August 1, 1997, through July 31, 1998.

ADDRESSES: Copies of the marketing order may be obtained from the office of the referendum agent at 2202 Monterey Street, suite 102B, Fresno, California 93721, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone (209)487–5901; fax (209)487-5906; or Anne Dec, Rulemaking Team Leader, Marketing Order Administration Branch, Fruit & Vegetable Programs, Agricultural Marketing Service, Department of Agriculture, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; fax (202)205–6632.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 981 (7 CFR part 981), hereinafter referred to as the ''order'' and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act,'' it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by the growers. The referendum shall be conducted during the period February 1, through February 19, 1999, among California almond growers in the production area. Only growers that were engaged in the production of California almonds during the period of August 1, 1997, through July 31, 1998, may participate in the continuance referendum.

The Secretary of Agriculture has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The Secretary would consider termination of the order if less than two-thirds of the growers voting in the referendum and growers of less than two-thirds of the volume of California almonds represented in the referendum favor continuance. In evaluating the merits of continuance versus termination, the Secretary will not only consider the results of the continuance referendum. The Secretary will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, handlers, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In any event, section 8c(16)(B) of the Act requires the Secretary to terminate an order whenever the Secretary finds that a majority of all growers affected by the order favor termination, and such majority produced for market more than 50 percent of the commodity covered under such order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the ballot materials to be used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0071 for California almonds. It has been estimated that it will take an average of 10 minutes for each of the approximately 7,000 growers of California almonds to cast a ballot. Participation is voluntary. Ballots postmarked after February 19, 1999, will not be included in the vote tabulation.

Martin Engeler of the California Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, is hereby designated as the referendum agent of the Secretary of Agriculture to conduct such referendum. The procedure applicable to the referendum shall be the ''Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended'' (7 CFR 900.400 *et. seq*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agent and from his appointees.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: November 20, 1998.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 98–31787 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–069–1]

Horses from Australia and New Zealand; Quarantine Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations regarding the importation of horses to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. We believe this action is warranted because neither country has ever had a reported case of dourine, New Zealand has never had a reported case of

glanders, and Australia has not had a reported case of glanders since 1891. It appears that horses imported from Australia and New Zealand would pose a negligible risk of introducing dourine and glanders into the United States.

DATES: Consideration will be given only to comments received on or before January 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–069–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–069–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Glen I. Garris, Supervisory Staff Officer, Regionalization Evaluation Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231, (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various animal diseases, including dourine and glanders. Dourine and glanders are potentially fatal equine diseases that are not known to exist in the United States.

Under § 93.308(a)(3) of the regulations, horses imported from any part of the world must, in order to qualify for release from quarantine, test negative to official tests for dourine, glanders, equine piroplasmosis, equine infectious anemia, and any other tests and procedures that may be required by the Administrator of the Animal and Plant Health Inspection Service (APHIS) to determine their freedom from communicable diseases.

The Governments of Australia and New Zealand have requested that the U.S. Department of Agriculture exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. Australia has never had a reported case of dourine, and the last case of glanders in that country was reported in 1891. New Zealand has never had a reported case of dourine or glanders.

The Governments of Australia and New Zealand also provided APHIS with documentation about their veterinary infrastructure, animal health monitoring system, trading practices with other regions, and other pertinent information to support their requests. Copies of this documentation may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

APHIS has reviewed the documentation, and based on that documentation, we believe that horses imported from Australia and New Zealand would pose a negligible risk of introducing dourine and glanders into the United States. Therefore, we are proposing to amend 93.308(a)(3) of the regulations to exempt horses imported from Australia and New Zealand from testing for dourine and glanders during the quarantine period. However, horses imported from Australia and New Zealand would still have to be quarantined and tested for equine piroplasmosis, equine infectious anemia, and undergo any other tests and procedures that may be required by the Administrator to determine their freedom from communicable diseases.

Miscellaneous

In § 93.308(a)(3), footnote 14 states that official tests for dourine and glanders are performed at the Veterinary Services Laboratory in Beltsville, MD; however, those tests are currently performed at the National Veterinary Services Laboratories in Ames, IA. We are proposing to amend the footnote to reflect the current location. We are also proposing to make several nonsubstantive editorial changes to § 93.308(a)(3).

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The 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.

This proposed rule would exempt horses imported into the United States from Australia and New Zealand from the requirement for testing for dourine and glanders during the quarantine period. As explained previously in this document, we believe that there is a negligible risk of horses imported from Australia and New Zealand introducing dourine and glanders into the United States.

U.S. importers of horses from Australia and New Zealand would be affected by this rule if it is adopted. These importers would no longer be required to have horses that are imported from Australia and New Zealand tested for dourine and glanders during the quarantine period. As a consequence, U.S. importers would save $18.00 for the cost of both tests. However, horses imported from Australia and New Zealand would still have to be tested for equine piroplasmosis, equine infections anemia, and undergo any other tests and procedures that may be required by APHIS to determine their freedom from communicable diseases.

According to the 1992 Census of Agriculture, the United States had a total population of at least 2,049,522 horses. The United States is a net exporter of horses. In 1997, the United States exported 56,953 horses valued at $271 million, and imported 23,794 horses valued at $134 million. However, only 45 of the horses were imported from Australia, and 130 of the horses were imported from New Zealand. The total number of horses imported into the United States from Australia and New Zealand is small due to the distances the horses must travel and the high transportation costs, which are reflected in the prices of the horses. For example, horses imported from Canada have an average price of $1,490, while horses imported from Australia and New Zealand have an average price of $20,682, and $13,781, respectively. Given these relatively high prices and the rather small expected savings of $18 per horse imported, we do not expect this proposed action would result in an increase in the number of horses imported into the United States from Australia and New Zealand, nor do we expect this proposed action would have a significant economic impact on U.S. importers of horses from Australia and New Zealand, regardless of their size.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 93.308, paragraph (a)(3) would be revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(3) To qualify for release from quarantine, all horses must test negative to official tests for dourine, glanders, equine piroplasmosis, and equine infectious anemia.[14] However, horses imported from Australia and New Zealand are exempt from testing for dourine and glanders. In addition, all horses must undergo any other tests, inspections, disinfections, and precautionary treatments that may be required by the Administrator to determine their freedom from communicable diseases.

* * * * *

Done in Washington, DC, this 20th day of November 1998.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–31711 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–34–P

[14] Because the official tests for dourine and glanders are performed only at the National Veterinary Services Laboratories in Ames, IA, the protocols for those tests have not been published and are, therefore, not available; however, copies of ''Protocol for the Complement-Fixation Test for Equine Piroplasmosis'' and ''Protocol for the Immuno-Diffusion (Coggins) Test for Equine Infectious Anemia'' may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import-Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 712

Credit Union Service Organizations

AGENCY: National Credit Union Administration

ACTION: Proposed rule.

SUMMARY: NCUA proposes several changes to its recently revised rule concerning federal credit unions' (FCUs') investments in and loans to credit union service organizations (CUSOs). The proposed changes: delete a provision preventing FCUs from investing in or lending to CUSOs in which non-credit union depository institutions are co-investors or lenders; revise a provision limiting CUSO investments in non-CUSO service providers; delete a provision preventing FCUs from investing in the debentures of a CUSO; and clarify how the NCUA measures the limit on an FCU's investment in or loans to CUSOs. The proposed changes decrease the regulatory burden for FCUs investing in or lending to CUSOs.

DATES: Comments must be received by March 1, 1999.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428. Fax comments to (703) 518–6319. E-mail comments to boardmail@ncua.gov. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540; or Linda Groth, Program Officer, Office of Examination and Insurance, at the above address or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION:

Background

Section 107 of the Federal Credit Union Act (the Act) authorizes FCUs to make loans to and invest in CUSOs subject to certain funding limits and other restrictions. 12 U.S.C 1757. As to funding, § 107(5)(D) authorizes an FCU to lend, in the aggregate, up to 1% of its shares and undivided earnings to CUSOs, and § 107(7)(I) authorizes an FCU to invest up to an additional 1% in the shares, stocks, or obligations of a CUSO. 12 U.S.C. 1757(5)(D), (7)(I). Other restrictions include § 107(5)(D)'s requirement that a service organization ''primarily serve the needs of its member credit unions'' and § 107(7)(I)'s prohibition against using the CUSO authority to acquire control of other specified organizations such as trade associations and other financial institutions.

NCUA's implementing regulations have, since their inception, combined these lending and investment provisions in a single ''CUSO rule.'' Now codified at 12 CFR part 712, the CUSO rule was most recently revised in March 1998. 63 FR 10743 (March 5, 1998). That revision reflected a comprehensive updating and streamlining of the rule. Among other changes, the revised rule clarifies NCUA's authority to examine CUSO books and records, adds to the list of permissible CUSO services, and simplifies the legal opinion requirements. Upon reconsideration of the revised rule, NCUA now believes that three provisions of the rule are unnecessarily restrictive and should be changed and that one provision needs further clarification.

Proposed Changes

The first proposed change concerns the question of what other organizations may participate with FCUs in the formation and operation of a CUSO. In this connection, § 712.2(c) of the current rule states that ''[a]n FCU may invest in, or loan to, a CUSO by itself or with other credit unions, or with non-depository institution parties not otherwise prohibited by § 712.6 or this part.'' This language prohibits an FCU from investing in or lending to a CUSO in which one or more banks or thrift institutions are also participating lenders or investors.

Explaining this prohibition, the preamble to the current rule cited concern about non-credit union depository institutions participating in credit union service centers, such as shared branches. NCUA was concerned that credit union members would be confused if both NCUSIF and FDIC signs were posted together at shared service centers. 63 FR at 10746. On further consideration, however, NCUA believes any possible confusion can be properly addressed through appropriate disclosures to service center customers. The prohibition on bank and thrift participants is unnecessary and NCUA proposes to revise § 712.2(c) to read: ''A federal credit union may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.'' This language is substantially the same as the rule prior to the March 1998 revision. In addition the proposed rule removes a cross-reference in the current version of § 712.2(c) to § 712.6. Section 712.6 stands on its own to implement the statutory prohibition

against using the CUSO authority to acquire control of certain other organizations such as the trade associations and other depository institutions. 12 U.S.C. 1757(7)(I).

The second change concerns § 712.3(b) of the current rule and the amount a CUSO can invest in other service providers. This paragraph, entitled ''Customer base,'' provides in part ''if in order for the CUSO to provide a permissible service it is necessary for the CUSO to own stock in a service provider not meeting the customer base requirement, then the CUSO can own and buy the minimal amount of service provider stock necessary to provide the service.'' As an example of how this authority can be used, a CUSO might wish to buy stock in a bank or thrift-owned ATM network, in order to make the network available to members of the CUSO's participating credit unions.

Upon further consideration, NCUA believes it is not necessary to limit a CUSO's investment in a service provider to a minimum amount required as a condition of participation in the service provider. If a CUSO can, as a result of an increased investment, obtain a reduced price for goods or services, the CUSO should be free to make that business decision. Accordingly, NCUA proposes to revise the language concerning service providers to permit CUSO investments in non-CUSO service providers if the investment is limited to the amount necessary to participate in the service provider or a greater amount if necessary to obtain a reduced price for goods or services, for the CUSO, its credit unions, or the credit unions' members.

The intent of this provision is to allow a CUSO to invest as much as is necessary to obtain an economic advantage on the goods or services it is receiving. CUSOs would not be permitted to use this provision as independent investment authority. The NCUA Board is interested in receiving comment on this distinction, and on whether the proposed regulatory language achieves the intended result.

NCUA believes it would be clearer for this provision to be set out in that portion of the regulation addressing permissible activities rather than in the section addressing customer base. NCUA proposes to move this provision from the customer base section of the rule, § 712.3(b), and add it as a new subsection (p) to § 712.5 concerning permissible CUSO activities and services.

The third change concerns § 712.2(a) of the current rule that limits an FCU's investment in a CUSO structured as a corporation to the equity of the corporation. The preamble explains that this limitation was a clarification. However, this provision has the effect of prohibiting an FCU from investing in the debentures of a CUSO structured as a corporation, a practice that was previously permissible. NCUA proposes to eliminate this provision because the limitation is more restrictive than the Act, which permits FCUs to invest in the obligations of a CUSO. 12 U.S.C. 1757(7)(I).

Currently, § 712.2(a) states that an FCU can only invest in a limited partnership as a limited partner. This provision is more related to the permissible structure of a CUSO than permissible investments in a CUSO. NCUA believes this provision would be clearer if it is moved from § 712.2(a) to § 712.3(a). In addition, the provision limiting an FCU's investment in a limited liability company to membership is deleted because it is unnecessary.

The final change clarifies that generally accepted accounting principles (GAAP) are to be used in accounting for an FCU's investments in and loans to a CUSO both for purposes of accounting for the regulatory limitations under § 712.2 and the financial statement amounts under § 712.3. In the past, some FCUs have measured both regulatory limitations and financial statement amounts consistent with GAAP while others have measured the regulatory limitation differently, using a concept called aggregate cash outlay.

The aggregate cash outlay practice came about because of a perceived inequity in having to use GAAP in certain situations. If a credit union owns 20% or more, but less than 50% of a CUSO's voting common stock, it is presumed to ''have the ability to exert significant influence'' over the CUSO and GAAP requires the credit union to use the equity method to account for its CUSO investment. Under this method, the FCU records its initial investment and, subsequently, its proportionate share of the CUSO's profits and losses. A situation could arise in which an FCU's initial investment is within the 1% regulatory limitation but, as the CUSO operates with continued profitability and the credit union absorbs its proportionate share of the profits through no additional cash outlay, the FCU exceeds its 1% limitation. This could trigger regulatory action requiring divestiture. Some argue this is contrary to prudent business practice and unfair because it would be penalizing FCUs for investing in profitable CUSOs. To avoid this result, there grew in practice a concept generally known as aggregate cash outlay. Under this concept, the regulatory limitation would only be measured in relation to the actual cash invested or lent to a CUSO, not counting subsequent increases or decreases to this amount growing out of application of equity method accounting.

The Board agrees that divestiture should not be required, but believes it is important for FCUs to account in accordance with GAAP. The proposed rule strikes a balance. It requires FCUs to account in accordance with GAAP for both regulatory and financial reporting purposes. It does not require divestiture or prohibit future investments if the regulatory limitation is exceeded under the equity method without any additional cash outlay.

To accomplish this, new subsections (d) and (e) have been added to § 712.2. Subsection (d) includes the definition of ''paid-in and unimpaired capital and surplus'' that was formerly in subsection (a) and adds the requirement that total investments in and loans to the CUSO be measured consistent with GAAP for regulatory purposes. Section 712.3(c) is revised by adding ''for financial reporting purposes'' to the title.

As an example of how the rule will be applied, if an FCU owns 45% of a CUSO and the CUSO has an annual net income of $50,000, the equity method requires an FCU to book a $22,500 addition to its ''investments in and loans to CUSO'' asset account. If by doing so, the regulatory limitation is reached or exceeded, NCUA will not require divestiture.

Request for Comment

The NCUA Board is interested in receiving comments on the proposed amendments to part 712.

The NCUA Board is also interested in receiving comment on § 712.5(d)(8) which lists cyber financial services as a permissible CUSO activity. The preamble to the current rule defined cyber financial services as ''credit union member financial services that are analogous to services performed for credit union members in a credit union branch and not unrelated services.'' 63 FR at 10753. As part of a CUSO's authority to provide cyber financial services, it may also want to provide other forms of cyber service. The NCUA Board is interested in receiving comment on the scope of services that should be included within the category of cyber financial services.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under 1 million in assets). Because these proposed changes reduce regulatory burden, the NCUA Board has determined and certifies that the proposal does not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

This proposal has no effect on reporting requirements in part 712.

Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The CUSO regulation applies only to FCUs. Thus, the NCUA Board has determined that this proposal does not constitute a ''significant regulatory action'' for purposes of the Executive Order. NCUA will continue to work with the state credit union supervisors to achieve shared goals concerning CUSOs with both FCU and state-chartered credit union participation.

List of Subjects in 12 CFR Part 712

Administrative practices and procedure, Credit, Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on November 19, 1998.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA proposes to amend 12 CFR part 712 as follows:

PART 712—CREDIT UNION SERVICE ORGANIZATIONS

1. The authority citation for part 712 will continue to read as follows:

Authority: 12 U.S.C. 1756, 1757(5)(D), and (7)(I), 1766, 1782, 1784, 1785 and 1786.

2. Amend § 712.2 by removing the second and third sentences of paragraph (a), revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 712.2 How much can an FCU invest in, or loan to, CUSOs, and what parties may be involved?

* * * * *

(c) *Parties.* An FCU may invest in or loan to a CUSO by itself, with other credit unions, or with non-credit union parties.

(d) *Measurement for calculating regulatory limitation.* For purposes of paragraphs (a) and (b) of this section: paid-in and unimpaired capital and surplus means shares and undivided earnings; and total investments in and total loans to CUSOs will be measured consistent with GAAP.

(e) *Divestiture.* If the limitations in paragraph (a) of this section are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the FCU, divestiture is not required. An FCU may continue to invest up to 1% without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

3. Amend § 712.3 by adding a new sentence following the first sentence of paragraph (a), by removing the second sentence of paragraph (b) and by revising the title of paragraph (c) to read as follows:

§ 712.3 What are the characteristics of and what requirements apply to CUSOs?

(a) *Structure.* * * * An FCU may only participate in a limited partnership as a limited partner. * * *

* * * * *

(c) Federal credit union accounting for financial reporting purposes. * * *

* * * * *

4. In § 712.5 add paragraph (p) to read as follows:

§ 712.5 What activities and services are preapproved for CUSOs?

* * * * *

(p) *CUSO investments in non-CUSO service providers:* In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

[FR Doc. 98–31598 Filed 11–27–98; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–295–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–7 series airplanes. This proposal would require removal of all attachment bolts and preload indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by December 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–295–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–295–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Aviation (TCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model DHC–7 series airplanes. TCA advises that on two Model DHC–7 series airplanes, two attachment bolts of the wing-to-fuselage attachment fittings were found broken on each airplane. On one airplane, two attachment bolts were corroded and the head of one attachment bolt had been completely sheared off, and was attached only by the lock wire. A similar incident occurred on another airplane. Failure of the attachment bolts was attributed to stress corrosion cracking, which was caused by moisture contamination of the wing-to-fuselage interface. Such cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997, which describes procedures for removal of all attachment bolts (one at a time) and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings; a one-time visual inspection to detect corrosion of each attachment bolt; and installation of new attachment bolts and PLI washers of the wing-to-fuselage attachment fittings. The service bulletin also describes procedures for notifying Bombardier in the event that corrosion is detected on any attachment bolt of the wing-to-fuselage attachment fittings.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–98–12, dated June 24, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 65 work hours per airplane to accomplish the proposed actions and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,200 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $355,000, or $7,100 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–295–AD.

Applicability: All Model DHC–7 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the attachment bolts of the wing-to-fuselage attachment fittings due to stress corrosion cracking, which could result in reduced structural integrity of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1), (a)(2), and (a)(3) of this AD, in accordance with Bombardier Service Bulletin S.B. 7–57–37, dated August 8, 1997.

(1) Remove all attachment bolts (one at a time), and pre-load indicating (PLI) washers of the wing-to-fuselage attachment fittings.

(2) Perform a one-time visual inspection to detect corrosion of each attachment bolt. If any corrosion is detected, within 10 days after accomplishing the visual inspection, or within 10 days after the effective date of this AD, whichever occurs later, submit a report of the inspection results to Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(3) Install new attachment bolts (one at a time), and new PLI washers of the wing-to-fuselage attachment fittings.

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

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

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

Note 3: The subject of this AD is addressed in Canadian airworthiness directive CF–98–12, dated June 24, 1998.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31700 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–289–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–60 SHERPA Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 SHERPA series airplanes. This proposal would require a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane.

DATES: Comments must be received by December 30, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–289–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–289–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all Short Brothers Model SD3–60 SHERPA series airplanes. The CAA advises that the existing power control cable assemblies are subject to breakage, which is caused by the inflexible construction of the cable. The manufacturer has introduced a more flexible construction of the cable, which was incorporated during production of the subject airplanes, however, the possibility does exist that not all airplanes were modified. Breakage of the power control cable assemblies due to the inflexible construction of the cable, if not corrected, could result in loss of engine power and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Service Bulletin SD3–60 SHERPA–76–1, dated July 1998, which describes procedures for a one-time visual inspection to determine the part number of the power control cable assemblies and pulleys of the engine controls; and replacement of the power control cable assemblies and pulleys (as applicable) with new parts, if necessary. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 004–07–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 28 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 15 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed inspection by this AD on U.S. operators is estimated to be $25,200, or $900 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Short Brothers, PLC: Docket 98–NM–289–AD.

Applicability: All Model SD3–60 SHERPA series airplanes, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent breakage of the power control cable assemblies due to the inflexible construction of the cable, which could result in loss of engine power and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 1,200 flight hours after the effective date of this AD, perform a one-time visual inspection to determine the part number (P/N) of the power control cable assemblies and pulleys of the engine controls, in accordance with Part A of the Accomplishment Instructions of Shorts Service Bulletin SD3–60 SHERPA–76–1, dated July 1998.

(1) If any power control cable assembly having P/N SD3–47–1091 or SD3–47–1094 is found, prior to further flight, replace the power control cable assembly with a new power control cable assembly in accordance with Part B of the Accomplishment Instructions of the service bulletin.

(2) If any pulley having P/N C181605 is found, prior to further flight, replace the pulley with a new pulley in accordance with Part C of the Accomplishment Instructions of the service bulletin.

(b) As of the effective date of this AD, no person shall install on the engine controls of any airplane a cable assembly having P/N SD3–47–1091 or SD3–47–1094, or any pulley having P/N C181605.

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

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

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

Note 3: The subject of this AD is addressed in British airworthiness directive 004–07–98.

Issued in Renton, Washington, on November 20, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–31699 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 19

[Notice No. 870]

RIN 1512–AB58

Distilled Spirits Plant Regulatory Initiative Proposals

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: ATF is proposing changes to the distilled spirits plant regulations to implement the Administration's Reinventing Government effort to reduce the regulatory burden and streamline requirements on the regulated public.

Proposals for change include removing an obsolete provision relating to special (occupational) tax; liberalizing the requirement for approval of changes in plant security personnel or procedures; reducing the paperwork when plant premises are alternated with other premises according to a previously approved plan; providing for alternation of distilled spirits plant and brewery premises; allowing denaturation and manufacture of articles to be done in a single, unified process; specifying marks for packages of spirits withdrawn taxpaid for industrial use; clarifying regulations that refer to a transfer record required when spirits are transferred in bulk from customs custody to the bonded premises of a distilled spirits plant; and incorporating a provision of Industry Circular 80–6 regarding the importation of alcohol fuel.

ATF believes these proposed changes will benefit distilled spirits plant proprietors and other industry members by enabling them to operate more easily and with less regulatory oversight from the Government.

Besides proposing and soliciting comments on these specific changes, ATF is requesting suggestions for additional changes that may, in the future, be proposed for the general system of recordkeeping at distilled spirits plants.

DATES: Written comments on specific proposals for which regulatory language is set forth in this notice must be received by January 29, 1999. Comments suggesting future possible changes pertaining to the general system of recordkeeping at distilled spirits plants must be received by March 30, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 870.

Copies of written comments in response to this notice of proposed rulemaking will be available for public inspection during normal business hours in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Steven C. Simon, Regulations Division, 650 Massachusetts Avenue NW., Washington, DC 20226; telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Delegations of Authority

Since the authorities formerly assigned to the "regional director (compliance)" have been reassigned to other officials, references to "regional director (compliance)" in regulations proposed to be amended or promulgated by this document are proposed to be changed to "appropriate ATF official."

Special Tax Provisions

ATF proposes to delete obsolete provisions in § 19.49(a)(2) which refer to the special (occupational) tax rate applicable to distilled spirits plants in business as of January 1, 1988. There are no substantive changes proposed relating to special tax.

Change in Security Personnel or Procedures

Currently, § 19.153(b) requires an application for amended plant registration (ATF Form 5110.41) to be filed each time there is a change in plant security personnel or procedures. ATF has determined that this requirement may be liberalized without jeopardy to the revenue. Therefore, this notice proposes to amend § 19.153(b) to require a letterhead application for changes in security procedures (§ 19.153(a) (1)–(4)), and a letterhead notice for changes in security personnel (§ 19.153(a)(5)). The plant registration would be updated on an annual basis to incorporate changes made during the preceding year.

Alternation of Premises

Current regulations in §§ 19.203–206 require the filing of a notice on ATF Form 5110.34 every time distilled spirits plant premises are alternated with general premises or with other ATF-regulated premises. However, ATF has determined that this requirement is unnecessary and burdensome when, as frequently occurs, these premises are regularly alternated according to a set plan of operations. Therefore, this notice proposes to amend §§ 19.203–206 to provide that after the proprietor has received approval of the plan (defining the boundary of the premises to be alternated), the alternation may take place pursuant to records to be kept in a logbook. The content of those records is prescribed in new § 19.781. Further, it is proposed to provide for alternation of distilled spirits plant and brewery premises, which is not currently provided for. With respect to alternation of proprietors under § 19.201 and alternation with customs premises under § 19.202, this notice proposes to substitute a letterhead notice for the filing of Form 5110.34; thus, that form (OMB control number 1512–0202) will become obsolete. The notice of suspension of production operations for 90 days or more in section A of Form 5110.34 will be covered by an amendment of § 19.311.

Denaturation and Article Manufacture

Regulations in § 19.454 require gauges both before and after denaturation. If followed, this requirement prevents a distilled spirits plant from conducting denaturation and article manufacture in a single, unified process. A unified process may be desirable, for example, when manufacture of an article involves addition of more of the same chemicals as are used as denaturants in making the denatured spirits formula from which the article is manufactured. Clearly, in this case, and in other similar situations, it would be helpful to be able to add the entire quantity of chemicals for denaturation and article manufacture in a single step, rather than pausing to take a gauge after the chemicals necessary to denature the spirits had been added. The purpose of requiring gauges before and after denaturation is to obtain accurate measurements of spirits used for denaturation, and of denatured spirits produced. However, when denatured spirits and articles are manufactured in a unified process, the quantity of denatured spirits produced can be accurately determined by a computation. Therefore, this notice proposes to amend § 19.454 to allow proprietors using such a process to use a prescribed method of computation to determine the quantity of denatured spirits produced.

Marks on Packages of Tax-Paid Industrial Spirits

Regulations in § 19.596 require certain information to be marked on "packages" (i.e. barrels or drums) of distilled spirits. These regulations primarily envision barrels of beverage spirits (e.g. whisky) entering bonded storage. Thus, in § 19.596(a), only "rated capacity" need

be shown on packages filled in production or storage, since the actual contents of wooden barrels changes during the aging process. For packages filled in processing (§ 19.596(b)), not even the rated capacity is required; the proof must be shown, but not the quantity. In general, there is no requirement for quantity of contents to be shown on packages. This may be appropriate for beverage spirits, which will be put in bottles before withdrawal from bond, but it can be problematic for industrial spirits. Particularly, if spirits in drums are withdrawn on tax determination for shipment to a manufacturer of nonbeverage products, that manufacturer does not have a ready means of determining their contents for taking a physical inventory. Moreover, the absence of a requirement for quantity of contents to be shown on packages is abnormal, when compared with regulations governing similar situations. Thus, quantity of contents must be shown on cases of spirits filled in processing (§ 19.607), on cases of industrial alcohol (§ 19.608), on containers of imported spirits (§ 19.484), on containers of spirits from an alcohol fuel plant (§ 19.1008), on bulk conveyances (§ 19.606), and even on packages of denatured spirits (§ 19.601). ATF feels that the advantage to nonbeverage manufacturers in having contents information as a required package mark outweighs any added burden on distilled spirits plant proprietors in being required to provide such information. Therefore, this notice proposes an amendment to § 19.605 to require proof, tare, and proof gallons to be marked on packages of spirits withdrawn on determination of tax.

Transfer Record for Shipments From Customs Custody

The transfer record for spirits being received into ATF bond from customs custody is mentioned in § 19.770 in a way that implies that this transfer record would be prepared under that section. However, 27 CFR 251.138 prescribes the information for the transfer record covering such transfers, and that information is different in several ways from the information required for domestic transfers by § 19.770. Therefore, it is proposed to amend § 19.770 to clarify that the record required for transfer of spirits from customs custody must be prepared in accordance with § 251.138. ATF also proposes to add a sentence to § 19.481, cross referencing the requirements of part 251 pertaining to transfers from customs custody.

Importation of Alcohol Fuel

Industry Circular 80–6, titled ''Distilled Spirits for Fuel Use,'' explained that an alcohol fuel plant may receive shipments of imported alcohol from customs custody, provided the alcohol was not produced from petroleum, natural gas, or coal. Subsequently, ATF has determined that, under the statute, this privilege only applies to medium and large alcohol fuel plants, since small plants are not covered by a bond. (Nontaxpaid bulk spirits transferred from customs custody are required by 26 U.S.C. 5232 to go to premises that are ''bonded.'') Further, 26 U.S.C. 5181(a)(1) provides that an alcohol fuel plant may be established solely for the purpose of (A) producing, processing, and storing, and (B) using or distributing distilled spirits for fuel use. Therefore, an alcohol fuel plant may not be established solely for the purpose of receiving and processing imported alcohol, since no distilled spirits would be ''produced.'' For the same reason, imported spirits received at an alcohol fuel plant must be subjected to some form of manufacture or processing (such as addition of materials to render the spirits unfit for beverage use). However, 26 U.S.C. 5232 prevents such spirits from being redistilled or denatured if they were imported at less than 185° proof. This notice proposes to incorporate expressly these determinations in the regulations by adding a new § 19.1003.

General System of Recordkeeping

In general, the system of recordkeeping prescribed in part 19 is derived from the system that was in place prior to the institution of ''all-in-bond'' in 1980. In many instances, use of commercial records is prescribed in lieu of previously required Government forms, but the content of the commercial record must be the same as was formerly shown on the Government form. Thus, the present recordkeeping system is not as different from the former system as it might appear. Ultimately, the present system descends from the era when Federal officers were permanently stationed at distilled spirits plants and kept many of the records that are now required to be kept by the plant proprietors. ATF feels that this is a situation that calls for examination under the Administration's Reinventing Government initiative. Modern methods of recordkeeping, particularly the use of computers, should be taken into account. The entire system should be looked at globally to determine whether the Government's goal of ensuring that all distilled spirits are accounted for, from production to taxpayment, can be met by a modern system that is based as much as possible on the industry's own recordkeeping methods. Before proposing specific regulatory changes, comments and suggestions should be considered from all segments of the distilled spirits industry and others concerned. Accordingly, this notice requests such comments and suggestions.

Public Participation—Written Comments

ATF requests comments from all interested persons. All comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material which a respondent considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of any person submitting a comment is not exempt from disclosure.

Comments may be submitted by facsimile transmission to (202) 927–8602, provided the comments: (1) are legible; (2) are 8½″ x 11″ in size; (3) contain a written signature; and (4) are three pages or less in length. Please mail (do not FAX) any comments that exceed three pages. Receipt of FAX transmittals will not be acknowledged. Facsimile transmitted comments will be treated as originals.

Disclosure

Copies of this notice and written comments will be available for public inspection during normal business hours at the ATF Reading Room, located in the ATF Reference Library, Room 6480, 650 Massachusetts Avenue NW., Washington, DC.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action, because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The collections of information contained in regulations proposed to be amended by this notice have been previously reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control numbers 1512–0202, 1512–0206, 1512–0215, 1512–0250, and 1512–0461. The proposed amendments are expected to result in a net annual reduction of 450 burden hours, due to (1) the elimination of control number 1512–0202 (1,000 burden hours), (2) a net increase of 50 burden hours under control number 1512–0206, and (3) an increase of 500 burden hours under control number 1512–0250. Comments on these collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Bureau of Alcohol, Tobacco and Firearms, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Chief, Document Services Branch, Room 3110, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226.

Regulatory Flexibility Act

Pursuant to § 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. As discussed elsewhere in this preamble, this proposed rule will ease the regulatory burden on small proprietors and will not: (1) impose, or otherwise cause, a significant increase in recordkeeping or other compliance burdens on a substantial number of small entities or (2) have significant secondary or incidental effects on a substantial number of small entities. The factual basis for this certification is that the proposed regulatory amendments will result in a reduced burden on small entities. Accordingly, an initial regulatory flexibility analysis is not required.

Drafting Information

This notice was written by Steven C. Simon, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations (Government agencies), Chemicals, Claims, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Stills, Surety bonds, Transportation, Vinegar, Virgin Islands, Warehouses, Wine.

Issuance. Accordingly it is proposed to amend Title 27, Code of Federal Regulations, as follows:

PART 19—DISTILLED SPIRITS PLANTS

Paragraph 1. The authority citation for 27 CFR Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2–3. Section 19.49(a) is revised to read as follows:

§ 19.49 Liability for special tax.

(a) *Proprietor of distilled spirits plant.* Except as provided in § 19.906, every proprietor of a distilled spirits plant shall pay a special (occupational) tax at a rate specified by § 19.50. The tax shall be paid on or before the date of commencing business as a distilled spirits plant proprietor, and thereafter every year on or before July 1. On commencing business, the tax shall be computed from the first day of the month in which liability is incurred, through the following June 30. Thereafter, the tax shall be computed for the entire year (July 1 through June 30).

* * * * *

Par. 4. Section 19.153 is amended by revising paragraph (b) to read as follows:

§ 19.153 Statement of physical security.

* * * * *

(b) *Changes.* For changes in any of the information provided under paragraphs (a)(1) through (a)(4) of this section, the proprietor shall submit a letterhead application to the appropriate ATF official and receive approval thereof before instituting the change. For changes in security personnel listed in paragraph (a)(5) of this section, the proprietor shall submit a letterhead notice within 30 days after the change. Annually on May 1 (or other date approved by the appropriate ATF official), if there have been any changes, the proprietor shall submit an application for amended registration reflecting the changes made during the preceding year.

* * * * *

Par. 5. In § 19.201, the second, fourth, and last (fifth) sentences of paragraph (a) are revised, and new paragraph (f) is added, to read as follows:

§ 19.201 Procedure for alternating proprietors.

(a) *General.* * * * Where operations by alternating proprietors are limited to parts of the plant, the notice of registration shall describe the areas, rooms or buildings, or combinations thereof, which will be alternated, indicate the method to be used to separate the premises being alternated from those not being alternated, and be accompanied by special diagrams designating the parts of the plant which are to be alternated. * * * Once such qualifying documents have been approved, the plant or parts thereof may be alternated pursuant to letterhead notices filed in accordance with paragraph (f) of this section by each proprietor involved in the alternation. A single notice may be filed if it is signed by an authorized representative of each proprietor.

* * * * *

(f) *Filing of notices.* The letterhead notices required by paragraph (a) of this section shall be submitted to the area supervisor for transmission to the appropriate ATF official. Separate notices shall be submitted for each alternation of premises. The notices must be received by the area supervisor prior to the effective date of the alternation and shall contain the following information:

(1) The name and plant number of the proprietor(s) filing the notice.

(2) Identification (by name and plant number) of the outgoing proprietor and the incoming proprietor.

(3) The date and hour of the alternation.

(4) Identification of any applicable special diagrams, in the registration documents of each proprietor named under paragraph (a)(1) of this section, depicting the portions of the premises to be alternated.

(5) The purpose of the alternation.

(6) Whether distilling materials, unfinished or finished spirits, denatured spirits, or wine will be transferred to the incoming proprietor.

(7) Whether denatured spirits or articles in the processing account will be retained in locked tanks during the period of alternating proprietorship.

* * * * *

Par. 6. In § 19.202, the fifth sentence of paragraph (a) and the entirety of paragraph (c) are revised, and new paragraph (d) is added, to read as follows:

§ 19.202 Alternate use of premises and equipment for customs purposes.

(a) *General.* * * * Once such qualifying documents have been approved by the appropriate ATF official, the designated premises and equipment may be alternately curtailed or extended pursuant to a letterhead notice filed in accordance with paragraph (d) of this section. * * *

* * * * *

(c) *Exception.* Notwithstanding the provisions of paragraphs (a) and (b) of this section, the bonded premises may be used temporarily without filing Form 5110.41 or the notice described in paragraph (d) of this section, for the sole purpose of gauging bulk distilled spirits to effect their transfer from customs custody to ATF bond.

(d) *Filing of notice.* The notice required by paragraph (a) of this section shall be submitted to the area supervisor for transmission to the appropriate ATF official. A separate notice shall be submitted for each alternation of premises. The notice must be received by the area supervisor prior to the effective date of the alternation and shall contain the following information:

(1) The name and plant number of the proprietor filing the notice.

(2) The date and hour of the alternation.

(3) Whether the premises are being curtailed or extended.

(4) Identification of the special diagrams in the registration documents depicting the premises as they exist before and after the alternation;

(5) The purpose of the alternation, including the class of customs warehouse (if any) temporarily occupying the curtailed premises.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 7. Section 19.203 is amended by revising the heading and paragraphs (a), (c), (d), and the authority citation, and by adding new paragraph (e), to read as follows:

§ 19.203 Alternation of distilled spirits plant and bonded wine cellar or taxpaid wine bottling house premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous bonded wine cellar or taxpaid wine bottling house, who desires to alternate the use of such premises with distilled spirits plant premises by temporary extension and curtailment, shall file qualifying documents, keep records, and conduct operations as prescribed in this section.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternation of premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of distilled spirits plant premises from bonded wine cellar or taxpaid wine bottling house premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Segregation of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated to wine premises, except that spirits may remain if they are being withdrawn for use in wine production under § 19.532 or for use in the production of nonbeverage wine or wine products under § 19.534, and wine may remain if it is being transferred in bond under § 19.505(b)(1)(ii); and all wine and spirits shall be removed from premises to be alternated to distilled spirits plant premises, except that wine may remain if it is being transferred in bond under § 19.505(b)(1)(i), and spirits may remain if they are being returned from bonded wine cellar to distilled spirits plant bonded premises under § 19.686(b).

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 10. Section 19.204 is revised to read as follows:

§ 19.204 Alternation of distilled spirits plant and brewery premises.

(a) *General.* A proprietor of a distilled spirits plant operating a contiguous brewery, who desires to alternate the use of brewery premises with distilled spirits plant premises by temporary extension and curtailment, shall file qualifying documents, keep records, and conduct operations as prescribed in this section.

(b) *Qualifying documents.* The proprietor shall file with the appropriate ATF official:

(1) Form 5110.41 and Form 5130.10 to cover the proposed alternation of premises;

(2) A special diagram, in duplicate, delineating the premises as they will exist, both during extension and curtailment, and clearly depicting all buildings, floors, rooms, areas, equipment and spirits lines (identified individually by letter or number) which are to be subject to alternation, in their relative operating sequence; and

(3) Evidence of existing bond, consent of surety, or a new bond to cover the proposed alternation of premises.

(c) *Records.* After approval of qualifying documents for the alternation of premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of distilled spirits plant premises from brewery premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Segregation of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated to brewery premises; and all beer shall be removed from premises to be alternated to distilled spirits plant premises, except that beer may remain if it is being received for production of distilled spirits as provided in § 19.312.

(Sec. 201, Pub. L. 85–859, 72 Stat. 1349, as amended, 1353, as amended (26 U.S.C. 5172, 5178))

Par. 9. Section 19.205 is amended by revising paragraphs (c) and (d), and by adding new paragraph (e), to read as follows:

§ 19.205 Alternate curtailment and extension of bonded premises for use as general premises.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternation of bonded and general premises, the proprietor may alternate the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* Separation of bonded premises from general premises shall be in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Removal of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated, except that—

(1) Bonded spirits may remain on portions of bonded premises to be alternated to general premises if the spirits are taxpaid concurrently with the alternation; and

(2) Taxpaid spirits may remain on portions of general premises to be alternated to bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart U of this part.

* * * * *

Par. 10. Section 19.206 is amended by revising paragraphs (c) and (d), and by adding new paragraph (e), to read as follows:

§ 19.206 Curtailment and extension of plant premises for the manufacture of eligible flavors.

* * * * *

(c) *Records.* After approval of qualifying documents for the alternate curtailment and extension of distilled spirits plant plant premises, the proprietor may alternately curtail and extend the premises according to the plan described in those documents. Each time the premises are alternated, the proprietor shall prepare the record of alternating premises prescribed by § 19.781.

(d) *Separation of premises.* The portion of the premises which is to be curtailed or extended as provided in this section shall be separated from the remaining portion of the distilled spirits plant in a manner which satisfies the appropriate ATF official that the revenue will not be jeopardized. The method of separation shall be in accordance with the approved plan of alternation described in the qualifying documents.

(e) *Removal of products.* Prior to alternation, all spirits, denatured spirits, articles, and wine shall be removed from premises to be alternated, except that—

(1) Bonded spirits may remain on portions of bonded premises to be curtailed if the spirits are taxpaid concurrently with the curtailment; and

(2) Taxpaid spirits which have not been used in the manufacture of a nonbeverage product may remain on portions of premises to be included by extension of bonded premises if the spirits are to be immediately dumped and returned to bond under the provisions of subpart U of this part.

* * * * *

Par. 11. Section 19.311 is revised to read as follows:

§ 19.311 Notice by proprietor.

(a) *Commencement of operations.* The proprietor shall, before commencing production operations or resuming production operations after having given notice of suspension, file a letterhead notice with the area supervisor, specifying the date on which the proprietor desires to commence or resume operations for the production of spirits. The proprietor shall not commence or resume operations prior to the time specified in the notice.

(b) *Suspension of operations.* Any proprietor desiring to suspend production operations for a period of 90 days or more shall file a letterhead notice with the area supervisor, specifying the date on which the operations will be suspended. In case of an accident which makes it apparent that operations cannot be conducted for 90 days or more, the proprietor shall immediately notify the area supervisor. (If such notification is verbal, it shall be followed up with a written notice.)

(Sec. 201, Pub. L. 85–859, 72 Stat. 1364, as amended (26 U.S.C. 5221))

Par. 12. Section 19.454 is revised by designating the existing text as ''(a),'' and by adding a heading to paragraph (a) and a new paragraph (b), to read as follows:

§ 19.454 Gauge for denaturation.

(a) *General.* * * *

(b) *Denaturation and article manufacture in a single process.* When spirits are denatured and articles are immediately produced therefrom in a unified process, the spirits and denatured spirits may be gauged by the following method:

(1) The spirits to be denatured are gauged by weight.

(2) The denaturants to be used are gauged by weight.

(3) The following computation is performed:

(i) The weight (in pounds) of denaturants used for denaturation (not to include any additional quantity of the same chemicals being used for article manufacture) is added to the weight (in pounds) of the spirits.

(ii) The sum thus obtained is divided by a number consistent with the data in § 21.161 of this chapter under the heading ''Wt./gal. in air (lbs.),'' extrapolated as necessary to the exact proof of the spirits.

(iii) The result is the number of wine gallons of denatured spirits produced; this figure shall be entered in the record required by § 19.752(b).

* * * * *

§ 19.481 [Amended]

Par. 13. Section 19.481 is amended by adding at the end of the existing text the following new sentence:

§ 19.481 General.

* * * The procedures in subpart L of part 251 of this chapter pertain to the transfer of spirits from customs custody to the bonded premises of a distilled spirits plant.

* * * * *

Par. 14. Paragraph (a) of § 19.605 is revised to read as follows:

§ 19.605 Additional marks on portable containers.

(a) In addition to the other marks required by this part, portable containers (other than bottles enclosed in cases) of spirits or denatured spirits to be withdrawn from the bonded premises shall bear the following marks:

(1) If withdrawn without payment of tax for export, for transfer to a customs manufacturing bonded warehouse or to a foreign trade zone, or for use as supplies on certain vessels or aircraft: the marks required by part 252 of this chapter.

(2) If withdrawn tax free for shipment to a permittee under part 22 of this chapter: the word ''Tax-Free.''

(3) If withdrawn in packages on determination of tax: the tare, proof, and proof gallons.

* * * * *

Par. 15. In § 19.770, paragraph (a)(6)(i) is revised and new paragraph (c) is added, to read as follows:

§ 19.770 Transfer record.

(a) Consignor. * * *

(6) * * *

(i) Name and plant number of the producer, warehouseman or processor (Not required for denatured spirits or wine. For imported spirits transferred in bond between distilled spirits plants, record the name and plant number of the warehouseman or processor who received the spirits from customs custody. For Virgin Islands or Puerto Rican spirits, show the name of the producer in the Virgin Islands or Puerto Rico. For spirits of different producers or warehousemen which have been mixed in the processing account, record the name of the processor.);

* * * * *

(c) *Receipt of spirits from customs custody.* When spirits are transferred from customs custody as provided in subpart O of this part, the transfer record shall contain the information prescribed by § 251.138 of this chapter.

* * * * *

Par. 16. New § 19.781 is added immediately following § 19.780, to read as follows:

§ 19.781 Record of alternating premises.

When distilled spirits plant bonded premises are alternated to or from bonded wine cellar, taxpaid wine bottling house, brewery, manufacturer of nonbeverage products, or general premises, under an approved plan of alternation described in the plant registration, the proprietor shall record the following information:

(a) The date and hour of the alternation;

(b) The kind of premises being curtailed, including plant identification number, if applicable;

(c) The kind of premises being extended, including plant identification number, if applicable;

(d) Identification of the special diagrams in the registration documents depicting the premises as they exist before and after the alternation; and

(e) The purpose of the alternation.

Par. 17. In § 19.1001, the first sentence of paragraph (a) is revised to read as follows:

§ 19.1001 Consignee premises.

(a) *General.* When spirits are received by transfer in bond or from customs custody, the proprietor shall examine each conveyance to determine whether the locks, seals, or other devices are intact upon arrival at the premises.

* * *

* * * * *

Par. 18. New § 19.1003 is added immediately following § 19.1002, to read as follows:

§ 19.1003 Transfer from customs custody.

(a) *General.* Spirits imported or brought into the United States in bulk containers may be withdrawn from customs custody and transferred in such bulk containers or by pipeline, without payment of tax, to the bonded premises of a large or medium alcohol fuel plant, but only if the spirits were not produced from petroleum, natural gas, or coal. Spirits received on alcohol fuel plant premises as provided in this section shall be subjected to further manufacturing or processing after receipt. Such spirits may be redistilled or denatured only if imported at 185 degrees or more of proof, and withdrawn for fuel use only, in the same manner and subject to the same requirements as domestically produced alcohol fuel.

(b) *Transfer procedures.* The procedures in § 19.1001 and in subpart L of part 251 of this chapter pertain to the transfer of spirits from customs custody to an alcohol fuel plant.

(c) *Restriction.* A proprietor who intends not to produce spirits, but to engage solely in the business of receiving spirits from customs custody as authorized in this section, must qualify as a regular distilled spirits plant under 26 U.S.C. 5171 and subpart G of this part.

§ 19.1010(b) [Amended]

Par. 19. Section 19.1010(b) is revised to:

(a) Remove references to control number 1512–0202 from §§ 19.201–19.205,

(b) Revised the reference to control number 1512–0202 in § 19.311 to a reference to control number 1512–0206,

(c) Remove all references to obsolete control number 1512–0189,

(d) Remove all entries for §§ 19.661–19.672,

(e) Remove entries for §§ 19.610 and 19.772, and

(f) Add an entry for § 19.781, to read as follows:

§ 19.1010 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Section where identified	Current OMB control no.
* * *	* *
19.781	1512–0250
* * *	* *

Signed: August 5, 1998.

John W. Magaw,

Director.

Approved: October 26, 1998.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 98–30942 Filed 11–27–98; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6193–7]

National Emission Standards for Hazardous Air Pollutants for Source Categories; National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries—Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the public comment period on the notice of proposed rulemaking (NPRM) for hazardous air pollutants from the petroleum refining industry, which was published in the **Federal Register** on September 11, 1998 (63 FR 48890). The purpose of this notice is to extend the comment period from November 10, 1998, to December 1, 1998. This extension is being made in response to a request from the National Petrochemical & Refiners Association, an industry trade association.

DATES: The EPA will accept comments on the NPRM until December 1, 1998.

ADDRESSES: Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–97–36, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below (Mr. Robert Lucas). The docket may be inspected at the above address between 8:00 a.m. and 5:30 p.m., on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the NPRM, contact Robert B. Lucas, Waste and Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541–0884; electronic mail address, ''lucas.bob@epamail.epa.gov.''

Dated: November 20, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–31674 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 87

[ET Docket No. 98–197, FCC 98–289]

Radionavigation Service at 31.8–32.3 GHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this action, we propose to amend the Commission's Rules in order to delete the unused non-Government radionavigation service allocation at 31.8–32.3 GHz and to also remove this frequency segment from the list of available frequencies set forth in the rules for the Aviation Services. The adoption of this proposal would protect the Federal Government's deep space operations in the 31.8–32.3 GHz band from uncoordinated commercial radionavigation usage that may otherwise occur in the future, while maintaining adequate spectrum for future non-Government radionavigation services in the adjacent 32.3–33.4 GHz band.

DATES: Comments are due December 30, 1998, reply comments are due January 14, 1999.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A–325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* ET Docket 98–197, FCC 98–289, adopted October 28, 1998, and released November 6, 1998. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–C404), 445 Twelfth Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of the Notice of Proposed Rulemaking

1. National Telecommunications and Information Administration (''NTIA''), at the request of the National Aeronautics and Space Administration (''NASA''), asks that we delete the non-Government radionavigation service from the 31.8–32.3 GHz band. NASA bases its request on the potential for interference to its deep space receive site at Goldstone, California, from uncoordinated commercial radionavigation usage of the 31.8–32.3 GHz band. In support of its request, NASA cites International Telecommunication Union Recommendation ITU–R SA.1061 as documenting that space research (deep space) sharing with airborne operations in the radionavigation service is not feasible. NASA explains that signals received on Earth from spacecraft in deep space are extremely weak, and thus are highly susceptible to interference of all kinds. Further, NASA stresses that airborne interference sources, if present, would easily overwhelm the desired but weak signals from space. In its normal deep space operations, to bolster signal reception, NASA points out that it has fitted its large earth station antennas with cryogenically-cooled preamplifiers and has employed specialized receivers. NASA states that it has sited the earth stations in such a way as to provide radio shielding from *terrestrial* radio sources sharing the same frequency band, which are potential interferers. But, NASA states, its earth stations cannot be shielded from *airborne* radio sources operating in the 31.8–32.3 GHz band, because the potential interfering signals may emanate from the same general direction as the desired deep space signals.

2. NASA indicates that currently, the only radionavigation operations in the 31.8–32.3 GHz band are from Federal Government (military) operations. The coordination of these military operations with NASA/Goldstone has been successful, NASA says, largely because they occur infrequently. By contrast, NASA does not believe that deep space operations can be coordinated successfully with private or commercial aircraft using terrain-following or landing-aid radars operating on an unrestricted basis within line-of-sight of the Deep Space Network site at Goldstone. To avoid causing interference, NASA states, such aircraft would have to choose between the impractical solutions of either avoiding the airspace in the Goldstone vicinity or turning off their transmitters in the 31.8–32.3 GHz band while within line-of-sight of Goldstone.

3. NASA brought this issue before NTIA's Interdepartment Radio Advisory Committee (''IRAC''). During these discussions, the Federal Aviation Administration indicated that there are no known plans for commercial aeronautical radionavigation operations in the 31.8–32.3 GHz band. After considering several options, IRAC recommended to NTIA that the 31.8–32.3 GHz band be limited to Federal Government operations. NTIA endorsed this recommendation, concluding that future demand for commercial or private radionavigation services could be adequately accommodated in the 1.1 gigahertz of radionavigation spectrum that would remain at 32.3–33.4 GHz.

4. We propose to implement NTIA's proposal to delete the non-Government radionavigation service allocation at 31.8–32.3 GHz. We agree with NTIA that the 32.3–33.4 GHz band appears adequate to accommodate commercial and private radionavigation services that may develop in the future. By limiting future non-Government radionavigation services to the 32.3–33.4 GHz band, we believe that adequate spectrum would be preserved for these potential services and that NASA's deep space operations in the 31.8–32.3 GHz band would be adequately protected from those services. We further propose to remove the 31.8–32.3 GHz segment from the list of frequencies that are available for use by the aeronautical radionavigation service under § 87.173 of the rules for the Aviation Services and to add a rule part cross reference to part 87 in the Table of Frequency Allocations entry for the 32.3–33.4 GHz band in § 2.106. In addition, as suggested in NTIA's letter, we propose to parallel the international table by changing the space research service (deep space) (space-to-Earth) allocation from a footnote allocation to a table entry allocation and, as a consequence of that proposal, to modify the text of footnote US262 to remove unneeded information. We request comment on these proposals.

Initial Regulatory Flexibility Certification

5. The Regulatory Flexibility Act (''RFA'') [1] requires that an initial regulatory flexibility analysis be prepared for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business''

[1] The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with American Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (''CWAAA''). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA'').

has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').

6. In this *Notice of Proposed Rule Making*, we propose to delete an unused non-Government allocation for the radionavigation service at 31.8–32.3 GHz in order to protect existing Government operations in this band from harmful interference. In addition, we tentatively conclude that the remaining portion of the existing non-Government radionavigation allocation at 32.3–33.4 GHz will provide sufficient spectrum for future non-Government radionavigation services, if and when such services develop. Accordingly, we hereby certify that the proposed deletion of the non-Government radionavigation allocation at 31.8–32.3 GHz will not have a significant economic impact on a substantial number of small entities. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *Notice of Proposed Rule Making*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 2 and 87

Communications equipment, Radio.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31689 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 231

[DFARS Case 98–D019]

Defense Federal Acquisition Regulation Supplement; Restructuring Savings Repricing Clause

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers should consider using a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before January 29, 1999, to be considered in the formulation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil. Please cite DFARS Case 98–D019 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 98–D019 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

Since the late 1980's, defense contractors have been restructuring their business operations to increase efficiencies and become more competitive in the defense marketplace. Many of the restructuring activities result from business combinations (such as mergers or acquisitions), and often lead to reduced overall costs and future savings. However, a significant amount of time may lapse between the announcement of the merger or acquisition and the point at which the contractor reflects the restructuring savings in reduced overhead rates and contract prices. During this uncertain period, fixed-price contracts without a repricing or reopener clause are risky because, once awarded, they cannot be repriced. Projected restructuring savings are difficult to estimate and may be significant in amount.

This rule proposes to amend DFARS 231.205–70, External restructuring costs, to specify that contracting officers should consider including a downward-only repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between the time a business combination is announced and the time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring. The repricing clause should ensure that DoD receives its appropriate share of restructuring savings.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principle contained in this rule. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite 5 U.S.C. 601, *et seq.* (DFARS Case 98–D019), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose any information collection requirements that require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

List of subjects in 48 CFR Part 231

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 231 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 231 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–70 is amended by adding paragraph (f) to read as follows:

231.205–70 External restructuring costs.

* * * * *

(f) *Contracting officer responsibilities.* (1) The contracting officer, in consultation with the cognizant ACO, should consider including a repricing clause in noncompetitive fixed-price contracts that are negotiated during the period between—

(i) The time a business combination is announced; and

(ii) The time the contractor's forward pricing rates are adjusted to reflect the impact of restructuring.

(2) The repricing clause should provide for downward-only price adjustment to ensure that DoD receives its appropriate share of restructuring savings.

(3) The decision to use a repricing clause will depend upon the particular circumstances involved, including—

(i) When the restructuring will take place;

(ii) When restructuring savings will begin to be realized;

(iii) The contract performance period; and

(iv) The size of the potential dollar impact on the contract.

[FR Doc. 98–31696 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF STATE

48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

[Public Notice No. 2925]

RIN 1400–AA71

Department of State Acquisition Regulation (DOSAR)

AGENCY: Office of the Procurement Executive, Department of State.

ACTION: Proposed rule.

SUMMARY: This proposed rule is being issued for comment in accordance with Section 4301 of the Federal Acquisition Reform Act of 1996 (Pub. L. 104–106). Section 4301 requires the elimination of certification requirements from the Department of State Acquisition Regulation (DOSAR) that are not specifically imposed by statute. In addition, this proposed rule adds one new certification required by statute and one new certification not required by statute but justified in accordance with section 29 of Public Law 104–106. This proposed rule also eliminates internal coverage from the codified section of the DOSAR. Finally, the proposed rule contains miscellaneous amendments and corrections needed to bring the DOSAR in line with recent changes in the Federal Acquisition Regulation.

DATES: Public comments must be received by January 29, 1999.

ADDRESSES: Comments may be sent to: Gladys Gines, Procurement Analyst, Department of State, Office of the Procurement Executive, 2201 C Street NW, Suite 603, State Annex Number 6, Washington, DC 20522–0602; e-mail address: ginesgg@state.gov.

FOR FURTHER INFORMATION CONTACT: Gladys Gines, telephone (703) 516–1691 or at the e-mail address specified above.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with Section 4301 of the Federal Acquisition Reform Act of 1996, the Department of State proposes to remove several certifications from the DOSAR. They are: 652.203–71, Certification Regarding Federal Employment (requirement not based in statute); 652.223–70, Estimates of the Total Percentage of Recovered Materials to be Utilized in the Performance of the Contract (superseded by FAR 52.223–9); and, 652.223–71, Certification of Minimum Content Actually Utilized in the Performance of the Contract (also superseded by FAR 52.223–9).

In conjunction with the review of the DOSAR to eliminate any certifications not based in statute, the Department looked at all current DOSAR provisions and clauses to determine if they could be eliminated or revised. In addition, the Department proposes to add several new certifications and clauses. Accordingly, the Department proposes to take the following actions:

- Eliminate the clause at 652.203–70, Prohibition Against the Use of Federal Employees.
- Eliminate the clauses at 652.204–70, Security Requirements, and 652.204–71, Security Requirements—Personnel. Both of these clauses implement requirements for contractors that have access to classified information. However, the Department falls under the National Industrial Security Program (NISP), which establishes a program to safeguard Federal Government classified information that is released to contractors. FAR 4.404 prescribes clauses for use by agencies covered by the NISP. The Department has determined that the FAR coverage is adequate and the DOSAR language is no longer required. The associated DOSAR prescription at 604.404–70 is also removed.
- Revise the provision at 652.206–70, Competition Advocacy/Ombudsman, to better explain the role of the Acquisition Ombudsman.
- Renumber the clause at 652.214–70, Notices, to 652.243–70. The associated prescription at 614.201–7–70(b) is also removed, and a new prescription is found at 643.104–70. The change was made because the clause deals with contract modifications, and is applicable to all contracts, not just those awarded using sealed bidding.
- Revise the provision at 652.214–71, Authorization to Perform, to clarify that (1) the requirement to obtain licenses, permits, etc. is in accordance with the date specified in the solicitation, (e.g., the date may be after contract award); and (2) the requirement to obtain the licenses, permits, etc. applies only to the parties who will actually be performing the work, i.e., prime contractor, subcontractors or joint venture partner.
- Revise the clause at 652.216–71, Price Adjustment, for clarification purposes.
- Add a new clause at 652.219–71, Section 8(a) Direct Awards, to implement the Memorandum of Understanding between the Department and the Small Business Administration to allow for direct awards to contractors under the 8(a) Program. Subpart 619.8 is also revised accordingly.
- Eliminate the provisions and clauses at 652.223–72, Use of Double-Sided Copying in the Submission of Bids and Proposals; 652.223–73, Use of Double-Sided Copying in the Submission of Reports; 652.223–74, Use of Fly Ash as a Partial Replacement for Cement and Concrete; 652.223–75, Use of Recovered Materials in Building Insulation Products; 652.223–76, Use of Lubricating Oils Containing Re-Refined Oils; 652.223–77, Use of Retread Tires; and, 652.223–78, Use of Recovered Materials in Paper and Paper Products. These provisions and clauses have been superseded by FAR language incorporated in FACs 90–27 and 97–1. DOSAR Subpart 623.4 is revised in its entirety to conform to the new FAR requirements.
- Add a new certification at 652.225–70, Arab League Boycott of Israel, and a new clause at 652.225–71, Section 8(a) of the Export Administration Act of 1979, As Amended. This certification and clause are required by Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103–236), which has continuing effect. A new Subpart 625.70 is also added.
- Add a new certification at 652.226–70, Certification of Status as a Minority Business Enterprise. This certification is not statutorily based. However, Federal agencies are required to report to the Minority Business Development Agency information concerning awards to minority-owned businesses, both large and small. Since this information is not readily available, this certification represents the most logical manner in which to gather this information. A justification for including this certification has been approved by the agency head. A new Part 626 is also added.
- Eliminate the clause at 652.228–73, Waiver of the Defense Base Act. The Department received a waiver from the Department of Labor for service contracts performed overseas for employees who are not U.S. citizens or

residents, or who are not hired in the U.S. Therefore, this clause is unnecessary. The associated prescription at 628.305(b)(3) is also removed.

• Combine the clauses at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services, and 652.228–72, Worker's Compensation Insurance (Defense Base Act)—Construction, into one clause with an alternate. Since the two clauses were virtually identical, it was determined to make coverage for construction contracts an Alternate I. The clause prescriptions at 628.305(b) have been revised accordingly.

• Combine the provisions at 652.228–74, Defense Base Act Insurance Rates—Limitation—Services, and 652.228–75, Defense Base Act Insurance Rates—Limitation—Construction, into one provision. The associated prescriptions at 628.306(a) are revised accordingly.

• Combine the provisions at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, and 652.228–77, Defense Base Act Insurance Rates—Limitation—Labor-Hour and Time-and-Material, into one provision. The associated prescriptions at 628.307 and 628.307–70 are revised accordingly.

• Add a new clause at 652.229–71, Personal Property Disposition at Posts Abroad. Department of State regulations at 22 CFR part 136 require that contractors that may have importation or tax privileges in a foreign country because of their contractual relationship to the U.S. Government follow these regulations and the procedures established by the chief of mission. The regulations are intended to ensure that individuals do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. A new section 649.402 is added accordingly.

• Revise the clauses at 652.232–70, Payment Schedule and Invoice Submission (Fixed-Price), and 652.232–71, Voucher Submission (Cost-Reimbursement), to add the SF–1449 and to correct the block numbers to which the payment requests are to be sent.

• Add a new clause at 652.232–72, Limitation of Funds. This clause allows for the incremental funding of fixed-price, labor-hour, and time-and-material contracts for severable services. An associated prescription at 632.705–70 is also added.

• Add a new clause at 652.236–70, Accident Prevention. In accordance with a class deviation approved by the Procurement Executive, this clause will replace FAR 52.236–13 for use in overseas construction contracts not exceeding $500,000, since 52.236–13 refers to 29 CFR and the Corps of Engineers safety regulations and manuals which are not practical on such contracts overseas.

• Revise the clause at 652.237–71, Identification/Building Pass, to correct the address of the Building Pass Application Unit.

• Eliminate the clause at 652.246–70, Commercial Warranty. FAR Part 12, Acquisition of Commercial Items, contains adequate coverage in FAR 12.404 regarding warranties. Contracting officers shall follow the guidance in FAR 12.404(b) regarding use of express warranties. The associated prescription at 646.710–70 is also removed.

The proposed rule also eliminates internal coverage from the *codified* version of the DOSAR. The entire DOSAR, which may be found on the Internet (see DOSAR 601.105–3 for the Internet address), will contain both the codified and uncodified sections. This change is being made for ease of administration and updating of the DOSAR. Internal procedures which do not affect contractors or the public need not be published for comment. This is consistent with FAR 1.301(a)(2) which states, in part, that ''* * * any agency head may issue or authorize the issuance of internal agency guidance at any organizational level'', and FAR 1.301(b) which states, in part, that ''* * * Issuances under 1.301(a)(2) need not be publicized for public comment.'' Removing such passages from the DOSAR will result in the Department being able to easily update these internal procedures without having to pursue the formal rulemaking process. As such, the following sections are deleted from the codified sections of the DOSAR:

• DOSAR 601.471, which contains procedural guidance to contracting officers for requesting deviations from the FAR or DOSAR.

• DOSAR 601.602–3 and 601.602–3–70 regarding ratification of unauthorized commitments. These sections contain detailed guidance on the authority levels for ratifications and the documentation requirements for unauthorized commitments.

• DOSAR 603.203 on reporting suspected violations of the Gratuities clause. This section contains procedural guidance for reporting such violations to internal DOS entities.

• DOSAR Subpart 603.3 on reporting suspected antitrust violations. This section contains procedural guidance for reporting such violations to internal DOS entities.

• DOSAR Subpart 604.2, which contains guidance on internal distribution of contractual documents.

• DOSAR Subpart 604.70 which contains guidance for internal review of solicitations and contracts by contracting officers and the Office of the Procurement Executive (A/OPE).

• DOSAR 605.207 on the preparation and transmittal of CBD synopses to A/OPE by overseas contracting activities.

• DOSAR Subpart 616.1 on selecting contract types. This provides internal guidance to overseas contracting officers on the limits of their authority in terms of awarding specific types of contracts.

• DOSAR Subpart 616.6, which describes determination and findings requirements for time-and-materials, labor-hour, and letter contracts.

• DOSAR Subpart 625.9 regarding the approval authority for foreign acquisition clauses.

• DOSAR 633.211, which provides instructions to the contracting officer on final decision letters and approval authorities.

• DOSAR 649.111 regarding internal approval authorities for the review of proposed termination settlements.

Finally, the proposed rule makes some technical amendments and corrections to conform the DOSAR to recent changes in the FAR. The more substantial changes are:

• Revision to 601.603–3 to provide guidance on temporary contracting officer warrants.

• Elimination of 601.670 regarding the Procurement Career Management Program. This elimination is consistent with FAC 90–23, which provided coverage on such programs in the FAR.

• Revision of 603.104 regarding procurement integrity requirements to conform to FAC 90–45.

• Addition of a new Subpart 603.9 to identify that the Procurement Executive is the agency head's designee for purposes of this subpart.

• Extension of the waiver in 605.202–70 to May 19, 2001, as approved by the agency head.

• Removal of Subpart 608.3 regarding utility services and the creation of a new Part 641, per FAC 90–23.

• Removal of Part 610 dealing with the Department's Metric Program and its inclusion in Part 611. FAC 90–32 revised FAR Part 10 to deal with market research. Information on describing agency needs was moved to FAR Part 11.

• Revision of Part 613 in its entirety to conform to the reorganization of FAR Part 13 as implemented in FAC 97–3.

• Revision of Subpart 614.2 for better clarity.

- Revision of Part 615 in its entirety to conform to the revision of FAR Part 15 as implemented in FAC 97–2.
- Addition of a new 616.505 to designate an ombudsman for task and delivery order contracts.
- Removal of 633.105 regarding protests to the GSBCA, as that forum was eliminated per FAC 90–41. Changes have also been made to 633.104, protests to GAO, to delete obsolete, internal coverage.
- Removal of 634.001, definition of ''major system'', as the FAR now provides a definition in FAR Part 2. Further information can be found in DOSAR Part 602.
- Removal of Part 639, Acquisition of Information Resources, per FAC 90–41, which eliminated the FIRMR.
- Addition of a new Subpart 647.2, Contracts for Transportation or for Transportation-Related Services. This subpart implements a class deviation approved by the Procurement Executive to revise the amount reflected in paragraph (c) of FAR 52.247–3, Contractor Liability for Loss of and/or Damage to Household Goods. The amount of $5.00 per pound (or metric equivalent based on local currency) based on the total net weight is consistent with liability calculations found in International Through Government Bills of Lading (ITGBL).

II. Impact

The Department of State certifies that this regulation will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

III. Unfunded Mandates Act of 1995

The Unfunded Mandates Act of 1995 requires agencies to prepare several analytical statements before proposing any rule that may result in annual expenditures of $100 million of State, local, and Indian tribal governments or the private sector. Since this proposed rule will not result in expenditures of this magnitude, the Department certifies that such statements are not necessary.

IV. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved under the Paperwork Reduction Act of 1980 by OMB, and were assigned control number 1405–0050.

List of Subjects in 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 611, 613, 614, 615, 616, 617, 619, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 641, 642, 643, 644, 645, 646, 647, 649, 652, 653

Government procurement.

Accordingly, title 48, chapter 6 of the Code of Federal Regulations is amended as follows:

1. The authority citation for 48 CFR Parts 601, 602, 603, 604, 605, 606, 608, 609, 610, 614, 616, 617, 619, 620, 622, 623, 625, 626, 628, 629, 630, 631, 632, 633, 634, 636, 637, 639, 642, 643, 645, 646, 647, 649, 652, 653 continues to read as follows:

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SUBCHAPTER A—GENERAL

PART 601—DEPARTMENT OF STATE ACQUISITION REGULATION

601.105 [Redesignated as 601.106]

2. Section 601.105 is redesignated as section 601.106. A new section 601.105, consisting of section 601.105–3, is added to read as follows:

601.105 Issuance.

601.105–3 Copies.

The DOSAR is available on CD–ROM disks through the Department's INFOEXPRESS program, or through the Internet from A/OPE's Acquisition Website. The Internet address is: http://www.statebuy.inter.net/home.htm.

3. Newly designated section 601.106 is revised to read as follows:

601.106 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) requires that Federal agencies obtain approval from the Office of Management and Budget before collecting information from ten (10) or more members of the public. Individuals are not required to respond to information collection unless the OMB number and burden estimate information is provided. Accordingly, the information and recordkeeping requirements contained in this regulation have been approved by OMB under OMB Control Number 1405–0050. The burden estimate is 225,302 hours.

601.301 [Amended]

4. Section 601.301 is amended by redesignating paragraph (a)(1) as paragraph (a) and by removing paragraph (a)(2) in its entirety.

601.302 [Amended]

5. Section 601.302 is amended in the first sentence of paragraph (a) by removing the words ''and leases of real and personal property''.

601.303 [Amended]

6. Section 601.303 is amended by correcting the citation at the end of paragraph (c) to read ''FAR 1.105–2(c)''.

601.471 [Amended]

7. Section 601.471 is removed.

8. The heading of Subpart 601.6 is revised to read as follows:

Subpart 601.6—Career Development, Contracting Authority, and Responsibilities

601.602–3 and 601.602–3–70 [Removed]

9. Section 601.602–3, and section 601.602–3–70, are removed.

10. Section 601.603–3 is amended by adding a title to paragraph (a); by revising the second sentence of paragraph (a); by revising paragraph (b) in its entirety; and, by adding a new paragraph (d), to read as follows:

601.603–3 Appointment.

(a) General. * * * The Procurement Executive appoints all DOS contracting officers, in conformance with FAR 1.603–3, with the one exception as noted in paragraph (b) of this section.
* * *

(b) Temporary warrants. The Chief of Mission is delegated the authority by the Procurement Executive to issue temporary contracting officer warrants for periods up to 90 calendar days in order to cover emergency, post-specific operational requirements (e.g., staffing gaps, medical evacuations, extended leave, etc.). These temporary appointments shall be executed on the Standard Form 1402, and a copy shall be furnished to A/OPE. The warrant shall contain both a dollar limitation of no more than $100,000 and a specific time period (not to exceed 90 days) during which the warrant is effective.

* * * * *

(d) Personal services agreements. Individuals who may sign personal services agreements (PSAs) are limited to the following:

(1) An individual, or class of individuals, granted authority by the Director, PER/OE; or

(2) Individuals with contracting officer certificates of appointment.

601.603–70 [Amended]

11. Section 601.603–70 is amended—

(a) By adding a period after the words ''and services'' and removing the words ''to sell personal property; and to lease real property.'' in the first sentence of paragraph (a)(1) introductory text;

(b) By adding a period after the words ''Deputy Assistant Secretary for Foreign

Buildings'' and removing the words ''and to the Director for Acquisitions as the HCA.'' in paragraph (a)(2);

(c) By removing the heading ''Office of Acquisition'' and inserting ''Office of Logistics Management; Office of Acquisition Management (A/LM/AQM)'' in its place; and by removing the words ''and Deputy Director as the HCA'' and inserting ''or designee as the HCA'' in their place in paragraph (a)(3);

(d) By removing the word ''and'' before the word ''construction'' and removing the word ''of'' after ''construction'' and by adding the words ''and supplies for'' after the word ''construction'' in paragraph (a)(7);

(e) By adding the word ''supplies,'' after the word ''subsystems,'' in paragraph (a)(8);

(f) By revising subparagraph (a)(9) to read as indicated below;

(g) By removing the words ''Office of Acquisition'' and inserting the acronym ''A/LM/AQM'' in their place in the second sentence of paragraph (b) introductory text;

(h) By removing the words ''schedule contracts'' and inserting the words ''existing contracts up to the maximum ordering threshold or limitation'' in their place in paragraphs (b)(1) through (b)(6); and

(i) By adding a new paragraph (b)(7), to read as follows:

601.603–70 Delegations of authority.

(a) * * *

(9) Regional Procurement Support Offices. The authority to enter into and administer contracts for the expenditure of funds involved in the acquisition of supplies, equipment, publications, and services on behalf of overseas posts is delegated to each Director, Regional Procurement Support Office (RPSO) as the HCA at the following locations:

(i) RPSO Germany in conjunction with Embassy Bonn and Consulate General Frankfurt;

(ii) RPSO Tokyo in conjunction with Embassy Tokyo;

(iii) RPSO Singapore in conjunction with Embassy Singapore; and,

(iv) RPSO Florida in conjunction with the Florida Regional Center.

(b) * * *

(7) Office of Small and Disadvantaged Business Utilization. The authority to enter into and administer 8(a) purchase orders and contracts as a third party pursuant to the Memorandum of Understanding signed with the Small Business Administration.

601.670 [Removed]

12. Section 601.670 is removed.

PART 602—DEFINITIONS OF WORDS AND TERMS

13. Section 602.101–70 is amended by removing the definition of ''local procurement''; and by adding, in alphabetical order, a definition of ''major system'' to read as follows:

602.101–70 DOSAR definitions.

* * * * *

Major System has the same definition as described in FAR 2.101; however, the Department of State's dollar threshold as defined in paragraph (b) is $30 million. The Under Secretary for Management is the head of the agency for the purposes of paragraph (c).

* * * * *

PART 603—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

14. Subpart 603.1 is revised to read as follows:

Subpart 603.1—Safeguards

Sec.
603.104 Procurement integrity.
603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
603.104–10 Violations or possible violations.

Subpart 603.1—Safeguards

603.104 Procurement integrity.

603.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The following classes of persons may be authorized to receive contractor bid or proposal information or source selection information by the contracting officer or head of the contracting activity, who is the agency head's designee, when such access is necessary to the conduct of an acquisition:

(1) Individuals involved in the selection process, such as the Contracting Officer's Representative, technical evaluators, advisors, consultants, and the Source Selection Official;

(2) Clerical personnel directly involved in the acquisition;

(3) Supervisors in the contracting officer's chain of command;

(4) Contracting personnel involved in reviewing or approving the solicitation, contract, or contract modification;

(5) Individuals from offices who may be required to perform pre-award audits, such as DCAA; and,

(6) Personnel in the following offices: Office of Small and Disadvantaged Business Utilization (A/SDBU), Office of the Legal Adviser, Office of Legislative Affairs, Office of the Inspector General, Office of the Procurement Executive, the Small Business Administration, and the Office of Federal Contract Compliance Programs (Department of Labor).

(c) All information which is considered proprietary or source selection information shall be marked to prevent its unauthorized disclosure before award. This may be performed by marking each page of proprietary or source selection material with the statement ''Source Selection Information—See FAR 3.104'' or ''Proprietary Information—See FAR 3.104'', as applicable. Alternatively, this requirement may be met by attaching Forms DS–1926, Proprietary Information (Cover Page), and DS–1927, Source Selection Information (Cover Page), to any proprietary and source selection information. Individuals responsible for preparing derivative documents which reference, cite, or paraphrase proprietary or source selection information, are responsible for marking such documents as indicated in this paragraph. The required marking or cover page shall be included when technical proposals are submitted for evaluation and when an audit is requested. After award, the procedures governing the Freedom of Information Act and related laws/ regulations shall be followed regarding release of proprietary or source selection information.

603.104–10 Violations or possible violations.

(a)(1) The contracting officer shall report any violation or possible violation to the head of the contracting activity after he or she has reviewed the documentation and has concluded that there is no impact on the acquisition.

(d)(2)(ii)(B) The Procurement Executive is the agency head's designee for the purposes of FAR 3.104–10(d)(2)(ii)(B).

603.203 [Removed]

15. Section 603.203 is removed.

Subpart 603.3—[Removed]

16. Subpart 603.3, consisting of section 603.303, is removed.

17. Section 603.405 is added to read as follows:

603.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The contracting officer may request the Office of the Inspector General to develop further information if the facts available are deemed insufficient to determine whether an actual violation has occurred. The

contracting officer may also obtain the advice of the Office of the Legal Adviser as to the legality and general propriety of any information disclosed.

603.408 [Removed]

18. Section 603.408, consisting of section 603.408–1, is removed.

603.670 [Removed]

19. Section 603.670 is removed.

20. Subpart 603.9 is added to read as follows:

Subpart 603.9—Whistleblower Protections for Contractor Employees

Sec.
603.905 Procedures for investigating complaints.
603.906 Remedies.

Subpart 603.9—Whistleblower Protections for Contractor Employees

603.905 Procedures for investigating complaints.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.905.

603.906 Remedies.

The Procurement Executive is the agency head's designee for the purposes of FAR 3.906.

PART 604—ADMINISTRATIVE MATTERS

Subpart 604.2—[Removed]

21. Subpart 604.2, consisting of section 604.202, is removed.

Subpart 604.4—[Removed]

22. Subpart 604.4, consisting of sections 604.404 and 604.404–70, is removed.

23. Subpart 604.5 is added to read as follows:

Subpart 604.5—Electronic Commerce in Contracting

Sec.
604.502 Policy.
604.505 FACNET certification.
604.505–2 Full certification.
604.506 Exemptions.

Subpart 604.5—Electronic Commerce in Contracting

604.502 Policy.

(b) The Procurement Executive is the agency head for the purpose of FAR 4.502(b).

604.505 FACNET certification.

604.505–2 Full certification.

(a)(3) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.505–2(a)(3).

604.506 Exemptions.

(b) The Assistant Secretary of State for Administration is the head of the agency for the purpose of FAR 4.506(b).

24. Subpart 604.70, consisting of sections 604.7001 and 604.7002, is removed.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 605—PUBLICIZING CONTRACT ACTIONS

25. Section 605.202–70 is amended by removing the date ''June 15, 1998'' and inserting the date ''May 19, 2001'' in its place in the last sentence of paragraph (a).

26. Section 605.207 is removed.

27. Section 605.303 is amended by inserting a comma after the word ''Affairs''; and by adding the words ''upon request,'' after the word ''Affairs'' in the first sentence of paragraph (a).

PART 606—COMPETITION REQUIREMENTS

28. Subpart 606.1, consisting of sections 606.101 and 606.101–70, is removed.

29. Section 606.302–6 is amended by removing ''E.O. 12356'' and inserting ''E.O. 12958'' in its place wherever it appears in paragraphs (c)(1) introductory text and (c)(1)(vi) .

30. Section 606.304 is amended in paragraph (a)(2) by removing the amounts ''$100,000'' and ''$1,000,000'' and inserting ''$500,000'' and ''$10,000,000'' in their place, respectively.

31. Section 606.501 is amended by revising the first sentence of paragraph (b) to read as follows:

606.501 Requirement.

* * * * *

(b) A contracting activity competition advocate has been designated for A/LM/AQM. * * *

32. Section 606.570 is revised to read as follows:

606.570 Solicitation provision.

The contracting officer shall insert the provision at 652.206–70, Competition Advocate/Ombudsman, in all solicitations exceeding the simplified acquisition threshold.

PART 608—REQUIRED SOURCES OF SUPPLIES AND SERVICES

33. Part 608, consisting of subpart 608.3 and section 608.302, is removed.

PART 609—CONTRACTOR QUALIFICATIONS

34. Section 609.206, consisting of section 609.206–1, is added to read as follows:

609.206 Acquisitions subject to qualification requirements.

609.206–1 General.

(b) The authority prescribed in FAR 9.206–1(b) is delegated, without power of redelegation, to the head of the contracting activity.

35. Section 609.404 is amended by revising the section heading to read as follows:

609.404 List of parties excluded from federal procurement and nonprocurement programs.

36. Section 609.405 is amended by revising paragraphs (d)(4)(i) and (d)(4)(ii) to read as follows:

609.405 Effect of listing.

* * * * *

(d) * * *

(4)(i) For procurement actions (both domestic and overseas) that do not exceed the simplified acquisition threshold, contracting officers need not consult the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'' prior to award. The list should be consulted whenever the contracting officer has reason to believe that a proposed contractor may appear on the list.

(ii) Contracting officers at domestic contracting activities shall review the ''List of Parties Excluded from Federal Procurement and Nonprocurement Programs'', either in hard copy or electronic form, prior to awarding a procurement action exceeding the simplified acquisition threshold.

37. Section 609.406–3 is amended in paragraph (b)(7) by removing the number ''10'' and inserting the number ''30'' in its place.

38. Subpart 609.5 is amended by revising the heading to read as follows:

Subpart 609.5—Organizational and Consultant Conflicts of Interests

PART 610—SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

39. Part 610, consisting of sections 610.002 and 610.002–70, is removed.

40. Part 611 is added to subchapter B to read as follows:

PART 611—DESCRIBING AGENCY NEEDS

Sec.
611.002 Policy.
611.002–70 Metric system implementation.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

Subpart 611.5—Liquidated Damages

611.502 Policy.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

611.002 Policy.

611.002–70 Metric system implementation.

(a) Policy. The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205a, et. seq.), requires Federal agencies to establish implementing guidelines pursuant to metric policy to adopt the metric system as the preferred system of weights and measurements for United States trade and commerce. This section establishes the Department of State's metric conversion guidelines.

(b) Applicability. This section applies to all DOS acquisitions, except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(c) Definitions.

Dual system means the use of both traditional and metric systems. For example, an item is designated, produced and described in inch-pound values with soft metric values also shown for information or comparison.

Hard metric means the use of only standard metric (SI) measurements in specifications, standards, supplies and services.

Hybrid system means the use of both traditional and hard metric values in specifications, standards, supplies and services.

Measurement sensitive means any item having an application or meaning depending substantially on some measured quantity. For example, measurement sensitive items include product or performance criteria and standards binding on others, such as emission levels, size and weight limitations, etc.

Metric system means the International System of Units (Le System International d'Unites (SI)) of the International Bureau of Weights and Measures.

Metrication means any act that increases metric system use, including metric training and initiation or conversion of measurement sensitive processes and systems to the metric system.

Soft metric means the result of mathematical conversion of inch-pound measurements to metric equivalents. The physical dimensions, however, are not changed.

Traditional system of weights and measurements means the predominant weight and measurement system currently used in the United States, also referred to as the ''inch-pound system.'' The traditional system includes such commonly used units as inch, foot, yard, mile, pint, quart, gallon, bushel, ounce (fluid and avoirdupois), pound, degree Fahrenheit, ampere, candela, and second.

(d) Procedures. (1) DOS contracting activities shall implement the metric system in a manner consistent with 15 U.S.C. 205a, *et seq.*

(2) All DOS contracting activities shall use the metric system in acquisition consistent with security, operations, economic, technical, logistical, training and safety requirements.

(3) The Department shall encourage industry to adopt the metric system by acquiring commercially available metric products and services that meet the Department's needs whenever practical. Toward this end, solicitations for DOS acquisitions shall:

(i) State all measurement sensitive requirements in metric terms whenever possible. Alternatives to hard metric are soft, dual and hybrid metric terms. The Metric Handbook for Federal Officials regarding the selection of proper metric units and symbols is available from the National Technical Information Service; and

(ii) For contracts expected to exceed $500,000 contracting officers shall return to the requirements office all specifications and statements of work that are not expressed in some form of metric terms unless the requirements office has prepared a justification, for the approval of the contracting officer, for the use of non-metric specifications or statement of work. The justification shall be in a format as prescribed by the head of the contracting activity. Option year prices shall be considered when computing the $500,000 threshold.

(4) Waivers are not required when ordering from Federal Supply Schedules.

(5) Valid justifications for non-metric specifications or statements of work include, but are not limited to:

(i) Existing specifications or standards are in inch-pound units, unless conversion of the existing specifications or standards is necessary or advantageous to the Government. Unnecessary retrofit of existing systems with new metric components should be avoided if the total cost of the retrofit, including redesign costs, exceeds $50,000;

(ii) Metric is not the accepted industry system with respect to a business-related activity; however, soft, hybrid, or dual systems may be used during the transition to hard metric;

(iii) The use of metric is impractical or is likely to cause significant inefficiencies or loss of markets to U.S. firms.

(6) The contracting officer shall review and, if acceptable, approve the waiver prior to the release of the solicitation. The waiver shall be placed in the contract file. If the waiver is not approved, the contracting officer shall return it to the requirements office with an explanation for the disapproval.

(7) The in-house operating metric costs shall be identified. Identification includes, but is not limited to, the cost of metric aids, tools, equipment, training and increased cost to develop metric specifications. All contracting activities and requirements offices shall maintain a record of any costs and/or savings brought about by metric conversion.

(8) Bulk (loose, unpacked) materials shall be specified and purchased in metric or dual units.

(9) Measuring devices, shop and laboratory equipment shall be purchased in metric or dual units.

(10) Shipping allowances, bills of lading and other shipping documents shall be expressed in metric or dual units.

Subpart 611.1—Selecting and Developing Requirements Documents

611.103 Market acceptance.

(a) The head of the contracting activity is the agency head for the purpose of FAR 11.103(a).

Subpart 611.5—Liquidated Damages

611.502 Policy.

(d) The head of the contracting activity is the agency head for the purpose of FAR 11.502(d).

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

41. Part 613 is revised to read as follows:

PART 613—SIMPLIFIED ACQUISITION PROCEDURES

Sec.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).
613.303–5 Purchases under BPAs.
613.305 Imprest funds and third party drafts.
613.305–3 Conditions for use.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 613.3—Simplified Acquisition Methods

613.303 Blanket purchase agreements (BPAs).

613.303–5 Purchases under BPAs.

(c) In accordance with FAR 13.303–5(c), BPAs shall be awarded to small businesses to the maximum extent practicable.

613.305 Imprest funds and third party drafts.

613.305–3 Conditions for use.

The Procurement Executive is the agency head's designee for the purposes of FAR 13.305–3(a).

PART 614—SEALED BIDDING

42. Subpart 614.2 is revised to read as follows:

Sec.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).
614.201–70 Use of English language.
614.201–6 Solicitation provisions.
614.201–6–70 DOSAR solicitation provision.

Subpart 614.2—Solicitation of Bids

614.201 Preparation of Invitation for Bids (IFB).

614.201–70 Use of English language.

Use of English language solicitations and contracts is mandatory unless a deviation has been approved by the Procurement Executive in accordance with 601.470. If any part of a contract is not written in the English language, the contracting officer shall attach an accurate English language translation of such part to the original and each copy of the contract, unless the contracting officer determines such action is infeasible.

614.201–6 Solicitation provisions.

614.201–6–70 DOSAR solicitation provision.

The contracting officer shall insert the provision at 652.214–71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

43. Section 614.404–1 is amended by adding a new paragraph (f) to read as follows:

614.404–1 Cancellation of invitations after opening.

* * * * *

(f) The head of the contracting activity is the agency head for the purpose of FAR 14.404–1(f). This authority is not redelegable.

44. Section 614.406, consisting of sections 614.406–3 and 614.406–4, is re-designated as ''614.407'', ''614.407–3'', and ''614.407–4'', respectively.

45. Newly designated section 614.407–3 is amended by correcting ''FAR 14.406'' to read ''FAR 14.407'' where it appears in the first sentence; and, by correcting ''FAR 14.406–3(f)'' to read ''FAR 14.407–3(f)'' where it appears in the second sentence.

46. Newly designated section 614.407–4 is amended by correcting ''FAR 14.406–4'' to read ''FAR 14.407–4'' where it appears in the first sentence; and, by correcting ''FAR 14.406–4(d)'' to read ''FAR 14.407–4(d)'' where it appears in the second sentence.

PART 615—CONTRACTING BY NEGOTIATION

47. Part 615 is revised to read as follows:

PART 615—CONTRACTING BY NEGOTIATION

Sec.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.
615.205 Issuing solicitations.
615.205–70 Use of English language.
615.209 Solicitation provisions and contract clauses.
615.209–70 DOSAR solicitation provision.

Subpart 615.3—Source Selection

615.303 Responsibilities.

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 615.2—Solicitation and Receipt of Proposals and Information

615.204 Contract format.

(e) The Procurement Executive is the agency head's designee for the purposes of FAR 15.204(e).

615.205 Issuing solicitations.

(a) Contracting officers shall release copies of solicitation mailing lists in accordance with FAR 14.205–5(a). However, the list of those firms which actually submit proposals is not releasable. Requests for information other than solicitation mailing lists shall be handled under the Freedom of Information Act.

615.205–70 Use of English language.

The requirements of DOSAR 614.201–70 also apply when contracting by negotiation.

615.209 Solicitation provisions and contract clauses.

615.209–70 DOSAR solicitation provision.

The contracting officer shall insert the provision at 652.214–71, Authorization to Perform, in all solicitations for contracts to be awarded or performed overseas.

Subpart 615.3—Source Selection

615.303 Responsibilities.

(a) The Procurement Executive is the agency head for the purposes of FAR 15.303(a).

Subpart 615.6—Unsolicited Proposals

615.604 Agency points of contact.

(a)(4) The contact points for unsolicited proposals are the heads of the contracting activities.

PART 616—TYPES OF CONTRACTS

48. Subpart 616.1, consisting of sections 616.102, 616.102–70, is removed.

49. Subpart 616.3, consisting of sections 616.301–3 and 616.306, is removed.

50. Section 616.505 is re-designated as section 616.506, and the section heading is revised to read as follows:

616.506 Solicitation provisions and contract clauses.

51. Section 616.505–70 is re-designated as section 616.506–70.

52. A new section 616.505 is added to read as follows:

616.505 Ordering.

(b)(4) The Departmental Competition Advocate is designated the task and delivery order contract ombudsman.

53. Subpart 616.6, consisting of sections 616.603 and 616.603–2, is removed.

PART 617—SPECIAL CONTRACTING METHODS

54. Subpart 617.1 is revised to read as follows:

Subpart 617.1—Multiyear Contracting

Sec.
617.104 General.
617.105 Policy.
617.105–1 Uses.
617.108 Congressional notification.

Subpart 617.1—Multiyear Contracting

617.104 General.

(b) The Procurement Executive is the agency head for the purpose of FAR 17.104(b).

617.105 Policy.

617.105–1 Uses.

(d) In the event that funds for the continuation of such a contract are not made available into a subsequent fiscal year, the contract shall be canceled. Any cancellation costs incurred shall be paid from appropriations originally available for the performance of the contract, appropriations currently available for the acquisition of similar property or services and not otherwise obligated, or appropriations made for such cancellation payments.

617.108 Congressional notification.

(a) The Procurement Executive is the agency head for the purposes of FAR 17.108(a).

55. Section 617.504–70 is amended in paragraph (a) by adding the words ''or their equivalents'' after the words ''Department deputy assistant secretaries.''

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 619—SMALL BUSINESS PROGRAMS

56. Part 619 is amended by revising the heading to read as set forth above.

57. Section 619.201 is amended in paragraph (d)(5) by removing the word ''limitation'' and adding the words ''threshold, including commercial items using the simplified procedures of FAR Subpart 13.5,'' in its place; and, by revising paragraph (d)(18) to read as follows:

§ 619.201 General policy.

* * * * *

(d) * * *

(18) Participating in interagency programs relating to small and small disadvantaged business matters as authorized by the A/SDBU Operations Director.

58. Section 619.501 is amended by deleting the phrase ''/Labor Surplus Area'' from the title of the Form DS–1910.

59. Section 619.505 is amended by revising the section heading to read as follows:

619.505 Rejecting Small Business Administration recommendations.

60. Subpart 619.7 is amended by revising the subpart heading to read as follows:

Subpart 619.7—Subcontracting with Small Business, Small Disadvantaged Business and Women-Owned Small Business Concerns

61. Section 619.705–3 is revised to read as follows:

619.705–3 Preparing the solicitation.

To further promote the use of small, disadvantaged, and women-owned firms by large prime contractors, contracting officers are encouraged to consider the adequacy of the subcontracting plans, and/or past performance in achieving negotiated subcontract goals, as part of the overall evaluation of the technical proposals.

62. Subpart 619.8 is revised to read as follows:

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

Sec.
619.800 General.
619.801 Definitions.
619.803 Selecting acquisitions for the 8(a) program.
619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).
619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.
619.804 Evaluation, offering, and acceptance.
619.804–2 Agency offering.
619.804–3 SBA acceptance.
619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.
619.805 Competitive 8(a).
619.805–2 Procedures.
619.806 Pricing the 8(a) contract.
619.808 Contract negotiation.
619.808–1 Sole source.
619.810 SBA appeals.
619.811 Preparing the contracts.
619.811–1 Sole source.
619.811–2 Competitive.
619.811–3 Contract clauses.
619.812 Contract administration.

Subpart 619.8—Contracting with the Small Business Administration (The 8(a) Program)

619.800 General.

(d) Utilizing Memoranda of Understanding (MOUs), the SBA has delegated its authority to contract directly with program participants under Section 8(a) of the Small Business Act to the Senior Procurement Executives of various Federal contracting activities. The Department of State has signed an MOU with SBA, effective May 6, 1998. Under the MOU, a contract may be awarded directly to an 8(a) firm on either a sole source or competitive basis. The SBA reserves the right to withdraw any delegation issued as a result of an MOU; however, any such withdrawal shall have no effect on contracts currently awarded under the MOU.

619.801 Definitions.

National buy requirements includes all 8(a) contracts performed outside the United States and processed by the Small Business Administration.

619.803 Selecting the acquisitions for the 8(a) program.

619.803–70 Responsibilities of the Office of Small and Disadvantaged Business Utilization (A/SDBU).

A/SDBU shall review the capabilities of 8(a) concerns and disseminate that information to DOS program and contracting personnel. As necessary, A/SDBU shall obtain from the SBA or 8(a) concerns supplemental information for DOS program and contracting personnel.

619.803–71 Simplified procedures for 8(a) acquisitions under MOUs.

Contracting activities may use the simplified acquisition procedures of FAR Part 13 and DOSAR Part 613 to issue purchase orders or contracts, not exceeding $100,000, to 8(a) participants. The $100,000 limitation for use of FAR Part 13 simplified acquisition procedures applies to the acquisition of both commercial and non-commercial items. The following applies to such acquisitions:

(a) Neither offering letters to, nor acceptance letters from, the SBA are required.

(b) The contracting activity shall use the SBA's PRO-Net database on the Internet (http://www.sba.gov) to establish that the selected 8(a) firm is a current program participant.

(c) Once an 8(a) contractor has been identified, the agency contracting officer shall establish the price with the selected 8(a) contractor.

(d) The contracting officer shall issue the purchase order or contract directly to the 8(a) firm in accordance with the provisions of FAR Part 13 and DOSAR Part 613. The contracting officer shall insert FAR clause 52.219–14, Limitations on Subcontracting, and DOSAR clause 652.219–71, Section 8(a) Direct Award, in all purchase orders and contracts awarded under this subsection. The contracting officer's title shall include the contracting activity, as follows: Contracting Officer for the Department of State [*insert contracting activity*]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose, shall sign the purchase order or contract as a third party.

(e) The contracting officer shall forward to the SBA District Office serving the 8(a) firm a copy of the purchase order or contract within five days after the order is issued.

619.804 Evaluation, offering, and acceptance.

619.804–2 Agency offering.

(a) When applicable, this notification shall identify that the offering is in accordance with the MOU identified in 619.800.

619.804–3 SBA acceptance.

619.804–3–70 SBA acceptance under MOUs for acquisitions exceeding $100,000.

(a) The SBA's decision whether to accept the requirement shall be transmitted to the contracting agency in writing within five working days of receipt of the offer.

(b) The SBA may request, and the contracting agency may grant, an extension beyond the five-day limit.

(c) SBA's acceptance letter should be faxed or e-mailed to the offering contracting agency.

(d) If the offering contracting agency has not received an acceptance or rejection of the offering from SBA within five days of SBA's receipt of the offering letter, the contracting agency may assume that the requirement has been accepted and proceed with the acquisition.

(e) The contents of the acceptance letter shall be limited to the eligibility of the recommended 8(a) contractor.

619.805 Competitive 8(a).

619.805–2 Procedures.

(a) 8(a) acquisitions may also be conducted using simplified acquisition procedures (see FAR Part 13). The award process is significantly streamlined where an MOU is in place.

(c)(3) For requirements exceeding $100,000 processed under the MOU cited in 619.800, the contracting officer shall submit the name, address, and telephone number of the low offeror (in sealed bid acquisitions) or the apparent successful offeror (in negotiated acquisitions) to the SBA Business Opportunity Specialist at the field office servicing the identified 8(a) firm. The SBA shall determine the eligibility of the firm(s) and advise the contracting officer within two working days of the receipt of the request. If the firm is determined to be ineligible, the contracting officer shall submit information on the next low offeror or next apparent successful offeror, as applicable, to the cognizant SBA field office.

619.806 Pricing the 8(a) contract.

(a) When required by FAR Subpart 15.4, the contracting officer shall obtain certified cost or pricing data directly from the 8(a) contractor if the contract is being awarded under the MOU cited in 619.800.

619.808 Contract negotiation.

619.808–1 Sole source.

(a) If the acquisition is conducted under an MOU cited in 619.800, the 8(a) contractor is responsible for negotiating with the agency within the time established by the agency. If the 8(a) contractor does not negotiate within the established time and the agency cannot allow additional time, the agency may, after notification and approval by SBA, proceed with the acquisition from other sources.

(b) If the acquisition is conducted under an MOU cited in 619.800, the agency is delegated the authority to negotiate directly with the 8(a) participant; however, if requested by the 8(a) participant, the SBA may participate in the negotiations.

619.810 SBA appeals.

(d) The Procurement Executive is the agency head for the purposes of FAR 19.812(d).

619.811 Preparing the contracts.

619.811–1 Sole source.

(d) If the award is to be made under an MOU cited in 619.800, the contract to be awarded by the contracting activity to the 8(a) firm shall be prepared in accordance with the contracting activity's normal procedures, given contract type and dollar amount, that the contracting activity would use for a similar, non-8(a) acquisition, except for the following:

(1) The award form shall cite 41 U.S.C. 253(c)(5) or 10 U.S.C. 2304(c)(5), as appropriate, and 15 U.S.C. 637(a) as the authority for use of other than full and open competition.

(2) The contracting officer shall insert FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards.

(3) For acquisitions exceeding $100,000, the contracting activity shall include SBA's requirement number on the award document.

(4) A single award document shall be used between the agency and the 8(a) contractor, i.e., an SBA signature will not be required. The title of the agency contracting officer shall include the contracting activity, as follows: Contracting Officer for the Department of State [insert contracting activity]. In addition, in accordance with the MOU, A/SDBU staff who have been issued limited contracting officer warrants for this purpose shall sign the contract as a third party. The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "Awarded to" or "Contractor name" block on the appropriate form.

619.811–2 Competitive.

(a) If the award is made under the delegation of 8(a) contracting authority, competitive contracts for 8(a) firms shall be prepared in accordance with the same standards as 8(a) sole source contracts. See 619.811–1.

(b) If the acquisition is conducted under the MOU cited in 619.800, the process for obtaining signatures shall be as specified in 619.811–1(d)(4).

619.811–3 Contract clauses.

(d)(3) The contracting officer shall insert the clause at FAR 52.219–18, Notification of Competition Limited to Eligible 8(a) Concerns, with its Alternate III (Deviation), in competitive solicitations and contracts exceeding $100,000 when the acquisition is processed under the MOU cited in 619.800.

(f) The contracting officer shall insert the clause at FAR 52.219–14, Limitations on Subcontracting, and DOSAR 652.219–71, Section 8(a) Direct Awards, in all solicitations and contracts that are processed under the MOU cited at 619.800. The clauses at FAR 52.219–11, Special 8(a) Contract Conditions; 52.219–12, Special 8(a) Subcontract Conditions; and, 52.219–17, Section 8(a) Award, shall not be used.

619.812 Contract administration.

(d) The head of the contracting activity is the agency head for the purposes of FAR 19.812(d). Awards under the MOU cited in 619.800 are subject to 15 U.S.C. 637(a)(21). These contracts contain the clause at DOSAR 652.219–71, Section 8(a) Direct Awards, that requires the 8(a) contractor to notify the SBA and the contracting officer when ownership of the firm is being transferred.

PART 622—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

63. Section 622.401 is removed.

64. Section 622.406–3 is removed.

65. Section 622.803 is added to read as follows:

622.803 Responsibilities.

(c) The Procurement Executive is the agency head for the purpose of FAR 22.803(c).

66. The heading of Subpart 622.13 is revised to read as follows:

Subpart 622.13—Disabled Veterans and Veterans of the Vietnam Era

67. The heading of Subpart 622.14 is revised to read as follows:

Subpart 622.14—Employment of Workers with Disabilities

PART 623—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

68. Subpart 623.4 is revised to read as follows:

Subpart 623.4—Use of Recovered Materials

Sec.
623.400 Scope of subpart.
623.404 Procedures.

Subpart 623.4—Use of Recovered Materials

623.400 Scope of subpart.

The affirmative procurement program is applicable to all domestic acquisitions of items currently designated by an EPA guideline or by future guidelines promulgated by EPA. The requirements of this section are not applicable to acquisitions made and/or performed outside the United States or its possessions.

623.404 Procedures.

(b)(2) The requirements office initiating an acquisition is responsible for determining whether recovered materials should be included in the specifications. Requirements offices may purchase EPA designated items containing other than recovered materials only if one of the exemptions listed in FAR 23.404(b)(3) applies. If the requirements office determines to acquire EPA designated items that do not contain recovered materials, a written justification must be submitted to the head of the contracting activity.

(i) Contracts for the purchase of, or requiring the supply of, any EPA designated item shall require that the item conform to the EPA guidelines, unless an exception has been approved by the head of the contracting activity in accordance with FAR 23.404(b)(3) and DOSAR 623.404(b)(3).

(ii) Contracting officers shall promote the fact that the Department is seeking to buy items containing recovered materials at pre-bid and pre-proposal conferences, when appropriate. Other means of promotion may include a specific notice on a solicitation's cover letter, calling attention to the requirement for recovered materials.

(iii) Contracting officers shall include FAR clause 52.223–9 to ensure that contractors estimate, certify, and verify the amount of recovered material used in the performance of the contract.

(iv) The effectiveness of the program shall be reviewed annually by A/OPE. An assessment will be made to determine if greater use of recovered materials is possible for the existing requirements or if recovered materials are causing undue delay, lack of competition, unreasonable prices, or an unacceptable level of performance.

(3) The head of the contracting activity is the agency head for the purpose of FAR 23.404(b)(3).

PART 625—FOREIGN ACQUISITION

69. Subpart 625.9, consisting of sections 625.901 and 625.903, is removed.

70. Subpart 625.70 is added to read as follows:

Subpart 625.70—Arab League Boycott and Related Provisions

Sec.
625.7001 Policy.
625.7002 Solicitation provision and contract clause.

Subpart 625.70—Arab League Boycott and Related Provisions

625.7001 Policy.

(a) Section 565 of the Fiscal Year 94/95 Foreign Relations Authorizations Act (Pub. L. 103–236) prohibits the Department of State from entering into any contract that expends funds appropriated to the Department of State:

(1) With a foreign person that complies with the Arab League Boycott of Israel; or,

(2) With any foreign or United States person that discriminates in the award of subcontracts on the basis of religion.

This authority has continuing effect. Section 565 requires specific language to be included in all Invitations for Bids and Requests for Proposals with respect to a contract subject to Section 565's prohibitions.

(b) Section 565 may be waived on a country-by-country basis if such a waiver is in the national interest and necessary to carry on diplomatic functions.

625.7002 Solicitation provision and contract clause.

Contracting officers shall include the following provision and clause in all solicitations and contracts exceeding the simplified acquisition threshold, unless a waiver has been granted in accordance with DOSAR 625.7001(b):

(a) 652.225–70, Arab League Boycott of Israel; and

(b) 652.225–71, Section 8(a) of the Export Administration Act, as amended.

71. Part 626 is added to subchapter D to read as follows:

PART 626—OTHER SOCIOECONOMIC PROGRAMS

Subpart 626.2—Minority Business Enterprise

626.200–70 Solicitation provision.

The contracting officer shall insert the provision at 652.226–70, Certification of Status as a Minority Business Enterprise, in all solicitations issued by domestic contracting activities. If the solicitation is being issued using electronic commerce, the contracting officer shall use the provision with its Alternate I.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 628—BONDS AND INSURANCE

72. Section 628.305 is amended by revising the second and third sentences of paragraph (b) introductory text and adding a fourth sentence to read as follows; and by removing paragraphs (b)(1), (b)(2), and (b)(3):

628.305 Overseas workers' compensation and war-hazard insurance.

* * * * *

(b) * * * In countries where local nationals and/or third country nationals will be employed to perform the contract, such countries have been waived by the Secretary of Labor. Whenever such insurance is required under the contract, the contracting officer shall insert the clause at 652.228–71, Worker's Compensation Insurance (Defense Base Act)—Services. If the contract is for construction, the contracting officer shall insert the clause with its Alternate I.

* * * * *

73. Section 628.306 is revised to read as follows:

628.306 Insurance under fixed-price contracts.

The contracting officer shall insert the provision at 652.228–74, Defense Base Act Insurance Rates—Limitation—Fixed-Price, in solicitations for fixed-price or construction contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

74. Section 628.307 is revised to read as follows:

628.307 Insurance under cost-reimbursement contracts.

The contracting officer shall insert the provision at 652.228–76, Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials, in solicitations for cost-reimbursement, labor-hour, or time-and-materials type contracts to be performed outside the United States by United States citizens, residents, and/or those hired in the United States.

75. Section 628.307–70 is removed.

PART 629—TAXES

76. Section 629.402, consisting of sections 629.402–1 and 629.402–1–70, is added to read as follows:

629.402 Foreign contracts.

629.402–1 Foreign fixed-price contracts.

629.402–1–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.229–71, Personal Property Disposition at Posts Abroad, in all solicitations and contracts performed overseas.

PART 630—COST ACCOUNTING STANDARDS

77. Part 630 is removed.

PART 631—CONTRACT COST PRINCIPLES AND PROCEDURES

78. Subpart 631.2 is added to read as follows:

Subpart 631.2—Contracts with Commercial Organizations

631.205 Selected costs.

631.205–6 Compensation for personal services.

(g)(3) The head of the contracting activity is the agency head's designee for the purpose of FAR 31.205–6(g)(3).

PART 632—CONTRACT FINANCING

79. Section 632.006, consisting of sections 632.006–1, 632.006–2, and 632.006–4, is added to read as follows:

PART 632—CONTRACT FINANCING

Sec.
632.006 Reduction or suspension of contract payments upon finding of fraud.
632.006–1 General.
632.006–2 Definitions.
632.006–4 Procedures.

632.006 Reduction or suspension of contract payments upon finding of fraud.

632.006–1 General.

The Procurement Executive is the agency head for the purpose of FAR 32.006–1.

632.006–2 Definitions.

Remedy coordination official means the Assistant Inspector General for Investigations.

632.006–4 Procedures.

The Procurement Executive is the agency head for the purposes of FAR 32.006–4.

80. Subpart 632.1 is added to read as follows:

632.1 Non-Commercial Item Purchase Financing

632.114 Unusual contract financing.

The Procurement Executive is the agency head for the purpose of FAR 32.114.

81. Subpart 632.2 is added to read as follows:

Subpart 632.2—Commercial Item Purchase Financing

632.201 Statutory authority.

The head of the contracting activity is the agency head for the purpose of FAR 32.201.

82. Section 632.404 is added to read as follows:

632.404 Exclusions.

(a) Total advance payments may be authorized for the items listed in FAR 32.404(a), notwithstanding their designation as a commercial item and acquisition under FAR Part 12 procedures.

83. Subpart 632.7 is revised to read as follows:

Subpart 632.7—Contract Funding

Sec.
632.702 Policy.
632.702–70 DOS policy.
632.703 Contract funding requirements.
632.703–3 Contracts crossing fiscal years.
632.705 Contract clauses.
632.705–70 DOSAR contract clause.

Subpart 632.7—Contract Funding

632.702 Policy.

632.702–70 DOS policy.

The Department's policy is to provide full funding for all contracts, to the maximum extent practicable. FAR 32.704 and 32.705–2 provide for incremental funding of cost-reimbursement contracts. Fixed-price, labor-hour, and time-and-materials contracts for severable services may also be incrementally funded if full funding is not available at the time of contract award and the contracting officer executes a determination and findings, approved by the requirements office, justifying the need for incremental funding due to the unavailability of funds.

632.703 Contract funding requirements.

632.703–3 Contracts crossing fiscal years.

(b) The head of the contracting activity is the agency head for the purpose of FAR 32.703–3(b).

632.705 Contract clauses.

632.705–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.232–72, Limitation of Funds, in incrementally funded fixed-price, labor-hour, and time-and-materials solicitations and contracts for severable services.

84. Section 632.803 is amended by adding the following sentence to the end of paragraph (b):

632.803 Policies.

(b) * * * The Directors, Regional Procurement Support Offices may approve the assignment of claims for contracts under their administration after obtaining legal consultation.

PART 633—PROTESTS, DISPUTES AND APPEALS

85. Section 633.102 is amended by removing the words "or the General Services Administration Board of Contract Appeals (GSBCA)".

86. Section 633.103 is revised to read as follows:

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

87. Section 633.104 is revised to read as follows:

633.104 Protests to GAO.

(a) *General procedures.* The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

88. Section 633.105 is removed.

89. Section 633.211 is removed.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 634—MAJOR SYSTEM ACQUISITION

90. Sections 634.001, 634.001–70, and 634.002 are removed.

91. Section 634.003 is amended in paragraph (a) by removing the second sentence.

92. Section 634.005–6 is amended by removing the period at the end of the sentence and adding the following

words to the end of the sentence ''with power of redelegation to the Under Secretary for Management.''

PART 636—CONSTRUCTION AND ARCHITECT-ENGINEERING CONTRACTS

93. Section 636.101–70 is amended by adding the following sentence:

636.101–70 Exception.

* * * The Deputy Assistant Secretary for Foreign Buildings Operations is authorized to waive the provisions of the FAR.

94. Subpart 636.5 is added to read as follows:

Subpart 636.5—Contract Clauses

636.513 Accident prevention.

(a) In accordance with a class deviation approved by the Procurement Executive, contracting officers at overseas contracting activities shall insert DOSAR 652.236–70, Accident Prevention, in lieu of FAR clause 52.236–13 when awarding construction contracts.

95. Section 636.602–1 is added to read as follows:

636.602–1 Selection criteria.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 36.602–1(b).

PART 637—SERVICE CONTRACTING

96. Section 637.106 is removed.

97. Section 637.110 is amended by adding the following sentence to the end of paragraph (c):

637.110 Solicitation provisions and contract clauses.

* * * * *

(c) * * * Overseas contracting activities may add local holidays to the list included in paragraph (a) of the clause.

98. Subpart 637.2 is added to read as follows:

Subpart 637.2—Advisory and Assistance Services

637.204 Guidelines for determining availability of personnel.

The head of the contracting activity is the agency head for the purposes of FAR 37.204.

PART 639—ACQUISITION OF INFORMATION RESOURCES

99. Part 639, consisting of section 639.001–70, is removed.

100. Part 641 is added to subchapter F to read as follows:

PART 641—ACQUISITION OF UTILITY SERVICES

Authority: 40 U.S.C. 486(c); 22 U.S.C. 2658.

Subpart 641.2—Acquiring Utility Services

641.201 Policy.

(d) The Procurement Executive is the agency head for the purposes of FAR 41.201(d)(2)(i) and FAR 41.201(d)(3).

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 642—CONTRACT ADMINISTRATION

101. Subpart 642.7 is added to read as follows:

Subpart 642.7—Indirect Cost Rates

642.703 General.

642.703–2 Certificate of indirect costs.

(b) The head of the contracting activity is the agency head's designee for the purpose of FAR 42.703–2(b).

PART 643—CONTRACT MODIFICATIONS

102. Section 643.102–70 is revised by removing paragraph (b) and by removing the paragraph designation in paragraph (a).

103. Section 643.104, consisting of section 643.104–70, is added to read as follows:

643.104 Notification of contract changes.

643.104–70 DOSAR contract clause.

The contracting officer shall insert the clause at 652.243–70, Notices, in all solicitations and contracts exceeding the micro-purchase threshold which are awarded or performed overseas.

104. Part 644 is added to subchapter G to read as follows:

PART 644—SUBCONTRACTING POLICIES AND PROCEDURES

Authority: 40 U.S.C. 486 (c); 22 U.S.C. 2658.

Subpart 644.3—Contractor's Purchasing System Reviews

644.302 Requirements.

(a) The Procurement Executive is the head of the agency for the purpose of FAR 44.302(a).

PART 645—GOVERNMENT PROPERTY

105. Subpart 645.4 is added to read as follows:

Subpart 645.4—Contractor Use and Rental of Government Property

645.403 Rental—Use and Charges clause.

(a) The head of the contracting activity is the agency head's designee for the purpose of FAR 45.403(a).

PART 646—QUALITY ASSURANCE

106. Part 646 is removed.

PART 647—TRANSPORTATION

107. Subpart 647.2 is added to read as follows:

Subpart 647.2—Contracts for Transportation or for Transportation-Related Services

647.207 Solicitation provisions, contract clauses, and special requirements.

647.207–7 Liability and insurance.

(e) The Procurement Executive has approved a class deviation for paragraph (c) of FAR clause 52.247–23, Contractor Liability for Loss of and/or Damage to Household Goods. The contracting officer shall indicate that the contractor shall indemnify the owner of the goods at a rate of $5.00 per pound (or metric equivalent in local currency) based on the total net weight. The rate conforms with liability calculations found in International Through Government Bills of Lading (ITGBL).

PART 649—TERMINATION OF CONTRACTS

108. Section 649.111 is removed.

SUBCHAPTER H—CLAUSES AND FORMS

PART 652—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

109. Section 652.203–70 is removed.

110. Section 652.203–71 is removed.

111. Section 652.204–70 is removed.

112. Section 652.204–71 is removed.

113. Section 652.206–70 is revised to read as follows:

652.206–70 Competition Advocacy/Ombudsman.

As prescribed in 606.570, insert the following provision:

Competition Advocacy/Ombudsman (MO/YR)

(a) The Department of State's Competition Advocate is responsible for assisting industry in removing restrictive requirements from Department of State solicitations and removing barriers to full and open competition and use of commercial items. If such a solicitation is considered competitively restrictive or does not appear properly conducive to competition and commercial practices, potential offerors are

encouraged to first contact the contracting officer for the respective solicitation. If concerns remain unresolved, contact the Department of State Competition Advocate on (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Competition Advocate, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(b) The Department of State's Acquisition Ombudsman has been appointed to hear concerns from potential offerors and contractors during the preaward and postaward phases of this acquisition. The role of the ombudsman is not to diminish the authority of the contracting officer, the Technical Evaluation Panel or Source Evaluation Board, or the selection official. The purpose of the ombudsman is to facilitate the communication of concerns, issues, disagreements, and recommendations of interested parties to the appropriate Government personnel, and work to resolve them. When requested and appropriate, the ombudsman will maintain strict confidentiality as to the source of the concern. The ombudsman does not participate in the evaluation of proposals, the source selection process, or the adjudication of formal contract disputes. Interested parties are invited to contact the contracting activity ombudsman, [insert name], at [insert telephone and fax numbers]. For an American Embassy or overseas post, refer to the numbers below for the Department Acquisition Ombudsman. Concerns, issues, disagreements, and recommendations which cannot be resolved at a contracting activity level may be referred to the Department of State Acquisition Ombudsman at (703) 516–1680, by fax at (703) 875–6155, or write to: Department of State, Acquisition Ombudsman, Office of the Procurement Executive (A/OPE), Suite 603, SA–6, Washington, DC 20522–0602.

(End of provision)

114. Section 652.214–70 is removed and reserved.

115. Section 652.214–71 is revised to read as follows:

652.214–71 Authorization to Perform.

As prescribed in 614.201–6–70(c) and 615.209–70, insert the following provision:

Authorization to Perform (MO/YR)

(a) The offeror agrees, should it be selected for contract award, that

(1) It has obtained (or will obtain by the date specified in the solicitation), authorization to operate and do business in the country or countries in which this contract will be performed;

(2) It has obtained (or will obtain by the date specified in the solicitation), all necessary licenses and permits required to perform this contract; and

(3) It shall comply fully with all laws, decrees, labor standards and regulations of said country or countries during the performance of this contract.

(b) If the party actually performing the work will be a subcontractor or joint venture partner, then such subcontractor or joint venture partner agrees to the requirements of paragraph (a) of this provision.

(End of provision)

116. Section 652.216–70 is amended by revising the introductory text to read as follows:

652.216–70 Ordering—Indefinite-Delivery Contract.

As prescribed in 616.506–70, insert the following clause:

* * * * *

117. Section 652.216–71 is revised to read as follows:

652.216–71 Price Adjustment.

As prescribed in 616.203–4, insert a clause substantially the same as follows:

Price Adjustment (MO/YR)

(a) The contract price may be increased or decreased in actual costs of direct service labor which result directly from laws enacted and effective during the term of this contract by the [insert name of country] Government. Direct service labor costs include only the costs of wages and direct benefits (such as social security, health insurance, unemployment compensation insurance) paid to or incurred for the direct benefit of personnel performing services under one of the categories listed in Section [identify section number] of this contract. Price adjustments will include only changes in direct service labor costs incurred in order to comply with the requirements of the law. No adjustment will be made under this clause with respect to labor costs of personnel not performing direct service labor under the categories of Section [identify section number], nor for overhead, profit, general and administrative (G&A) costs, taxes or any other costs whatsoever.

(b) For the contracting officer to consider any request for adjustment, the contractor shall demonstrate in writing:

(1) That the change in the law occurred during the term of this contract and subsequent to the award date of this contract; and,

(2) That the change in the law could not have been reasonably anticipated prior to contract award; and,

(3) How the change in the law directly affects the contractor's costs under this contract.

(c) The contractor shall present data that clearly supports any request for adjustment. This data shall be submitted no later than 30 calendar days after the changes in the law have been made public. This data shall include, but not be limited to, the following:

(1) The calculation of the amount of adjustment requested; and,

(2) Documentation which identifies and provides the appropriate portions of the text of the particular law from which the request is derived.

(d) In order to establish the change between the requested adjusted rate and the original rate, the contractor shall support the appropriate data and composition of the original rate and the requested adjusted rate. This shall include details regarding specific hourly rates paid to individual employees. The allowable adjustment shall be limited to the extent to which increases in direct service labor costs due to host country law changes are not offset by exchange rate gains. For contracts paid in U.S. dollars, the contractor's request for price adjustment shall present data reflecting:

(1) The exchange rate in effect on the date of the contractor's proposal that was accepted for the basic contract; and

(2) The current exchange rate and its effect on payment of workers in local currency.

(e) Only direct cost changes mandated by enacted laws shall be considered for adjustment under this contract. Changes for purposes of maintaining parity of pay between employees at the minimum mandated levels and employees already paid at levels above the newly mandated minimums shall not be considered. Therefore, if the contractor elects to increase payments to employees who are already being paid at or above the mandated amounts, such increased costs shall be borne solely by the contractor and shall not be justification for an increase in the hourly and monthly rates under this contract.

(f) Any request for adjustment shall be presented by signature of an officer or general partner of the contractor having overall responsibility for the conduct of the contractor's affairs.

(g) No adjustment shall be made to the contract price that relates to any indirect, overhead, or fixed costs, profit or fee. Only the changes in direct service labor wages (and any benefits based directly on wages) shall be considered by the U.S. Government as basis for contract price changes.

(h) No request by the contractor for an adjustment under this clause shall be allowed if asserted after final payment has been made under this contract.

(i) This clause shall only apply to laws enacted by the [insert name of country] Government meeting the criterion set forth in paragraph (b) of this clause. No adjustments shall be made due to currency fluctuations in exchange rates.

(End of clause)

118. Section 652.219–71 is added to read as follows:

652.219–71 Section 8(a) direct awards.

As prescribed in 619.811–3(f), insert the following clause:

Section 8(a) Direct Awards (MO/YR)

(a) This purchase order or contract is issued as a direct award between the contracting activity and the 8(a) contractor pursuant to the Memorandum of Understanding between the Small Business Administration (SBA) and the Department of State (DOS). SBA retains responsibility for 8(a) certification, 8(a) eligibility determinations and related issues, and provides counseling and assistance to the 8(a) contractor under the 8(a) program. The cognizant SBA district office is: [To be completed by the contracting officer at the time of award]

(b) The DOS contracting officer is responsible for administering the purchase

order or contract and taking any action on behalf of the Government under the terms and conditions of the purchase order or contract. However, the DOS contracting officer shall give advance notice to the SBA before it issues a final notice terminating performance, either in whole or in part, under the purchase order or contract. The DOS contracting officer shall also coordinate with SBA prior to processing any novation agreement. The DOS contracting officer may assign contract administration functions to a contract administration office.

(c) The contractor agrees:

(1) To notify the DOS contracting officer, simultaneous with its notification to SBA (as required by SBA's 8(a) regulations), when the owner or owners upon whom 8(a) eligibility is based, plan to relinquish ownership or control of the concern. Consistent with 15 U.S.C. 637(a)(21), transfer of ownership or control shall result in termination of the contract for convenience, unless SBA waives the requirement for termination prior to the actual relinquishing of ownership and control; and,

(2) To adhere to the requirements of FAR 52.219–14, Limitations on Subcontracting.

(End of clause)

119. Section 652.223–70 is removed.
120. Section 652.223–71 is removed.
121. Section 652.223–72 is removed.
122. Section 652.223–73 is removed.
123. Section 652.223–74 is removed.
124. Section 652.223–75 is removed.
125. Section 652.223–76 is removed.
126. Section 652.223–77 is removed.
127. Section 652.223–78 is removed.
128. Section 652.225–70 is added to read as follows:

652.225–70 Arab League Boycott of Israel.

As prescribed in 625.7002(a), insert the following provision:

Arab League Boycott of Israel (MO/YR)

(a) Definitions. As used in this provision:

Foreign person means any person other than a United States person as defined in this paragraph (a).

United States person means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern), and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as provided under the Export Administration Act of 1979, as amended.

(b) Certification. By submitting this offer, the offeror certifies that it is not:

(1) Taking or knowingly agreeing to take any action, with respect to the boycott of Israel by Arab League countries, which Section 8(a) of the Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)) prohibits a United States person from taking; or,

(2) Discriminating in the award of subcontracts on the basis of religion.

(End of provision)

129. Section 652.225–71 is added to read as follows:

652.225–71 Section 8(a) of the Export Administration Act of 1979, as amended.

As prescribed in 625.7002(b), insert the following clause:

Section 8(a) of the Export Administration Act of 1979, as Amended (MO/YR)

(a) Section 8(a) of the U.S. Export Administration Act of 1979, as amended (50 U.S.C. 2407(a)), prohibits compliance by U.S. persons with any boycott fostered by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation. The Boycott of Israel by Arab League countries is such a boycott, and therefore, the following actions, if taken with intent to comply with, further, or support the Arab League Boycott of Israel, are prohibited activities under the Export Administration Act:

(1) Refusing, or requiring any U.S. person to refuse to do business with or in Israel, with any Israeli business concern, or with any national or resident of Israel, or with any other person, pursuant to an agreement of, or a request from or on behalf of a boycotting country;

(2) Refusing, or requiring any U.S. person to refuse to employ or otherwise discriminating against any person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person;

(3) Furnishing information with respect to the race, religion, or national origin of any U.S. person or of any owner, officer, director, or employee of such U.S. person;

(4) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the State of Israel, with any business concern organized under the laws of the State of Israel, with any Israeli national or resident, or with any person which is known or believed to be restricted from having any business relationship with or in Israel;

(5) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the State of Israel; and,

(6) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement against doing business with the State of Israel.

(b) Under Section 8(a), the following types of activities are not forbidden ''compliance with the boycott,'' and are therefore exempted from Section 8(a)'s prohibitions listed in paragraphs (a) (1) through (6) of this clause:

(1) Complying or agreeing to comply with requirements:

(i) Prohibiting the import of goods or services from Israel or goods produced or services provided by any business concern organized under the laws of Israel or by nationals or residents of Israel; or,

(ii) Prohibiting the shipment of goods to Israel on a carrier of Israel, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(2) Complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipments as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(3) Complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurance, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(4) Complying or agreeing to comply with the export requirements of the boycotting country relating to shipments or transshipments of exports to Israel, to any business concern of or organized under the laws of Israel, or to any national or resident of Israel;

(5) Compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and,

(6) Compliance by a U.S. person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his or her activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his or her own use, including the performance of contractual services within that country, as may be defined by such regulations.

(End of clause)

130. Section 652.226–70 is added to read as follows:

652.226–70 Certification of status as a minority business enterprise.

As prescribed in 626.200–70, insert the following provision:

Certification of Status as a Minority Business Enterprise (MO/YR)

The Bidder/Offeror/Supplier certifies that is [ ] is [ ] is not [check one] a minority

business enterprise which is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are:

[Check the applicable block]

[ ] Black Americans

[ ] Hispanic Americans

[ ] Native Americans

[ ] Asian-Pacific Americans

[ ] Other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

Alternate I (MO/YR).

Certification of Status as a Minority Business Enterprise (Alternate I) (MO/YR)

(a) If you are a minority-owned business, please indicate in the comments section of your quote/response the applicable minority designation from those listed in paragraph (b) of this provision. If no comments are received, it shall be assumed that you are not a minority-owned business. This request for information is to assist the Department collect statistics on awards to minority-owned businesses and will not influence the award decision.

(b) A minority business enterprise is defined as a business which is at least 51 percent owned by one or more minority individuals or, in the case of a publicly owned business, at least 51 percent of its voting stock is owned by one or more minority individuals, and whose management and daily operations are controlled by one or more such individuals. For purposes of this definition, minority individuals are: Black Americans; Hispanic Americans; Native Americans; Asian-Pacific Americans; and, other groups whose members are U.S. citizens and are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of the Small Business Act, as amended (15 U.S.C. 637(d)), or the Secretary of Commerce.

(End of provision)

131. Section 652.228–70 is amended by revising the introductory text to read as follows:

652.228–70 Indemnification.

As prescribed in 628.7001(b), insert the following clause:

* * * * *

132. Section 652.228–71 is revised to read as follows:

652.228–71 Worker's Compensation Insurance (Defense Base Act)—Services

As prescribed in 628.305(b), insert the following clause:

Worker's Compensation Insurance (Defense Base Act)—Services (MO/YR)

(a) This clause supplements FAR 52.228–3.

(b) The contractor agrees to procure Defense Base Act (DBA) insurance pursuant to the terms of the contract between the Department of State and the Department's DBA insurance carrier unless the contractor has a DBA self-insurance program approved by the Department of Labor. The contractor shall submit a copy of the Department of Labor's approval to the contracting officer upon contract award. The current rate under the Department of State contract is [contracting officer insert rate] of compensation for services.

(c) Since the Department of State has obtained a waiver of DBA coverage for contractor employees who are not citizens of, residents of, or hired in the United States, the contractor agrees to provide such employees with worker's compensation benefits as required by the laws of the country in which the employees are working, or by the laws of the employee's native country, whichever offers greater benefits.

(d) The contractor agrees to insert a clause substantially the same as this one in all subcontracts to which the DBA is applicable. Subcontractors shall be required to insert a similar clause in any of their subcontracts subject to the DBA.

(e) Should the rates for DBA insurance coverage increase or decrease during the performance of this contract, the Department shall modify this contract accordingly.

(f) The contractor shall demonstrate to the satisfaction of the contracting officer that the equitable adjustment as a result of the insurance increase or decrease does not include any reserve for such insurance. Adjustment shall not include any overhead, profit, general and administrative expenses, etc.

(End of clause)

Alternate I (MO/YR). If the contract is for construction, as prescribed in 628.305(b), substitute the last sentence of paragraph (b) to read as follows: ''The current rate under the Department of State contract is [contracting officer insert rate] of compensation for construction.''

133. Section 652.228–72 is removed and reserved.

134. Section 652.228–73 is removed and reserved.

135. Section 652.228–74 is revised to read as follows:

652.228–74 Defense Base Act insurance rates—Limitation—Fixed-price.

As prescribed in 628.306, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Fixed-Price (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. The rates for this insurance are as follows:

Services @ [contracting officer insert current rate] of compensation; or

Construction @ [contracting officer insert current rate] of compensation.

(b) Bidders/Offerors should compute the total compensation (direct salary plus differential, but excluding per diem, housing allowance and other miscellaneous post allowances) to be paid to employees who will be covered by DBA insurance and the cost of DBA insurance in their bid/proposal using the foregoing rate, and insert the totals in the spaces provided for the base year and each year thereafter, if applicable. The DBA insurance cost shall be included in the total fixed price. The DBA insurance costs shall be reimbursed directly to the contractor.

(1) Compensation of Covered Employees: __

(2) Defense Base Act Insurance Costs: ______

(3) Total Cost: ________________________

(c) Bidders/offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

136. Section 652.228–75 is removed and reserved.

137. Section 652.228–76 is revised to read as follows:

652.228–76 Defense Base Act insurance rates—Limitation—Cost-reimbursement, labor-hour, and time-and-materials.

As prescribed in 628.307, insert the following provision:

Defense Base Act Insurance Rates—Limitation—Cost-Reimbursement, Labor-Hour, and Time-and-Materials (MO/YR)

(a) The Department of State has entered into a contract with an insurance carrier to provide DBA insurance to Department of State contractors at a contracted rate. In preparing the cost proposal, the offeror shall use the following rates in computing the cost for DBA insurance:

Services @ [contracting officer insert current rate] of compensation (direct salary plus differential, but excluding per diem, housing allowance, education allowance, and miscellaneous allowances); or

Construction @ [contracting officer insert current rate] of compensation.

(b) These rates apply to all job classifications in those particular categories. The successful offeror shall be advised of the name and address of the insurance broker who will process the DBA insurance coverage.

(c) Should an offeror compute or include higher DBA insurance rates, the rates shall be disallowed.

(d) Offerors shall include a statement as to whether or not local nationals or third country nationals will be employed on the resultant contract.

(End of provision)

138. Section 652.228–77 is removed.

139. Section 652.229–70 is amended by revising the introdcutorty text to read as follows:

652.229–70 Excise tax exemption statement for contractors within the United States.

As prescribed in 629.401–70, insert the following clause:

* * * * *

140. Section 652.229–71 is added to read as follows:

652.229–71 Personal property disposition at posts abroad.

As prescribed in 629.402–1–70, insert the following clause:

Personal Property Disposition at Posts Abroad (MO/YR)

Regulations at 22 CFR Part 136 require that U.S. Government employees and their families do not profit personally from sales or other transactions with persons who are not themselves entitled to exemption from import restrictions, duties, or taxes. Should the contractor experience importation or tax privileges in a foreign country because of its contractual relationship to the United States Government, the contractor shall observe the requirements of 22 CFR Part 136 and all policies, rules, and procedures issued by the chief of mission in that foreign country.

(End of clause)

141. Section 652.232–70 is amended in paragraph (c) of the clause by revising the first sentence to read as follows:

652.232–70 Payment Schedule and Invoice Submission—(Fixed-Price).

* * * * *

Payment Schedule and Invoice Submission (Fixed-Price) (MO/YR)

* * * * *

(c) Invoice Submission. Invoices shall be submitted in an original and [contracting officer insert appropriate number of copies] to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449. * * *

* * * * *

142. Section 652.232–71 is amended in paragraph (a) by revising the last sentence to read as follows:

652.232–71 Voucher Submission (Cost-Reimbursement).

* * * * *

Voucher Submission (Cost-Reimbursement) (MO/YR)

(a) * * * All vouchers shall be submitted to the office identified in Block 10 of the SF–26, Block 23 of the SF–33, or Block 18b of the SF–1449.

* * * * *

143. Section 652.232–72 is added to read as follows:

652.232–72 Limitation of funds.

As prescribed in 632.705–70, insert the following clause:

Limitation of Funds (MO/YR)

(a) Of the total price in Section B (or the ''Prices'' section), only the amount stated on the contract award document or subsequent modifications is now available for payment and obligated under this contract. It is anticipated that from time to time, additional funds will be obligated under the contract until the total price of the contract is obligated.

(b) The Government is not obligated to pay or reimburse the contractor more than the amount obligated pursuant to this clause. The contractor agrees to perform the contract up to the point at which the total amount paid and payable by the Government (including amounts payable for subcontracts and settlement costs if this contract is terminated for convenience) approximates but does not exceed the total amount obligated.

(c)(1) It is contemplated that funds now obligated under this contract will cover the work to be performed until [contracting officer insert date].

(2) If the contractor considers the funds obligated under this contract to be insufficient to cover the work to be performed until that date, or another date agreed to by the parties, the contractor shall notify the contracting officer in writing and indicate the date on which it expects expended funds to approximate 75 percent of the total amount obligated. The notice shall state the estimated amount of additional funds required to continue performance through the date specified in paragraph (c)(1) of this clause or another date agreed to by the parties.

(3) If, after notification is provided pursuant to paragraph (c)(2) of this clause, additional funds are not obligated, or an earlier date than the date in paragraph (c)(1) of this clause is not agreed to, the contractor shall not be obligated to continue performance under this contract (including actions under the termination clause of this contract) beyond the funds obligated for contract performance.

(d) When additional funds are obligated from time to time for continued performance of this contract, the contract shall be modified to increase the funds obligated and to indicate the period of performance for which funds are applicable. The contractor may notify the contracting officer as provided in paragraph (c)(2) of this clause regarding any additional funds obligated.

(e) If the contractor incurs additional costs or is delayed in the performance of work under this contract, solely by reason of the Government's failure to obligate additional funds in amounts sufficient for the timely performance of this contract, an equitable adjustment may be made to the price, or time of delivery, or both.

(f) This clause shall become inoperative upon obligation of funds sufficient to cover the full price stated in the contract, except for rights and obligations then existing under this clause.

(g) Nothing in this clause shall affect the Government's right to terminate the contract for convenience or default.

(End of clause)

144. Section 652.236–70 is added to read as follows:

652.236–70 Accident prevention.

As prescribed in 636.513, insert the following clause:

Accident Prevention (MO/YR)

(a) General. The contractor shall provide and maintain work environments and procedures which will safeguard the public and Government personnel, property, materials, supplies, and equipment exposed to contractor operations and activities; avoid interruptions of Government operations and delays in project completion dates; and, control costs in the performance of this contract. For these purposes, the contractor shall:

(1) Provide appropriate safety barricades, signs and signal lights;

(2) Comply with the standards issued by any local government authority having jurisdiction over occupational health and safety issues; and,

(3) Ensure that any additional measures the contracting officer determines to be reasonably necessary for this purpose are taken.

(4) [The contracting officer shall specify additional requirements regarding safety if the work involves scaffolding or other work at heights above 2 meters, trenches or other excavation greater than 1 meter, earth moving equipment, electrical hazards, work in confined spaces (limited exits, potential for oxygen less than 19.5%, toxic or combustible atmosphere, potential for solid or liquid engulfment, or other hazards considered to be immediately dangerous to life or health such as water tanks, transformer vaults, sewers, cisterns, etc.), or hazardous materials (especially those used indoors, e.g., paints, solvents, etc.).]

(b) Records. The contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this contract resulting in death, traumatic injury, occupational disease, or damage to or theft of property, materials, supplies, or equipment. The contractor shall report this data in the manner prescribed by the contracting officer.

(c) Subcontracts. The contractor shall be responsible for its subcontractors' compliance with this clause.

(d) Written program. Before commencing work, the contractor shall:

(1) Submit a written plan for implementing this clause; and,

(2) Meet with the contracting officer to discuss and develop a mutual understanding relative to administration of the overall safety program.

(e) Notification. The contracting officer shall notify the contractor of any non-compliance with these requirements and the corrective actions required. This notice, when delivered to the contractor or the contractor's representative on site, shall be deemed sufficient notice of the non-compliance and corrective action required. After receiving the notice, the contractor shall immediately take corrective action. If the contractor fails or refuses to promptly take corrective action, the contracting officer may issue an order suspending all or part of the work until satisfactory corrective action has been taken. The contractor shall not be entitled to any equitable adjustment of the contract price or extension of the performance schedule on any suspension of work order issued under this clause.

(End of clause)

145. Section 652.237–71 is amended by revising the clause date to ''(MO/YR)''; and, in paragraph (c) of the clause by removing the words ''Building Pass

Application Unit, Room 309, State Annex Number 1, Columbia Plaza., 22401 E Street, NW, Washington, DC'' and inserting the words ''Building Pass Application Unit, Room B266, Department of State, 2201 C Street, NW, Washington, DC'' in their place.

146. Section 652.237–72 is amended by revising the clause date to ''(MO/YR)''; and, in paragraph (a) of the clause by removing the words ''President's Day'' from the list of designated holidays and inserting the words ''Washington's Birthday'' in their place.

147. Section 652.242–70 is amended by revising the clause date to ''(MO/YR)''; and by deleting the parenthetical ''[insert name of COR]'' in paragraph (b) of the clause and inserting the words ''[insert job title of COR]'' in their place.

148. Section 652.242–71 is amended by revising the introductory text to read as follows:

652.242–71 Notice of Shipments.

As prescribed in 642.1406–2–70(a), insert the following clause:

* * * * *

149. Section 652.242–72 is amended by revising the introductory text to read as follows:

652.242–71 Shipping Instructions.

As prescribed in 642.1406–2–70(b), insert the following clause:

* * * * *

150. Section 652.243–70 is added to read as follows:

652.243–70 Notices.

As prescribed in 643.104–70, insert the following clause:

Notices (MO/YR)

Any notice or request relating to this contract given by either party to the other shall be in writing. Said notice or request shall be mailed or delivered by hand to the other party at the address provided in the schedule of the contract. All modifications to the contract must be made in writing by the contracting officer.

(End of clause)

151. Section 652.246–70 is removed.

PART 653—FORMS

152. Section 653.213–70 is removed.

153. Section 653.219 is amended by revising the section heading to read as follows:

653.219 Small business programs.

154. Section 653.219–70 is revised to read as follows:

653.219–70 DOS form DS–1910, Small Business Agency Review—Actions Above the Simplified Acquisition Threshold.

As prescribed in 619.501(c), DS–1910 is prescribed for use in documenting set-aside decisions.

Dated: November 16, 1998.

Lloyd W. Pratsch,

Procurement Executive.

[FR Doc. 98–31430 Filed 11–27–98; 8:45 am]

BILLING CODE 4710–05–P

Notices

Federal Register

Vol. 63, No. 229

Monday, November 30, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Forest Plan Amendment Project EIS

AGENCY: Forest Service, USDA.

ACTION: Notice; correction.

SUMMARY: The Department of Agriculture, Forest Service, Regions 4 and 5 published a document in the **Federal Register** of November 20, 1998 concerning the preparation of an environmental impact statement (EIS) to amend eleven National Forest Land and Resource Management Plans and the Regional Guides for the Intermountain and Pacific Southwest Regions. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT:

John Bradford, (916) 492–7548.

Correction

In the **Federal Register** of November 20, 1998, in FR Doc. 98–31022 on page 64452, correct the ''Dates'' paragraph to read:

DATES: The public is asked to provide any additional information they believe the Forest Service may still not have at this time, and to submit any issues (points of concern, debate, dispute or disagreement) regarding potential effects of the proposed action or alternatives by January 19, 1999.

Dated: November 23, 1998.

Kent Connaughton,

Deputy Regional Forester.

[FR Doc. 98–31761 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Keystone Resort, Jones Gulch Development; White River National Forest, Summit County, Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement, correction.

SUMMARY: The USDA, Forest Service published a Notice of Intent to prepare an Environmental Impact Statement (EIS) on November 10, 1998, 63 FR 63024–63025. Under the Public Involvement and Scoping section on page 63025, an error was made by not identifying specific months for anticipated completion of both the draft and final EIS. In addition, the length of the comment period for the Draft EIS was incorrect. Finally, the standard paragraphs required in Notices of Intent was also inadvertently omitted. This document corrects those errors.

DATES: Written scoping comments and suggestions should be postmarked or received by the Dillon Ranger District no later than December 10, 1998. Send comments to Michael Liu, Attn: Keystone, Dillon Ranger District, P.O. Box 620, Silverthorne, Colorado, 80498, fax (970) 468–7735.

FOR FURTHER INFORMATION CONTACT: Michael Liu, Special Projects Coordinator, Dillon Ranger District, phone (970) 262–3440.

SUPPLEMENTARY INFORMATION: Make the following correction in the Notice of Intent published on November 10, 1998. On page 63025, the last paragraph under the Public Involvement and Scoping section should be deleted and the following sections inserted.

Estimated Dates For Filing

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by April 1999. At that time, EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be a minimum of 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**.

The Final EIS is scheduled to be completed by June 1999. In the Final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewers Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the court's. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the Draft EIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The Responsible Official for this project is Martha Ketelle, Forest Supervisor for the White River National Forest. The Responsible Official will document the decision and reasons for the decision in the Record of Decision issued concurrently with the release of

the final EIS. That decision will be subject to appeal under 36 CFR 215.

Dated: November 19, 1998.

Martha J. Ketelle,

Forest Supervisor, White River National Forest.

[FR Doc. 98–31697 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Willamette Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA Forest Service.

ACTION: Action of meeting.

SUMMARY: The Willamette PIEC Advisory Committee will meet on Thursday, December 10, 1998. The meeting will be held at the Salem BLM Office; 1717 Fabry Road SE; Salem, Oregon 97306; phone (503) 375–5642. The meeting is scheduled to begin at 9:00 a.m., and will conclude at approximately 1:00 p.m. The tentative agenda includes: (1) Review of 1998 PAC activities, (2) Selection of topics and issues for PAC action in 1999, (3) Membership changes for 1999–2000, (4) Recognition of outgoing PAC members.

The public forum is tentatively scheduled to begin at 10:30 a.m. Time allotted for individual presentation will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may also be submitted prior to the December 10 meeting by sending them to Designated Federal Official Neal Forrester at the address given below.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Neal Forrester, Willamette National Forest; 211 East Seventh Avenue; Eugene, Oregon 97401; (541) 465–6924.

Dated: November 23, 1998.

Darrel L. Kenops,

Forrest Supervisor

[FR Doc. 98–31759 Filed 11–27–98; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will result in authorizing small entities to furnish the commodity and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cover, Folding Cot
7105–00–935–1845
NPA: Cambria County Association f/t Blind & Handicapped, Johnstown, Pennsylvania

Services

Base Supply Center, Moody Air Force Base, Georgia
NPA: Georgia Industries for the Blind, Bainbridge, Georgia
Commissary Shelf Stocking, Custodial and Warehousing, Naval Air Station, Key West, Florida
NPA: Goodwill Industries of South Florida, Inc., Miami, Florida
Commissary Shelf Stocking, Custodial and Warehousing, Bangor ANGB, Bangor, Maine
NPA: Multiple Handicap Center of Penobscot Valley, Bangor, Maine
Commissary Shelf Stocking, Custodial and Warehousing, Fort Detrick, Maryland
NPA: The Jeanne Bussard Center, Inc., Frederick, Maryland
Commissary Shelf Stocking, Custodial and Warehousing, Fallon Naval Air Station, Fallon, Nevada
NPA: Churchill Association for Retarded Citizens-Fallon Industries, Fallon, Nevada
Commissary Shelf Stocking, Custodial and Warehousing, Dahlgren Naval Surface Warfare Center, Dahlgren, Virginia
NPA: Rappahannock Goodwill Industries, Inc., Fredericksburg, Virginia
Commissary Shelf Stocking, Custodial and Warehousing, Fort McCoy, Wisconsin
NPA: Handi-Shop Industries, Inc., Tomah, Wisconsin
Food Service, 147 Fighter Wing, Texas Air National Guard, Ellington Field, Houston, Texas
NPA: Center For The Retarded, Inc., Houston, Texas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Broom, Upright
7920–00–291–8305
7920–00–292–4372
7920–00–292–4375
7920–00–292–4371

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31823 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: December 30, 1998.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 31, August 21, and October 16, 1998, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 49877, 44833 and 55577) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Administrative Services

HUD Albany Office, 52 Corporate Circle, Albany, New York
Base Supply Center, Bolling Air Force Base, Washington, DC
Base Supply Center, Naval Air Station, Meridian, Mississippi
Operation of Individual Equipment Element Store, Offutt Air Force Base, Nebraska

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cover, Cushion Assembly
2540–01–245–2524
2540–01–245–2525
2540–01–245–2526
2540–01–246–6212
Box, M16 Rifle
8140–00–X40–4785

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31824 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Additions to the Procurement List; Correction

In the document appearing on page 63671, FR Doc. 98–30574, in the issue of November 16, 1998, in the first column, the listing for Meals Operations Rations Commercial (MORC) Kits, MORC Kits, Infantry Kits, Supplemental Kits for Sandwiches and Variety Pack, the Class 8790 for each of the NSNs should read as 8970.

Beverly L. Milkman,

Executive Director.

[FR Doc. 98–31825 Filed 11–27–98; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the New Hampshire Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Hampshire Advisory Committee to the Commission which was to convene at 9:00 a.m. and adjourn at 4:30 p.m. on November 19, 1998, has been cancelled. The notice originally published in the **Federal Register** on Wednesday, November 4, 1998, vol. 63, no. 213, pp. 59507–59508.

Persons desiring additional information should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116).

Dated at Washington, DC, November 18, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–31796 Filed 11–27–98; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and request for revocation in part.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received a request to revoke one countervailing duty order in part.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT:

Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. The Department also received a request to revoke in part the countervailing duty order on certain agricultural tillage tools from Brazil.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 1999.

	Period to be reviewed
Antidumping Duty Proceedings	
Italy: Pressure Sensitive Tape A–475–059	10/1/97–9/30/98
Autoadesivi Magri, Srl	
Japan:	
Large Newspaper Printing Presses A–588–837	9/1/97–8/31/98
Tokyo Kikai Seisakusho, Ltd.[1]	
Tapered Roller Bearings, Under 4 Inches A–588–054	10/1/97–9/30/98
Fuji Heavy Industries, Ltd.	
Koyo Seiko Co., Ltd.	
NSK, Ltd.	
Tapered Roller Bearings, Over 4 Inches A–558–604	10/1/97–9/30/98
Koyo Seiko Co., Ltd.	
NSK Ltd.	
NTN Corporation	
Vector Supercomputers A–588–841	10/16/97–9/30/98
Fujitsu Limited	
NEC Corporation	
Malaysia: Extruded Rubber Thread A–557–805	10/1/97–9/30/98
Filati Lastex Elastrofibre Sdn. Bhd.	
Filmax Sdn. Bhd.	
Heveafil Sdn. Bhd.	
Rubberflex Sdn. Bhd.	
Rubfil Sdn. Bhd.	
The People's Republic of China: A–570–007	10/1/97–9/30/98
Barium Chloride[2].	
Zhang Jia Ba	
Tangshan	
Tianjin Chemical	
Red Star	
Linshu	
Ermeishang	
Hengnan	
Buohai	
Kunghan	
Xinji	
Helical Spring Lock Washers[3] A–570–822	10/1/97–9/30/98
Zhejiang Wanxin Group Co., Ltd.	
Countervailing Duty Proceedings	
Brazil: Certain Agricultural Tillage Tools C–351–406	1/1/97–12/31/97
Marchesan Implementos e Maquinas, Argicolas "TATU" S.A.[4]	
India: Certain Iron-Metal Castings C–533–063	1/1/97–12/31/97
AGV (or AGV Exports)	
Agarwal Hardware	
Ambika Exports	
Bengal Exports	
Bengal Iron Corporation	
Bhagyadevi	
Calcutta Ferrous Ltd.	
Carnation Enterprise Pvt. Ltd.	

	Period to be reviewed
Carnation Industries	
Commex Corporation	
Crescent Foundry Co. Pvt. Ltd.	
Delta Enterprises	
Delta Corporation Ltd.	
Dinesh Brothers (P) Ltd.	
Dugar International	
Edcons Castings	
Essen International	
Ganapati Suppliers	
Global Intertrade	
Hargolal & Sons	
Hindusthan Malleables & Forgings Ltd.	
J.K. Udyog	
Kajaria Iron Castings Pvt. Ltd.	
Kajaria Iron Castings Ltd.	
Kauntia Exports	
Kejriwal Iron & Steel Works	
Kiswok Industries Pvt. Ltd.	
Metflow	
Nandikeshwari Iron Foundry Pvt. Ltd.	
Orissa Metal Industries	
Overseas Iron Foundry	
Rangilal & Sons	
RBA Exports	
R.B. Agarwalla & Company	
R.B. Agarwalla & Co. Pvt. Ltd.	
RR Enterprises	
RSI Limited	
RS Ispat Pvt. Ltd.	
Samitex (or Samitek)	
Sammitex (or Sammitek)	
Shakti Isabgel Ind.	
Serampore Industries Pvt. Ltd.	
Shree Hanuman Foundry	
Shree Rama Enterprise	
Shree Uma Foundries	
Siko Exports	
Sitaram Maohogarhia	
Sociedad J.B. Nagar	
SSL Exports	
Super Iron Foundry	
Tara Engineering Works	
Thames Engineering	
Tirupati International	
Trident Industries	
Trident International	
Uma Iron & Steel	
Victory Castings Ltd.	
Sweden: Certain Carbon Steel Products C–401–401	1/1/97–12/31/97
SSAB Svenskt Stal AB	

[1] Inadvertently omitted from previous initiation notice.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of barium chloride from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of helical spring lock washers from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[4] Marchesan has submitted a request for partial revocation of the order under 19 CFR 351.222(c)(3). The Department will examine the request for revocation to determine whether Marchesan meets the threshold requirements for revocation under 19 CFR 351.222(e)(2)(iii).

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniverary of the publication of a an antidumping duty order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of the Department's Regulations to any

administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: November 23, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–31841 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846 and A–821–809]

Preliminary Determinations of Critical Circumstances: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan and the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 30, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Russian Federation) at (202) 482–3208; and Nithya Nagarajan (Japan) at (202) 482–4243, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Preliminary Determination of Critical Circumstances

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

Critical Circumstances

On October 15, 1998, the Department of Commerce (''the Department'') initiated investigations to determine whether imports of certain hot-rolled flat-rolled carbon-quality steel products (''hot-rolled steel'') from Brazil, Japan, and the Russian Federation (''Russia'') are being, or are likely to be, sold in the United States at less than fair value (63 FR 56607, October 22, 1998). In the petition filed on September 30, 1998, petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of hot-rolled steel from Brazil, Japan, and Russia. On November 13, 1998, the International Trade Commission (''ITC'') preliminarily determined that there was threat of material injury to the domestic industry from imports of hot-rolled steel from Brazil, Japan, and Russia.

In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted a critical circumstances allegation more than 20 days before the scheduled date of the preliminary determination, the Department must issue a preliminary critical circumstances determination not later than the date of the preliminary determination. In a policy bulletin issued on October 8, 1998, the Department stated that it has determined that it may issue a preliminary critical circumstances determination prior to the date of the preliminary determination of dumping, assuming adequate evidence of critical circumstances is available (*see Change in Policy Regarding Timing of Issuance of Critical Circumstances Determinations,* 63 FR 55364). In accordance with this policy, we are issuing preliminary critical circumstances decisions in the investigations of imports of hot-rolled steel from Japan and Russia.

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

Japan

History of Dumping and Importer Knowledge

We are not aware of any antidumping order in any country on hot-rolled steel from Japan. Therefore, we examined whether there was importer knowledge. In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that the exporter was selling hot-rolled steel at less than fair value and thereby causing material injury, the Department must rely on the facts before it at the time the determination is made. The Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the likelihood of resultant material injury.

In the present case, since we have not yet made a preliminary finding of dumping, the most reasonable source of information concerning knowledge of dumping is the petition itself. In the petition, petitioners calculated estimated dumping margins of 27.20 and 28.25 percent, which both exceed the 25 percent threshold. Therefore, we preliminarily determine importers knew or should have known that the exporters were dumping the subject merchandise.

As to the knowledge of likely injury from such dumped imports, we considered the information regarding injury to the domestic industry in the petition. We also considered other sources of information, including numerous press reports from early to mid-1998 regarding rising imports, falling domestic prices resulting from rising imports, and domestic buyers shifting to foreign suppliers. In addition to this information, the ITC preliminarily found threat of material injury to the domestic industry due to imports of hot-rolled steel from Japan. Therefore, with respect to Japan, we preliminarily find that there is a reasonable basis to believe or suspect that importers knew or should have known that material injury from the dumped merchandise was likely.

Massive Imports

In determining whether there are ''massive imports'' over a ''relatively short time period,'' the Department ordinarily bases its analysis on import data for at least the three months preceding (the ''base period'') and following (the ''comparison period'') the filing of the petition. Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. However, as stated in the Department's regulations, at section 351.206(i), if the Secretary finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time.

In this case, petitioners argue that importers, exporters, or producers of Japanese hot-rolled steel had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that a proceeding was likely. For Japan, we find that such press reports, particularly in March and April 1998, are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Japan. (*See* discussion in the Determination of Critical Circumstances Memo). Accordingly, we examined the increase in import volumes from May–September 1998 as compared to December 1997–April 1998 and found that imports of hot-rolled steel from Japan increased by more than 100 percent (*see* the Attachment to the Critical Circumstances Memo). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of hot-rolled steel from Japan over a relatively short time.

Russia

History of Dumping and Importer Knowledge

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i), the Department considers evidence of an existing antidumping order on hot-rolled steel from Russia in the United States or elsewhere to be sufficient. In this case, petitioners alleged that Chile, Indonesia, and Mexico all have antidumping orders in place covering subject merchandise. Because the antidumping order in Chile has been revoked, we are not considering it for purposes of this determination. Nevertheless, we find the antidumping orders in place against Russian hot-rolled steel in Indonesia and Mexico to be sufficient to indicate a history of injurious dumping. Therefore, with respect to Russia, we find that a history of dumping causing material injury exists. Since we have found a history of dumping causing material injury with respect to Russia, there is no need to examine importer knowledge.

Massive Imports

In this case, petitioners argue that importers, exporters, or producers of Russian hot-rolled steel had reason to believe that an antidumping proceeding was likely before the filing of the petition. The Department examined whether conditions in the industry and published reports and statements provide a basis for inferring knowledge that a proceeding is likely. As discussed in the Determination of Critical Circumstances Memo, we find that for Russia such press reports are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely. Accordingly, we examined the increase in import volumes from May–September 1998, as compared to December 1997–April 1998, and found that imports of hot-rolled steel from Russia increased by 98 percent (*see* the Attachment to the Critical Circumstances Memo). Therefore, pursuant to section 733(e) of the Act and section 351.206(h) of the Department's regulations, we preliminarily determine that there have been massive imports of hot-rolled steel from Russia over a relatively short time.

Brazil

Because there is insufficient evidence on the record at this time that importers, exporters, or producers knew or should have known, at some time prior to the filing of the petition, that a proceeding concerning Brazil was likely, the appropriate comparison period for determining whether imports have been massive would begin at the time of filing of the petition. Because data for this period are not yet available, the Department will make its preliminary critical circumstances finding by the date of its preliminary determination regarding dumping.

Conclusion

We preliminarily determine that there is a reasonable basis to believe or suspect that critical circumstances exist for imports of hot-rolled steel from Japan and Russia.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, upon issuance of an affirmative preliminary determination of sales at less than fair value in the Japan or Russia investigation, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of hot-rolled steel from Japan or Russia, as appropriate, that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at less than fair value. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations of sales at less than fair value published in the **Federal Register**. This suspension of liquidation will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for Japan and Russia when we make our final determinations regarding sales at less than fair value in these investigations, which will be 75 days after the preliminary determinations regarding sales at less than fair value.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determinations.

This notice is published pursuant to section 777(i) of the Act.

Dated: November 23, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–31842 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Application may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 98–057. Applicant: Ames Laboratory, U.S. Department of Energy, 211 TASF, Iowa State University, Ames, IA 50011–3020. Instrument: Auger Microprobe, Model JAMP–7800F. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument will be used for the following to help

towards providing better processes for growing and characterization of alloy systems: (1) Detect position shifts in the Auger electron binding energy due to differences in bonding characteristic, (2) identify the type of bonding in complex alloy systems, (3) determine which elements are involved in oxidation and corrosion of various systems, (4) detect and identify second phases present in single crystals, (5) get an overview of all the elements present in a particular sample quickly, and (6) sputter clean a sample and return the material to its bulk configuration. Application accepted by Commissioner of Customs: October 28, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–31843 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amended Export Trade Certificate of Review, Application No. 90–5A006.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review (''Certificate'') granted to the Forging Industry Association (''FIA'') on July 9, 1990. Notice of issuance of the original Certificate was published in the **Federal Register** on July 13, 1990 (55 FR 28801).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998). The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

The Forging Industry Association's (''FIA'') original certificate was issued on July 9, 1990 (55 FR 28801, July 14, 1990) and previously amended on April 30, 1991 (56 FR 21128, May 7, 1991); May 29, 1992 (57 FR 24022, June 5, 1992); April 1, 1994 (59 FR 16619, April 7, 1994); and July 28, 1995 (60 FR 41879, August 14, 1995).

FIA's Certificate has been amended to:

1. Add the following companies as a new ''Member'' of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Anderson Shumaker Company, Chicago, IL; Dana Corporation, for the activities of its Spicer Heavy Axle & Brake Division, Marion Forge, Marion, OH.

2. Delete the following companies as ''Members'' of the Certificate: Hussey Marine Alloys, Ltd., Leetsdale, PA; Schlosser Forge Company, Cucamonga, CA; Western Forge & Flange Co., Santa Clara, CA; and

3. Change the listing of the company name for each current ''Member'' cited in this paragraph to the new listing cited in this paragraph in parenthesis as follows: Beth Forge, Inc. (Lehigh Heavy Forge Corporation); Eaton Corporation, Marion, OH (Eaton Corporation, South Bend, IN); Kaiser Aluminum & Chemical Corporation, Erie, PA (Kaiser Aluminum & Chemical Corporation, Oxnard, CA); Teledyne Portland Forge (Portland Forge, An Allegheny Teledyne Company, Portland, IN); The Harris -Thomas Drop Forge Co. (Harris Thomas Industries, Inc.); Waltec American Forgings, Inc., Waterbury, CT (Waltec Forgings, Inc.-Port Huron, Port Huron, MI).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 23, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–31726 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration, Commerce.

Export Trade Certificate of Review

ACTION: Notice of issuance of an Amended Export Trade Certificate of Review, application No. 85–7A018.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to U.S. Shippers Association (''USSA'') on June 3, 1986. Notice of issuance of the original Certificate was published in the **Federal Register** on June 9, 1986 (51 FR 20873).

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs (''OETCA'') is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate

Export Trade Certificate of Review No. 85–00018, was originally issued to U.S. Shippers Association on June 3, 1986 (51 FR 20873, June 9, 1986), and subsequently amended on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); September 22, 1993 (58 FR 51061, September 30, 1993); June 28, 1994 (59 FR 34411, July 5, 1994); and on April 10, 1997 (62 FR 18586, April 16, 1997).

USSA's Export Trade Certificate of Review has been amended to:

1. Add the following entities as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Rhodia, Inc., Cranbury, New Jersey (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie

Cedex, France); and Rhone-Poulenc Animal Nutrition, Inc., Atlanta, Georgia (Controlling Entity: Rhone-Poulenc, S.A., Courbevoie Cedex, France); and

2. Change the listing of the company name for current ''Member,'' Rhone-Poulenc, Inc., to the new name of Rhone-Poulenc AG Company, Inc.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: November 23, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–31826 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

November 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 30, 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, variously, for swing and special shift.

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 67625, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 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, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on November 30, 1998, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
219	8,828,362 square meters.
225	6,384,614 square meters.
313–O [2]	13,330,756 square meters.
314–O [3]	66,417,908 square meters.
317–O/617/326–O [4]	28,716,274 square meters of which not more than 3,834,249 square meters shall be in Category 326–O.
331/631	2,158,543 dozen pairs.
340/640	1,706,087 dozen.
359–S/659–S [5]	764,946 kilograms.
369–S [6]	945,251 kilograms.
604–A [7]	528,781 kilograms.
618–O [8]	500,005 square meters.
641	1,723,343 dozen.
643	245,404 numbers.
644	202,130 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 617; Category 317–O: all HTS numbers except 5208.59.2085; Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[5] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 604–A: only HTS number 5509.32.0000.

[8] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31770 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Elimination of Export Visa and Electronic Visa Information System (ELVIS) Requirements for Silk Apparel Products Produced or Manufactured in the People's Republic of China

November 23, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs eliminating export visa and ELVIS requirements.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

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.

In accordance with the Export Visa Arrangement, effected by a Memorandum of Understanding dated February 1, 1997, between the Governments of the United States and the People's Republic of China, the U.S. Government has agreed to discontinue the requirement for export licenses and ELVIS (Electronic Visa Information System) transmissions for silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and entered into the United States after December 31, 1998.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to no longer require a visa or ELVIS transmission for silk apparel products in the aforementioned categories which are produced or manufactured in China and entered into the United States on and after January 1, 1999. Other export documentation will continue to be required.

See 62 FR 15465, published on April 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 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 March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, and silk apparel products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1999, you are directed to no longer require a visa or ELVIS (Electronic Visa Information System) transmission for silk apparel products in Categories 733–736, 738–748, 750–752, 758 and 759, produced or manufactured in China and entered into the United States after December 31, 1998.

Shipments of silk apparel products in the aforementioned categories which are produced or manufactured in China and entered into the United States on and after January 1, 1999 shall not be denied entry for lack of an export visa or ELVIS transmission. Other export documentation will continue to be required.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31772 Filed 11–27–98; 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

November 24, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 30, 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 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 63524, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 24, 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 November 30, 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]
226/313	126,225,452 square meters.
351/651	360,228 dozen.
359–C/659–C [2]	1,621,030 kilograms.
363	49,484,642 numbers.
369–F/369–P [3]	2,644,511 kilograms.
369–S [4]	799,188 kilograms.
613/614	24,993,797 square meters.
615	26,637,611 square meters.
625/626/627/628/629	81,776,324 square meters of which not more than 40,888,163 square meters shall be in Category 625; not more than 40,888,163 square meters shall be in Category 626; not more than 38,573,739 square meters shall be in Category 627; not more than 7,980,774 square meters shall be in Category 628; and not more than 38,573,739 square meters shall be in Category 629.
666–P [5]	809,891 kilograms.
666–S [6]	4,489,906 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[3] Category 369–F: only HTS number 6302.91.0045; Category 369–P: only HTS numbers 6302.60.0010 and 6302.91.0005.

[4] Category 369–S: only HTS number 6307.10.2005.

[5] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[6] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–31771 Filed 11–27–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Commission Finding That Shortens Periods For Issuing Information On Mesh Playpens

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission finds that certain mesh playpens present a potential hazard to children and that, to protect the public health and safety, the customary manufacturer comment and notification periods preceding public release of certain information shall be shortened.

FOR FURTHER INFORMATION CONTACT: William J. Moore, Jr., Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0626 ext. 1348.

SUPPLEMENTARY INFORMATION:

A. Background

The Commission staff negotiated with the manufacturers of mesh playpens to recall many models with protruding rivets, catchpoints for pacifier cords and children's clothing, that lead to strangulation of toddlers. The manufacturers of the playpens are Graco Children's Products, Inc., Bilt-Rite, Pride Trimble Corp., Pride Trimble, Inc., Kolcraft Enterprises, Inc., Hufco-Delaware, Evenflo Co., Inc., and Strolee Co.

The staff prepared a video news release (VNR), and provided the manufacturers with the opportunity to comment on it beginning on November 10. The staff received comments from the manufacturers, worked with them, and made some requested changes. The staff informed the manufacturers that it would issue the VNR on November 24.

B. Statutory and Regulatory Provisions

Under section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b)(1), the Commission must provide manufacturers or private labelers with at least 30 days advance notice before disseminating information that identifies the manufacturer's product. In addition, section 6(b)(2) of the CPSA, 15 U.S.C. 2055(b)(2), requires at least 10 days additional notice if the manufacturer or private labeler claims that the information to be released is inaccurate. However, the Commission may provide lesser periods of notice, in both cases, if ''the Commission finds that the public health and safety requires a lesser period of notice.''

Under the CPSA and the Commission's regulations, the Commission must publish its ''public health and safety'' findings in the **Federal Register**. 16 CFR 1101.23(b) and (c) and 1101.25(b) and (c). Disclosure of the information in the VNR may be made concurrently with the filing of the **Federal Register** notice, and need not await its publication.

C. Commission Finding

The Commission finds that the public health and safety requires less notice than the periods of time specified in section 6(b) of the Consumer Product Safety Act. Specifically, the 30-day period is reduced to the period from November 10 until November 23 for the video news release. In addition, the 10-day period is reduced to the period from November 23 until November 24, 1998.

Dated: November 24, 1998.

Sayde E. Dunn,

Secretary of the Commission.

[FR Doc. 98–31775 Filed 11–27–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed collection; Comment Request

AGENCY: Department of Defense, Under Secretary of Defense (Acquisition and Technology)/Deputy Under Secretary of Defense (Industrial Affairs and Installations/Industrial Capabilities and Assessments)

ACTION: Notice.

In compliance with Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995, the Under Secretary of Defense (Acquisition and Technology)/ Deputy Under Secretary of Defense (Industrial Affairs and Installations/ Industrial Capabilities and Assessments) announces the proposed extension of a currently approved collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 29, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to: ATTN: Mr. Ronald Cooke, Office of Deputy Under Secretary of Defense (Industrial Affairs and Installations/ Industrial Capabilities and Assessments), 3310 Defense Pentagon, Washington, DC 20301–3310.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address or call Mr. Ronald Cooke at (703) 588–0192 or DSN 245–0192.

Title, Associated Form, and OMB Number: Industrial Capabilities Questionnaire, DD Form 2737, OMB Number 0704–0377.

Needs and uses: As part of its responsibilities to facilitate a diverse, responsive, and competitive industrial base, the Department of Defense (DoD) requires accurate, pertinent, and up to date information as to industry's ability to satisfy defense needs. The Industrial Capabilities Questionnaire will be used by all Services and the Defense Logistics Agency to gather business, industrial capability (employment, skills, facilities, equipment, processes, and technologies), and manufactured end item information to conduct required industrial assessments and to support DoD strategic planning and decisions.

Affected public: Business or Other For-Profit.

Annual Burden Hours: 153,600.

Number of Respondents: 12,800.

Responses Per Respondent: 1.

Average Burden Per Response: 12 Hours.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are industry professionals who provide information to the requesting DoD agency on the industrial capabilities associated with the subject facility being reviewed. The DoD agencies are directed to solicit only those data elements within this form necessary to conduct the particular planning or assessment task at hand. This approach is used to minimize the

burden for data requests on industry and limit the retention of in-house data to that essential to supporting defense decisions and plans. A significant portion of this information will be collected electronically and, with appropriate measures to protect sensitive data, will be made available to authorized users in the Department to support a wide variety of industrial capability analyses. These analyses are used to support cost effective acquisition of defense systems and key troop support/consumable items, assess the implications of changes in defense spending on industry, development of responsive logistics support efforts, and industrial preparedness planning and readiness analyses. The lack of accurate, current and relevant industry capability information will adversely impact the integrity of the Department's decisions and planning efforts.

Dated: November 19, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–31769 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0038]

Proposed Collection; Comment Request Entitled Mistake in Bid

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Mistake in Bid. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FUTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

When a mistake in bid is discovered by the contracting officer (CO) after bid opening but before award, the CO obtains verification of the bid intended. This verification is needed to establish the bidder's correct bid. If the bidder requests permission to correct the bid, the bidder must submit clear and convincing evidence that a mistake was made. If the bidder requests permission to correct the bid and submits evidence that a mistake was made, the evidence is analyzed by the CO to determine whether or not the bidder should be allowed to correct the bid. The data (evidence) submitted by the bidder is attached to bidder's bid and placed in the contract file along with the CO's determination.

The verification of the correct bid is attached to the original bid and a copy of the verification is attached to the duplicate bid and placed in the contract file.

B. Annual Reporting Burden

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.

The annual reporting burden is estimated as follows: *Respondents*, 4,673; *responses per respondent*, 1; *total annual responses*, 4,673; *preparation hours per response*, .5; and *total response burden hours*, 2,337.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0038, Mistake in Bid, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31753 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0039]

Proposed Collection; Comment Request Entitled Descriptive Literature

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Descriptive Literature. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Descriptive literature means information which shows the characteristics or construction of a product or explains its operation. It is furnished by bidders as a part of their bids to describe the products offered. Bidders are not required to furnish descriptive literature unless the contracting office needs it to determine before award whether the products offered meet the specification and to establish exactly what the bidder proposes to furnish.

B. Annual Reporting Burden

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. The annual reporting burden is estimated as follows: Respondents, *2,663*; responses per respondent, *3*; total annual responses, *7,989*; preparation hours per response, *.167*; and total response burden hours, *1,334.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0039, Descriptive Literature, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31754 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0043]

Proposed Collection; Comment Request Entitled Delivery Schedules

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Delivery Schedules. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA, (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The time of delivery or performance is an essential contract element and must be clearly stated in solicitations and contracts. The contracting officer may set forth a required delivery schedule or may allow an offeror to propose an alternate delivery schedule. The information is needed to assure supplies or services are obtained in a timely manner.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *10* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *3,440*; responses per respondent, *5*; total annual responses, *17,200*; preparation hours per response, *.167*; and total response burden hours, *2,872*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0043, Delivery Schedules, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31755 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Proposed Collection; Comment Request Entitled Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Authorized Negotiators. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph De Stefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 minute per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *61,875*; responses per respondent, *8*; total annual responses, *495,000*; preparation hours per response, *.017*; and total response burden hours, *8,415.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW,

Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31829 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0004]

Proposed Collection; Comment Request Entitled Architect-Engineer and Related Services Questionnaire (SF 254)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Architect-Engineer and Related Services Questionnaire (SF 254). The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Standard Form 254 is used by all Executive agencies to obtain uniform information about a firm's experience in architect-engineering (A–E) projects. The form is submitted annually as required by 40 U.S.C. 541—544 by firms wishing to be considered for Government A–E contracts. The information obtained on this form is used to determine if a firm should be solicited for A–E projects.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* hour 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.

The annual reporting burden is estimated as follows: Respondents, *5,000;* responses per respondent, *7;* total annual responses, *35,000;* preparation hours per response, *1;* and total response burden hours, *35,000.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0004, Architect-Engineer and Related Services Questionnaire (SF 254), in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31830 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0065]

Proposed Collection; Comment Request Entitled Overtime

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Overtime. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Streets, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal solicitations normally do not specify delivery schedules that will require overtime at the Government's expense. However, when overtime is required under a contract and it exceeds the dollar ceiling established during negotiations, the contractor must request approval from the contracting officer for overtime. With the request, the contractor must provide information regarding the need for overtime.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *1,270;* responses per respondent, *1;* total annual responses, *1,270;* preparation hours per response, *.25;* and total response burden hours, *318.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0065, Overtime, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31831 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0035]

Proposed Collection; Comment Request Entitled Claims and Appeals

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Claims and Appeals. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill, Federal Acquisition Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

It is the Government's policy to try to resolve all contractual issues by mutual agreement at the contracting officer's level without litigation. Contractor's claims must be submitted in writing to the contracting officer for a decision. Claims exceeding $100,000 must be accompanied by a certification that (1) the claim is made in good faith; (2) supporting data are accurate and complete; and (3) the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Contractors may appeal the contracting officer's decision by submitting written appeals to the appropriate officials.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per completion, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *4,500;* responses per respondent, *3;* total annual responses, *13,500;* preparation hours per response *1;* and total response burden hours, *13,500.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0035, Claims and Appeals, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31832 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0047]

Proposed Collection; Comment Request Entitled Place of Performance

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Place of Performance. The clearance currently expires on March 31, 1999.

DATES: Comments may be submitted on or before January 29, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, or obtaining a copy of the justification, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4037, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

The information relative to the place of performance and owner of plant or facility, if other than the prospective contractor, is a basic requirement when contracting for supplies or services (including construction). This information is instrumental in determining bidder responsibility, responsiveness, and price reasonableness. A prospective contractor must affirmatively demonstrate its responsibility. Hence, the Government must be apprised of this information prior to award. The contracting officer must know the place of performance and the owner of the plant or facility to (a) determine bidder responsibility; (b) determine price reasonableness; (c) conduct plant or source inspections; and (d) determine whether the prospective contractor is a manufacturer or a regular dealer. The information is used to determine the firm's eligibility for awards and to assure proper preparation of the contract.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *4* 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.

The annual reporting burden is estimated as follows: Respondents, *79,397;* responses per respondent, *14;* total annual responses, *1,111,558;* preparation hours per response, *.07;* and total response burden hours, *77,810.*

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4037, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0047, Place of Performance, in all correspondence.

Dated: November 24, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 98–31833 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on December 30, 1998, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarters Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 695–0970 or DSN 225–0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety.

Dated: November 20, 1998.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DFMP 26

SYSTEM NAME:

Vietnamese Commando Compensation Files *(June 30, 1997, 62 FR 35158).*

CHANGES

* * * * *

CATEGORIES OF INDIVIDUALS COVERED:

At the end of the paragraph add ‘and parents and siblings of deceased Commandos.’

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Replace ’Section 657,’ with ’Sections 657 and 658,’.

* * * * *

PURPOSE(S):

In part (2) of the paragraph, delete ’October 1, 1998’ and replace with ’November 15, 1998’.

* * * * *

DFMP 26

SYSTEM NAME:

Vietnamese Commando Compensation Files.

SYSTEM LOCATION:

Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are former Vietnamese operatives who either (1) participated in OPLAN 34A (or its predecessor) and were captured and incarcerated by the Democratic Republic of Vietnam (DRG) as a result of such participation, or (2) participated in OPLAN 35, were captured and incarcerated by North Vietnam forces as a result of such participation in Laos or along Lao-Vietnamese border, remained in captivity after 1973 (or died in captivity), and have not previously received payment from the United States for the period spent in captivity, provided that neither claimant has served in the Peoples Army of Vietnam or provided active assistance to the Government of the DRG during the period 1958 through 1975; the surviving spouse of a deceased claimant; the surviving children (including natural and adopted) of the deceased claimant if there is no surviving spouse; parents of a deceased claimant if there is no surviving spouse or children; and siblings of the deceased claimant if there is no surviving spouse, children or parents of the deceased claimant.

CATEGORIES OF RECORDS IN THE SYSTEM:

System (including documentation) is comprised of (1) names (including aliases, former names, or other names used); (2) current address; (3) current telephone number(s); (4) United States Social Security Number, (if any), United States Immigration and Naturalization Service (INS) Identification or similar number(s), (if any), and any equivalent social security or identification number(s), (if any), issued to applicant by the Democratic Republic of Vietnam, the Republic of Vietnam, or the current government of Vietnam; (5) date of birth; (6) place of birth; (7) distinguishing marks (fingerprints, scars, etc.); (8) family identification, including (a) parents; (b) spouse; (c) children; (d) brothers; (e) sisters; (f) others; (9) team name; (10) place of insertion; (11) date of launch; (12) dates of captivity; (13) name, address, and telephone number of counsel or attorney (if any); and (14) required sworn declaration of veracity of above, including denial of service with or collaboration with North Vietnam.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 104–201, sections 657, as amended by Pub.L. 105-261, 658, payments to certain persons captured or interned by North Vietnam.

PURPOSE(S):

To be used by officials of the Vietnamese Commandos Compensation Commission to (1) verify the identity of claimants; (2) ensure the claim has been submitted in a timely manner (on or before November 15, 1998); (3) adjudicate the claim; (4) establish verified list of claimants for disbursing agency and facilitate cash payments to claimants; (5) provide a check list for attorney’s fees limitation (as specified in the law); (6) establish a check list of paid claimants to preclude future claims or judicial review; and (7) prepare future reports to the Congress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice, Litigation Division, in connection with litigation concerning *Au Dong Quy et al./Lost Commandos vs. United States* for the purpose of representing the Department of Defense in pending or potential litigation to which the record is pertinent.

To the Central Intelligence Agency and the Immigration and Naturalization Service for the purpose of checking and verifying claim information.

The ‘Blanket Routine Uses’ set forth at the beginning of OSD’s compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy files are maintained in file folders; computer files are stored on magnetic tape and disk.

RETRIEVABILITY:

Records are retrieved by name, date and place of birth, and/or Social Security Number if assigned and voluntarily furnished.

SAFEGUARDS:

Files are maintained under the direct control of office personnel in the Commission on Compensation during duty hours. Office is locked and alarmed during non-duty hours. Computer access requires log-on and password and computer media is stored in a controlled area.

RETENTION AND DISPOSAL:

Records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a Social Security Number and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commission on Compensation, Office of the Secretary of Defense, 4000 Defense Pentagon, Washington, DC 20301–4000.

Requesters should provide full name and any former names used and date and place of birth. If a requester has a Social Security Number and desires to furnish it, he or she may do so but failure to provide it will not result in the request not being processed.

CONTESTING RECORD PROCEDURES:

The OSD's rules for accessing records, for contesting contents and appealing initial agency determinations are contained in OSD Administrative Instruction No. 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from claimants, their survivors, their attorneys and other authorized representatives; third party individuals; the Department of Defense; and Government intelligence agencies; the Immigration and Naturalization Service; and from the National Archives and Records Administration.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 98–31768 Filed 11–27–98; 8:45 am]
BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration adds a routine use to permit the release of information to the Department of Veterans Affairs for the purposes of conducting authorized research projects.

DATES: This proposed action will be effective without further notice on December 30, 1998, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on November 12, 1998, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 23, 1998.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel Record *(April 9, 1998, 63 FR 17389).*

Changes:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph under the Department of Veterans Affairs as follows: 'To provide information relating to authorized research projects.'

* * * * *

A0640–10b TAPC

SYSTEM NAME:

Official Military Personnel Record.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active Army officers.

U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Command, 9700 Page Avenue, St Louis, MO 63132–5200 for reserve personnel.

National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Command showing physical location of the Official Military Personnel of retired, separated and files on all service members returned to active duty.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army who are enlisted, appointed, or commissioned status; members of the U.S. Army who were enlisted, appointed, or commissioned and were separated by discharge, death, or other termination of military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Department of Veterans Affairs benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/ declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C. section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/ waivers/election and travel; efficiency appeals; promotion/reduction/ recommendations, approvals/ declinations announcements/ notifications, reconsiderations/ worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army; and E.O. 9397 (SSN).

PURPOSE(S):

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs:

1. To provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

2. To provide information relating to authorized research projects.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard (USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to E.O. 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DoD Directive 3025.10, Military Support of Civil Defense, and

Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

NOTE: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices do not apply to these categories of records.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system, except for those specifically excluded categories of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Optical digital imagery, microfiche stored randomly in electro-mechanical storage/retrieval devices. Files consists of selected data automated in support of military personnel management purposes on platters, disc fiche and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrievable by name, Social Security Number or ADP parameter; records of active Army, Reserve, National Guard, (officer), retired, separated and deceased persons are retrieved by Social Security Number terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Command, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Command, 9700 Page Avenue, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, National Archives and Records Administration, 9700 Page Avenue, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 98–31767 Filed 11–27–98; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, Office of Small and Disadvantaged Business Utilization, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, the information collection on respondents, including thorough use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 27, 1999.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to Director, Defense Logistics Agency, ATTN: Kenneth Dougherty, DDAS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instructions, please write to the above address, or call Mr. Kenneth Dougherty at (703) 767–1657.

Title; Associated Form; and OMB Number: Request for Approval for Procurement Technical Assistance Cooperative Agreement Performance Report, DLA Form 1806, OMB Control Number 0704–0320.

Needs and Uses: The Defense Logistics Agency uses the report as the principal instrument for measuring, on a semiannual basis, Cooperative Agreement recipient's (State and local governments, private nonprofit organizations, Indian tribal organizations and Indian economic enterprises) performance against the goals and objectives as established in their application for which the award was made.

Affected Public: State or local governments; businesses or other for-profit; Federal agencies or employees; Nonprofit institutions; Small businesses or organizations.

Annual Burden Hours: 1344.

Number of Respondents: 84.

Responses per Respondent: 2.

Average Burden per Response: 8 hrs.

Frequency: Semiannually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Cooperative agreements are awarded on a competitive basis. Past performance is a major evaluation factor for selecting programs to be funded each fiscal year. Past performance data is obtained from the performance report. The data is used to measure recipient accomplishments against goals and objectives set forth in the application, for which an award was made. The reported data also provides budget information (total amount expended, total DoD fund expended) used to monitor the expenditure of DoD funds and to assure that the DoD/recipient share ratio established at award is maintained

Additionally, the information is used to identify programs that are experiencing difficulty to establish the need for assistance and the frequency of on-site reviews.

Carla A. Von Bernewitz,

Chief Information Officer, Defense Logistics Agency.

[FR Doc. 98–31798 Filed 11–27–98; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Proposed collection; comment request.

SUMMARY: The Secretary of Education requests comments on the Free Application for Federal Student Aid (FAFSA) that the Secretary proposes to use for the 2000–2001 year. The FAFSA is completed by students and their families and the information submitted on the form is used to determine the students' eligibility and financial need for financial aid under the student financial assistance programs authorized under Title IV of the Higher Education Act of 1965, as amended (Title IV, HEA Programs). The Secretary also requests comments on changes under consideration for the 2001–2002 FAFSA. This notice provides additional information not provided in an earlier notice published on November 23, 1998.

DATES: Interested persons are invited to submit comments on or before January 22, 1999.

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. In addition, interested persons can access this document on the Internet:

(1) Go to IFAP at http://ifap.ed.gov
(2) Click on the ''Bookshelf''
(3) Scroll down and click on ''FAFSA and Renewal FAFSA Forms and Instructions''
(4) Click on ''By 2000–2001 Award Year''
(5) Click on ''FAFSA Instructions''
(6) Click on the red icon to open the file.

Please note that the free Adobe Acrobat Reader software, version 3.0 or greater, is necessary to view this file. This software can be downloaded for free from Adobe's website: http://www.adobe.com

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 483 of the Higher Education Act of 1965, as amended (HEA), requires the Secretary, ''in cooperation with agencies and organizations involved in providing student financial assistance,'' to ''produce, distribute and process free of charge a common financial reporting form to be used to determine the need and eligibility of a student under'' the Title IV, HEA Programs. This form is the FAFSA. In addition, Section 483 authorizes the Secretary to include non-financial data items that assist States in awarding State student financial assistance.

In consultation with the financial aid community, State agencies administering student financial aid, and the public, the FAFSA was substantially redesigned for the 1999–2000 year. Therefore the proposed 2000–2001 FAFSA was intentionally designed to be a ''rollover,'' containing minimal change from the redesigned 1999–2000 application.

In addition to comments on the proposed 2000–2001 FAFSA, the Secretary also requests comments on the following changes under consideration to the 2001–2002 FAFSA. References to the current FAFSA are to the 1999–2000 FAFSA.

Addition of Parent Identifying Information

The Secretary is considering collecting the following parental data: names, Social Security Numbers, dates of birth, citizenship, and Alien Registration Number. Also under consideration are parents' driver's license number and state, and permanent phone number. The purpose of adding this information is to facilitate using the FAFSA as a Plus loan application or an IRS match, as described below.

The FAFSA as PLUS Loan Application

One possible use of parent identifying information (described above) is to make the FAFSA the PLUS loan application. The Secretary is considering implementing this in 2001–2002.

IRS Match

Another possible use of parent identifying information (described above) is to conduct a computer match to confirm student and parent income information with the IRS. The Secretary is considering implementing this in 2001–2002.

Reduction of Number of Schools on the FAFSA

The current FAFSA allows students to select up to six schools to receive their application information. Applicant data show, however, that the vast majority of students list only three or fewer schools. In addition, improved information technology has made it easier for students to add more schools after submitting their initial application. As such, the Secretary is considering reducing the number of schools students can list on the FAFSA.

Elimination of FAFSA Express

The success of FAFSA on the Web and the increasing availability of Internet access lead the Secretary to consider consolidating student electronic application options by eliminating the PC software program FAFSA Express in the 2001–2002 award year.

Addition of E-mail Address

E-mail is becoming an increasingly viable means of communication between students and various agencies and organizations that administer student financial aid. As such, the Secretary is considering collecting student (and parent) e-mail addresses on the 2001–2002 paper FAFSA. In addition, the Secretary is considering adding student e-mail address to FAFSA on the Web for 2000–2001 for the purpose of an e-mail notification to the student that his or her application has been processed.

The Secretary is publishing this request for comment under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Under that Act, ED must obtain the review and approval of the Office of Management and Budget (OMB) before it may use a form to collect information. However, under procedure for obtaining approval from OMB, ED must first obtain public comment of the proposed form, and to obtain that comment, ED must publish this notice in the **Federal Register**.

In addition to comments requested above, to accommodate the requirements of the Paperwork Reduction Act, the Secretary is interested in receiving comments with regard to the following matters: (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: November 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Free Application for Federal Student Aid (FAFSA).

Frequency: Annually.

Affected Public: Individuals and families.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 10,254,697

Burden Hours: 6,589,649

Abstract: The FAFSA collects identifying and financial information about a student who applies for Title IV, Higher Education Act (HEA) Program funds. This information is used to calculate the student's expected family contribution, which is used to determine a student's financial need. The information is also used to determine the student's eligibility for grants and loans under the Title IV, HEA Programs. It is further used for determining a student's eligibility for State and institutional financial aid programs.

[FR Doc. 98–31720 Filed 11–27–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 30, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Werfel—d@al.eop.gov*. 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 *PatSherrill@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 Leader, Information Management Group, Office of the Chief Financial and 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.

Dated: November 23, 1998.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Financial and Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Technological Innovation and Cooperation for Foreign Information Access Program.

Frequency: Every 3 Years.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 50. Burden Hours: 800.

Abstract: Collect program and budget information to make grants to institutions of higher education and/or libraries. This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 98–31719 Filed 11–27–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Solicitation for Financial Assistance Applications; Northeast Regional Biomass Energy Program Management Project

AGENCY: Department of Energy.

ACTION: Notice of solicitation for financial assistance applications number DE–PS36–99GO10385.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for the Northeast Regional Biomass Program (NERBEP) Management Project. The selected applicant will receive financial assistance to manage NERBEP under a financial assistance agreement with DOE.

DATES: The solicitation will be issued on or about November 30, 1998.

AVAILABILITY: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.eren.doe.gov/golden/solicit.htm, click on ''solicitations'' and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: The major goals of the DOE NERBEP are: to promote biomass energy by creating awareness, a positive image, and confidence in biomass energy technologies within the region; to develop a climate supportive of biomass energy among the general public and relevant government agencies; to assist both the public and private sectors in the responsible development, commercialization, and utilization of biomass energy technologies so that the region achieves full realization of associated energy, economic, and environmental benefits; and to select and perform activities that provide for responsible development of biomass energy within the region. The Northeast Region includes the following states: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont.

Applications must address each of the following activities in order to be considered for award. The activities are (1) management and planning, (2) information and outreach, and (3) project oversight and evaluation.

1. Management and Planning includes a plan for the overall management of the project at the state level, including coordination with the DOE Boston Regional Support Office (BRSO) and NERBEP ad hoc steering committees. The responsibility also includes development of resource plans and the provision of technical input to DOE for development of annual operating plans for the NERBEP.

The NERBEP Annual Operating Plan (AOP) is a document which will be prepared each year by the BRSO, with appropriate committee input, which provides guidance and direction to the program for the following Fiscal Year.

The draft FY '99 AOP will be made an attachment to the solicitation. It will be the responsibility of the recipient to guide the Program in meeting AOP objectives, recommend and implement changes to the AOP as necessary, and assist the BRSO in the preparation and completion of future AOP's.

2. Information and Outreach includes responding to inquiries about the program from interested parties, developing biotech briefs, collecting and contributing articles to support dialogue, and preparing regional biomass energy program reports. The recipient also will coordinate and publish a regional newsletter at least quarterly and will establish and maintain a NERBEP Internet site which provides relevant biomass program information and project summaries.

3. Project Oversight and Evaluation includes the award and administration of subgrants to organizations in the region. The recipient will solicit applications for projects in support of program objectives through a competitive solicitation. Administration of the individual subgrants, including financial commitments, performance tracking, and the provision of periodic reports to DOE, will be the responsibility of the recipient with appropriate oversight from the BRSO.

In response to this solicitation, DOE expects to make a single award. Solicitation number DE–PS36–99GO10385 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about November 30, 1998, with responses due on January 20, 1999.

Issued in Golden, Colorado, on November 8, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–31809 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law No. 92–463,86 Stat.770)

notice is hereby given of the following advisory committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, December 14, 1998; 6:30 p.m.–9:30 p.m.

ADDRESSES: Arvada Center of the Arts and Humanities 6901 Wadsworth Boulevard Arvada, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB–Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Continue Discussion on Waste Management Topics and Development of a ''Vision'' for the Closure of the Rocky Flats Site

Other Board Business May Be Conducted as Necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and a reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make a public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation of the Public Reading Room are 9:00 a.m. through 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on November 24, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31839 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting: Name: Secretary of Energy Advisory Board.

DATES: Wednesday, December 16, 1998, 9:00 am–3:30 pm.

ADDRESSES: Swissotel Washington—The Watergate Hotel, Monticello Ballroom, 2650 Virginia Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (The Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91). The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. The Board and its Task Force Subcommittees provide timely, balanced, and authoritative advice to the Secretary on the Department's management reforms, research, development, and technology activities, energy and national security responsibilities, environmental cleanup activities, and economic issues relating to energy.

Tentative Agenda

Wednesday, December 16, 1998

9:00 am–9:15 am Welcome & Opening Remarks—Chairman Walter Massey
9:15 am–9:30 am Remarks and Introduction of New Board Members—Secretary Bill Richardson
9:30 am–11:30 am SEAB Subcommittee Reports & Discussion
11:30 am–11:45 am Response and Charge to the Board—Secretary Bill Richardson
11:45 am–12:00 pm Public Comment Period
12:00 pm–1:00 pm Lunch
1:00 pm–3:15 pm SEAB Planning Session
3:15 pm–3:30 pm Public Comment Period
3:30 pm Closing Remarks

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the meeting in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC, the Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board may also be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on November 24, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–31838 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

RIN 1904–AA77

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), the Office of Codes and Standards (OCS) in the Office of Energy Efficiency and Renewable Energy (EERE) invites the general public and other Federal agencies to take this opportunity to comment on the proposed information collection under the title ''Study of Central Air Conditioner Prices.'' OCS is soliciting comments concerning the collection of data regarding equipment and installation prices for residential unitary air conditioners and heat pumps.

DATES: Consideration will be given to comments submitted by January 29, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to: U.S. Department of Energy, Attn: Kathi Epping, Office of Codes and Standards (EE–43), 1J–018/FORS, 1000 Independence Ave., SW, Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Kathi Epping, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Codes and Standards, Mail Station EE–431, Room 1J–018 Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–7425, E-mail: Kathi.Epping@hq.doe.gov.

SUPPLEMENTARY INFORMATION:

Collection title: Study of Central Air Conditioner Life Cycle Costs.

Form Number: N/A.

Abstract: OCS is undertaking a rulemaking to determine whether the current regulations mandating minimum energy efficiency levels for central air conditioners and heat pumps should be amended. Legislation requires that, in determining whether an energy conservation standard is economically justified, the Secretary shall consider ''the savings in operating costs throughout the estimated average life of the covered product . . . compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products.'' (42 U.S.C. 6295(o)(2)(B)(i)(II)). As part of this analysis, the Office of Codes and Standards is seeking to survey participants in central air conditioner and heat pump markets to determine current retail unitary equipment prices and installation costs by equipment efficiency level.

The information collection will include contractors participating in the residential unitary equipment market. Consumers will not be surveyed. Questions will attempt to gather data related to equipment costs, sales volumes, and other information pertinent to the determination of retail prices. Some information does exist and is available to OCS from government and private sources. These sources include:

- Current Industrial Report MA35M(96), U.S. Bureau of the Census, 1997.
- ARI Statistical Profile, Air Conditioning and Refrigeration Institute, 1997.
- U.S. Unitary and Close Control Air Conditioning, Report 11973/2, Building Services Research and Information Association, 1997.
- 1996 Measure Cost Study, California Energy Commission, 1997.
- Forced-air Furnace and Central Air Conditioner Market, Report 164–1, Energy Center of Wisconsin.

This information is not sufficient to determine retail prices for the purposes of this analysis, because most sources (1) disaggregate by capacity rather than efficiency, (2) aggregate on a national rather than regional level, (3) do not differentiate between ''deluxe'' and standard models, and (4) do not differentiate between the appropriate product classes. OCS is not aware of any source or combination of sources that satisfies all requirements. This information collection request is intended to provide that additional necessary information.

Approximately 250 respondents each will be asked 6–10 questions, and responses will be voluntary. Independent market research firms and consultants will conduct much of the collection on behalf of the Department. Most interviews will be conducted via telephone or facsimile and in person. Responses requiring disclosure of proprietary information will be kept confidential in accordance with Department policy.

Type of request: Approval of new collection.

Type of respondents: Contractors.

Estimated annual number of respondents: 250.

Total annual responses: 250 (one per respondent).

Estimated Burden hours per respondent: 1.5 hours.

Estimated total reporting burden: 375 hours.

Estimated cost burden to respondents: No monetary burden.

Request for comments: Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget's (OMB) approval. All comments will become a matter of public record. Comments are invited on: (1) Whether the proposed collection of information is necessary to carry out the mandates of the legislation; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (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.

Issued in Washington, DC, on November 23, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–31810 Filed 11–27–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–11–000; FERC Form No. 11]

Proposed Information Collection and Request for Comments

November 23, 1998.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before January 29, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 273–0873, and by e-mail at michael.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC Form No. 11 ''Natural Gas Pipeline Company Quarterly Statement of Monthly Data'' (OMB No. 1902–0032) is used by the

Commission to implement the statutory provisions of Sections 10(a), 16 and 21 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w, and the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432. The NGA and NGPA authorize the Commission to prescribe rules and regulations requiring natural gas pipeline companies whose gas was either transported or stored for a fee and exceeds 50 million Dekatherms in each of the three previous calendar years, to submit FERC Form No. 11. The form provides monthly data on a quarterly basis on certain revenue and expenditure items of major pipelines, and also provides some volume data on their operations.

The filing requirements of the monthly statement for selected revenues, income, and refund obligations, as well as details of operation and maintenance expenses incurred by natural gas companies in connection with transportation, or storage of natural gas are used by the Commission to develop analyses and studies in investigating the reasonableness of the various revenue and cost of service items claimed in Section 4 and 5 of the NGA rate filings. These data also provide an indication of the current status of pipeline activities and comparisons between pipelines, and are used to measure the financial status of the regulated pipelines as a group.

The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 260.3 and 385.2011.

Action: The Commission is requesting a three-year extension of the current expiration date.

Burden Statement: Public Reporting burden for this collection is estimated as:

Number of Respondents Annually	Number of Responses per Respondent	Average Burden Hours Per Response	Total Annual Burden Hours
(1)	(2)	(3)	(1)×(2)×(3)
55	4	3	660

Estimated cost burden to respondents: 660 hours divided by 2,080 hours per year times $109,889 per year equals $34,868. The cost per respondent is equal to $634.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31703 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4636–004; Docket No. ER97–4652–004]

New Energy Ventures, L.L.C. NEV East, L.L.C., Notice of Filing

November 23, 1998.

Take notice that on November 17, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31710 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–203–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

November 23, 1998.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1:00 p.m. on Thursday, December 3, 1998 and continuing on Friday, December 4, 1998, if necessary, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Sandra J. Delude at (202) 208–

0583, Bob Keegan at (202) 208–0158, or Edith A. Gilmore at (202) 208–2158.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31708 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER95–379–013]

Peak Energy, Inc.; Notice of Filing

November 23, 1998.

Take notice that on November 18, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31709 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–78–000]

Williams Gas Pipeline Central; Notice of Request Under Blanket Authorization

November 23, 1998.

Take notice that on November 16, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–78–000, 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 install, reclaim, and to abandon facilities, all located in Greene County, Missouri, under the blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, Williams proposes to install a custody transfer meter setting at the site of an existing high pressure regulator setting, to reclaim a high pressure regulator setting, and to abandon in place by sale to Missouri Gas Energy, a division of Southern Union Company (MGE) three meter settings and approximately 7.25 miles of the Brookline 4-inch lateral pipeline and approximately 100 feet of 2-inch lateral pipeline.

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's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31705 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

UNITED STATES OF AMERICA

Federal Energy Regulatory Commission

[Docket No. ER99–609–000, et al.]

Central Maine Power Company, et al.; Electric Rate and Corporate Regulation Filings

November 20, 1998.

Take notice that the following filings have been made with the Commission:

1. Central Maine Power Company

[Docket No. ER99–609–000]

Take notice that on November 16, 1998, Central Main Power Company tendered for filing Quarterly Report Transactions for the period ending September 30, 1998. This report was filed in compliance with the Commission's Order in Docket No. ER97–3390-000 issued August 29, 1997.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. California Independent System Operator Corporation

[Docket Nos. EC96–19–044, and ER96–1663–046

Take notice that on November 16, 1998 (corrected on November 17, 1998) the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission, in compliance with the Commission's October 16, 1998, Order in the above-noted dockets, revised Tariff Sheets of the ISO Tariff and Protocols reflecting Amendments No. 10 and 11, as approved by the Commission. The revised sheets also include one additional change to the Tariff and Protocols to require the ISO to provide notice of failed availability tests to relevant Scheduling Coordinators and owners and operators of sources of Ancillary Services as soon as practicable after such tests.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. EC96–19–045 and ER96–1663–047

Take notice that on November 16, 1998, the California Independent System Operator Corporation filed with the Federal Energy Regulatory Commission, in compliance with the Commission's October 16, 1998, Order in the above-noted dockets, revised Tariff Sheets of the ISO Tariff and Protocols reflecting Amendments No. 10 and 11, as approved by the Commission. The revised sheets also include one additional change to the Tariff and Protocols to require the ISO to provide notice of failed availability tests to relevant Scheduling Coordinators and owners and operators of sources of Ancillary Services as soon as practicable after such tests.

Comment Date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. City of Las Cruces, New Mexico v. El Paso Electric Company

[Docket No. EL99–10–000]

Take notice that on November 12, 1998, the City of Las Cruces, New Mexico filed a Complaint Requesting an Expedited Commission Order Directing El Paso Electric Company to Provide Wholesale Power.

Comment date: December 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Northwest Power Marketing Company; Calpine Power Services Company; Northern/AES Energy, LLC; Industrial Energy Applications; J. Anthony & Associates Ltd.; The Montana Power Trading and Marketing Company; Cargill-Alliant, LLC; Union Electric Development Corporation

[Docket Nos. ER96–688–010; ER94–1545–000; ER98–445–003; ER95–1465–010; ER95–784–014; ER97–399–008; ER97–4273–005; and ER97–3663–005]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room:

On November 3, 1998, Northwest Power Marketing Company filed certain information as required by the Commission order issued in Docket No. ER96–688–000.

On November 3, 1998, Calpine Power Services Company filed certain information as required by the Commission order issued in Docket No. ER94–1545–000.

On November 3, 1998, Northern/AES Energy, LLC filed certain information as required by the Commission order issued in Docket No. ER98–445–000.

On November 3, 1998, Industrial Energy Applications, Inc. filed certain information as required by the Commission order issued in Docket No. ER95–1465–000.

On November 3, 1998, J. Anthony & Associates Ltd. filed certain information as required by the Commission order issued in Docket No. ER95–784–000.

On November 3, 1998, The Montana Power Trading and Marketing Company filed certain information as required by the Commission order issued in Docket No. ER97–399–000.

On November 3, 1998, Cargill-Alliant, LLC filed certain information as required by the Commission order issued in Docket No. ER97–4273–000.

On November 3, 1998, Union Electric Development Corporation filed certain information as required by the Commission order issued in Docket No. ER97–3663–000.

6. Duke Power, a division of Duke Energy Corporation

[Docket No. ER99–610–000]

Take notice that on November 17, 1998, Duke Power, a division of Duke Energy Corporation (Duke), tendered for filing amendments to Service Schedule C of the Interconnection Agreement between Duke and Yadkin, Inc., FERC Rate Schedule Original Volume No. 282, dated as of October 16, 1998.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–611–000]

Take notice that on November 17, 1998, Commonwealth Edison Company (ComEd), tendered for filing a Non-Firm Service Agreement and a Short-Term Firm Service Agreement with Ameren Services Company (AMRN), under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of November 11, 1998, for the service agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on AMRN and the Illinois Commerce Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Unitil Power Corp.

[Docket No. ER99–612–000]

Take notice that on November 17, 1998, Unitil Power Corp. (UPC), tendered for filing a service agreement between UPC and Strategic Energy Ltd., for service under UPC's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2460–000.

UPC requests an effective date of November 3, 1998, for the service agreement with Strategic Energy Ltd.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Fitchburg Gas and Electric Light Company

[Docket No. ER99–613–000]

Take notice that on November 17, 1998, Fitchburg Gas and Electric Light Company (Fitchburg), tendered for filing a service agreement between Fitchburg and Strategic Energy, Ltd., for service under Fitchburg's Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on September 25, 1997, in Docket No. ER97–2463–000.

Fitchburg requests an effective date of November 3, 1998, for the service agreement with Strategic Energy, Ltd.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Southwest Power Pool

[Docket No. ER99–614–000]

Take notice that on November 17, 1998, Southwest Power Pool (SPP), tendered for filing an executed service agreement with El Paso Power Services Company (El Paso) for non-firm point-to-point firm transmission service under the SPP Open Access Transmission Tariff (Tariff), and two executed service agreements with Constellation Power Source, Inc. (Constellation), for short-term firm point-to-point and non-firm point-to-point firm transmission service under the Tariff.

SPP requests an effective date of October 15, 1998, for the agreement with El Paso, and an effective date of September 28, 1998, for the agreements with Constellation.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Williams Energy Services Company

[Docket No. ER99–615–000]

Take notice that on November 17, 1998, Williams Energy Marketing & Trading Company (formerly Williams Energy Services Company) (Williams), tendered with the Federal Energy Regulatory Commission a change to its Rate Schedule FERC No. 1. The filed change identifies the California ancillary and energy services Williams sells and limits the sales of such services to either the California Independent System Operator Corporation (CAISO) or others that are self-supplying ancillary services to the CAISO, as well as reflects the change of corporate name.

Williams requests that such change be made effective November 13, 1998.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Dighton Power Associates Limited Partnership

[Docket No. ER99–616–000]

Take notice that on November 17, 1998, Dighton Power Associates Limited Partnership (Dighton), petitioned the Commission for acceptance of Dighton Power Associates Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity generated at its proposed generating facility at market-based rates; and the waiver of certain Commission Regulations.

Dighton intends to engage in wholesale electric power and energy generation and sales as a marketer. Dighton is an exempt wholesale generator under Section 32 of the Public Utility Holding Company Act of 1935. Neither Dighton nor any affiliate of Dighton is engaged in the business of transmitting electric power or has any franchised service area for the sale of electricity.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER99–617–000]

Take notice that on November 17, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and NorAm Energy Management, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to NorAm Energy Management, Inc., under the terms and conditions of the Tariff.

Virginia Power requests an effective date of November 17, 1998.

Copies of the filing were served upon NorAm Energy Management, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Northeast Utilities Service Company

[Docket No. ER99–618–000]

Take notice that on November 17, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service Company of New Hampshire, tendered for filing Service Agreements between NUSCO and Duke/Louis Dreyfus, L.L.C., under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates and System Power Sales/Exchanges Tariff No. 6. Said Service Agreements were subsequently assigned to Duke Energy Trading and Marketing, L.L.C.

NUSCO requests an effective date of January 16, 1999, for these Service Agreements.

NUSCO states that copies of its submission have been mailed or delivered to Duke Energy Trading and Marketing, L.L.C.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Entergy Services, Inc.

[Docket No. ER99–619–000]

Take notice that on November 17, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the First Amendment to the Agreement for Wholesale Power Service between Entergy Arkansas, Inc., and the City of Prescott, Arkansas.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER99–620–000]

Take notice that on November 17, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Market Rate Sales Agreement between Entergy Services, as agent for the Entergy Operating Companies, and Engage Energy US, L.P., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Allegheny Power Service Corporation, on behalf of Monongahela Power Co. The Potomac Edison Company, and West Penn Power Company (Allegheny Power).

[Docket No. ER99–621–000]

Take notice that on November 17, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing a revised schedule for its Pro Forma Open Access Transmission Tariff. Allegheny Power will provide retail transmission services pursuant to the schedule as of January 1, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Texas Utilities Electric Company

[Docket Nos. ER99–622–000]

Take notice that on November 17, 1998, Texas Utilities Electric Company (TU Electric), tendered for filing a revision to the distribution level transmission service and transformation rates included in TU Electric's Tariff for Transmission Service To, From and Over Certain HVDC Interconnections (TFO Tariff).

TU Electric has requested a waiver to permit the revisions to become effective as of November 1, 1998.

TU Electric states that a copy of this filing has been served on the Public Utility Commission of Texas and on all parties receiving service under the TFO Tariff.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. PG&E Energy Trading-Power, L.P.

[Docket No. ER99–631–000]

Take notice that on November 17, 1998, PG&E Energy Trading-Power, L.P. (PGET), 7500 Old Georgetown Road, Bethesda, Maryland 20814, filed an amended to its Electric Rate Schedule No. 1, related to the sale of certain Ancillary Services and Replacement Reserves to either the California Independent System Operator Corporation (California ISO) or others that are self-supplying ancillary services to the California ISO.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Southern Indiana Gas and Electric Company

[Docket No. OA97–308–002]

Take notice that on November 16, 1998, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing revised OASIS Standards of Conduct and other requested information in compliance the order issued by the Federal Energy Regulatory Commission (Commission) on October 16, 1998 in the above-referenced docket. See Ameren Services Company, et al., 85 FERC ¶ 61,068 (1998).

Copies of this filing were served on the Indiana Utility Regulatory Commission and Indiana Office of the Utility Consumer Counselor and all parties designated on the official service list.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. South Carolina Electric & Gas Company

[Docket No. OA97–416–003]

Take notice that on November 16, 1998, South Carolina Electric & Gas Company tendered for filing a compliance filing revising its Standards of Conduct to conform to the Commission's order issued on October 16, 1998 in Ameren Services Company, 85 FERC ¶ 61,068.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Tucson Electric Power Company

[Docket No. OA97–436–002]

Take notice that on November 16, 1998, Tucson Electric Power Company (TEP) tendered for filing revised OASIS Standards of Conduct and other requested information in compliance the order issued by the Federal Energy Regulatory Commission (Commission) on October 16, 1998 in the above-referenced docket. See Ameren Services Company, et al., 85 FERC ¶ 61,068 (1998).

Copies of this filing were served on the Arizona Corporation Commission and all parties designated on the official service list.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Duke Power Company

[Docket No. OA97–450–003]

Take notice that on November 16, 1998 Duke Energy Corporation, on behalf of its divisions, Duke Power and Nantahala Power and Light, (Duke) made a Compliance filing in the above-referenced docket.

Comment date: December 16, 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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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. 98–31706 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–10–000, et al.]

Cleco Corporation, et al.; Electric Rate and Corporate Regulation Filings

November 23, 1998.

Take notice that the following filings have been made with the Commission:

1. Cleco Corporation

[Docket No. EC99–10–000]

Take notice that on November 18, 1998, Cleco Corporation (Cleco) submitted an application pursuant to Section 203 of the Federal Power Act for authority to effect a ''disposition of facilities'' that would be deemed to occur as a result of the implementation of a proposed holding company structure for itself.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Energy Masters International, Inc.

[Docket No. ER94–1402–020]

Take notice that on November 17, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Power Exchange Corporation IGI Resources, Inc.; Penobscot Bay Energy Co.

[Docket Nos. ER95–72–016; ER95–1034–012 and ER95–1034–013; and ER97–2875–004]

Take notice that on November 16, 1998 the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

4. Stand Energy Corporation

[Docket No. ER95–362–015]

Take notice that on November 18, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Proven Alternatives; PanCanadian Energy Services Inc.; Brooklyn Navy Yard Cogeneratin Partners, L.P.; Alternate Power Source, Inc.; K N Marketing, Inc.

[Docket Nos. ER95–473–011; ER90–168–039; ER97–886–003; ER96–1145–009; and ER95–869–013]

Take notice that on November 5, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. TECO EnergySource, Inc.; Premier Enterprises, LLC; Amoco Energy Trading Corporation; ProGas Power, Inc.; Nine Energy Services, LLC; INFINERGY Services, LLC and Power Marketing Coal Services, Inc.; PowerMark Electric Power Trading & Marketing; U.S. Energy; Power Systems Group, Inc.

[Docket Nos. ER96–1563–011; ER95–1123–010; ER95–1359–014; ER95–968–006; ER98–1915–002; ER98–3478–001; ER97–1548–005; ER96–332–007; ER96–2879–003; ER97–3187–001]

Take notice that on November 9, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. AEP Power Marketing, Inc.; Revelation Energy Resources Corporation

[Docket No. ER96–2495–008 and ER97–765–001]

Take notice that on November 6, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

8. The A'Lones Group, Inc.; PPM One; PPM Two; PPM Three; PPM Four; PPM Five; PPM Six

[Docket No. ER97–512–001 and ER97–3926–001, ER97–3927–001, ER97–3928–001, ER97–3929–001, ER97–3930–001 and ER97–3931–001]

Take notice that on November 10, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Community Electric Power Corporation

[Docket No. ER97–2792–004]

Take notice that on November 12, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

10. Alpha Energy Corporation; Calpine Power Services Company; FirstEnergy Trading and Power Marketing, Inc.; British Columbia Power Exchange Corporation

[Docket No. ER97–4730–003; ER94–1545–015; ER95–1295–010; and ER97–4024–006]

Take notice that on November 13, 1998, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

11. Astra Power, LLC

[Docket No. ER98–3378–002]

Take notice that on November 18, 1998, Astra Power LLC (Astra), tendered for filing notification of change in status, in the above-referenced docket.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. ACN Power, Inc.

[Docket No. ER98–4685–000]

Take notice that on November 18, 1998, ACN Power, Inc., (ACN Power), tendered for filing an amendment to its petition, setting forth certain additional information about its corporate affiliations and about the ownership interests of its shareholders.

ACN Power intends to engage in wholesale electric power and energy purchases and sales as a marketer. ACN Power is not in the business of generating or transmitting electric power. The business activities of ACN Power also will include the wholesale purchase and sale of natural gas. ACN Power is a wholly-owned subsidiary of ACN Utility Services, Inc., ACN Utility Services, Inc., is a wholly-owned subsidiary of American Communications Network, Inc., which is primarily engaged in the marketing of long distance telephone, paging and internet services.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Jersey Central Power & Light Company

[Docket No. ER99–531–000]

Take notice that on November 5, 1998, Jersey Central Power & Light Company filed a letter to inform the Commission that there have been no transactions under GPU Energy's Market-based Sales Tariff (GPU Operating Companies, FERC Electric Tariff, Original Volume No. 5) since the Commission accepted the tariff on January 15, 1998 in Docket No. ER98–702–000.

Comment date: December 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER99–623–000]

Take notice that on November 18, 1998, Arizona Public Service Company (APS), tendered for filing Umbrella Service Agreements to provide Non-Firm Point-to-Point Transmission Service to PacifiCorp Power Marketing Inc., and Firm and Non-Firm Point-to-Point Transmission Service to Statoil Energy Trading, Inc., under APS' Open Access Transmission Tariff.

A copy of this filing has been served on PacifiCorp Power Marketing Inc., Statoil Energy Trading, Inc., and the Arizona Corporation Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. NGE Generation, Inc.

[Docket No. ER99–624–000]

Take notice that on November 18, 1998, NGE Generation, Inc. (NGE Gen), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, service agreements (the Service Agreements) under which NGE Gen may provide capacity and/or energy to El Paso Energy Marketing Company (El Paso) and Columbia Energy Power Marketing Corporation (Columbia Energy) in accordance with NGE Gen's FERC Electric Tariff, Original Volume No. 1.

NGE Gen has requested waiver of the notice requirements so that the Service Agreements with El Paso and Columbia Energy become effective as of November 19, 1998.

NGE Gen has served copies of the filing upon the New York State Public Service Commission, El Paso and Columbia Energy.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Public Service Company of New Mexico

[Docket No. ER99–625–000]

Take notice that on November 18, 1998, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Ameren Services Company, (2 agreements, dated November 13, 1998 for Non-Firm and Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Peco Energy Company

[Docket No. ER99–626–000]

Take notice that on November 18, 1998, PECO Energy Company (PECO), tendered for filing a Service Agreement dated November 13, 1998, with Central Vermont Public Service Corporation (CVPS) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CVPS as a customer under the Tariff.

PECO requests an effective date of November 1, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to CVPS and to the Pennsylvania Public Utility Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–627–000]

Take notice that on November 18, 1998, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 9 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of November 17, 1998, to The Detroit Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Northeast Utilities Service Company

[Docket No. ER99–628–000]

Take notice that on November 18, 1998, Northeast Utilities Service Company (NUSCO), on behalf of its operating affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Service Agreement with Southern Company Energy Marketing LP (SCEM) under the Northeast Utilities System Companies' Sale for Resale Tariff No. 7, Market Based Rates.

NUSCO requests an effective date of December 1, 1998.

NUSCO states that a copy of its submission has been mailed or delivered to SCEM.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Ridge Generating Station, L.P.

[Docket No. ER99–632–000]

Take notice that on November 17, 1998, Ridge Generating Station, L.P., owner of a 39.6 MW biomass-fueled generating facility in Polk County, Florida, petitioned the Commission for acceptance of changes in its Rate Schedule FERC No. 1, and waiver of the 60-day notice requirement and certain requirements under Subparts B and C of Part 35 of the Commission's Regulations. Ridge Generating Station, L.P. is an indirect subsidiary of Wheelabrator Technologies Inc.

Comment date: December 7, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Montaup Electric Company

[Docket No. ER99–633–000]

Take notice that on November 18, 1998, Montaup Electric Company (Montaup) filed 1) executed unit sales service agreements under Montaup's FERC Electric Tariff, Original Volume No. III; and 2) executed service agreements for the sale of system capacity and associated energy under Montaup's FERC Electric Tariff, Original Volume No. IV. The service agreements under both tariffs are between Montaup and the following companies:

1. Griffin Energy Marketing, L.L.C.
2. FPL Energy Power Marketing, Inc.
3. NRG Power Marketing Inc.

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of November 21, 1998.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Entergy Services, Inc.

[Docket No. ER99–634–000]

Take notice that on November 18, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the Power Coordination and Interchange Agreement Entergy Arkansas, Inc., and the East Texas Electric Cooperative, Inc.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Entergy Services, Inc.

[Docket No. ER99–635–000]

Take notice that on November 18, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing three Letter Amendments to the Agreements for Wholesale Power Service between Entergy Gulf States Utilities, Inc., and the Cities of Caldwell, Kirbyville and Newton, Texas.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Niagara Mohawk Power Corporation

[Docket No. ER99–636–000]

Take notice that on November 18, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing its Interconnection Agreement with independent power producer Onondaga Cogeneration Limited Partnership. The Interconnection Agreement governs the interconnection between Niagara Mohawk's transmission system and Onondaga Cogeneration's Geddes, New York facility.

The Geddes, New York facility recently lost its Qualifying Facility status under the Public Utilities Regulatory Policies Act (PURPA), requiring the Interconnection Agreement to be filed with the Commission.

Copies of the filing were served upon Onondaga Cogeneration Limited Partners and the New York Public Service Commission.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Koch Power Louisiana, L.L.C.

[Docket No. ER99–637–000]

Take notice that on November 18, 1998, Koch Power Louisiana, L.L.C. (KPL), 20 Greenway Plaza, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission an application for authorization to make wholesale sales of electricity at market-based rates.

KPL requests that its rate schedule providing for such sales be allowed to become effective on January 17, 1999.

Comment date: December 8, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Idaho Power Company

[Docket No. ER99–638–000]

Take notice that on November 18, 1998, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service between Idaho Power Company and

1. Seattle City Light
2. PacifiCorp Power Marketing, Inc.
3. NorAm Energy Services, Inc.
4. Tractebel Energy Marketing, Inc.
5. New Energy Ventures, L.L.C.

and

Firm Point-to-Point Transmission Service between Idaho Power Company and

1. Constellation Power Source, Inc.
2. NorAm Energy Services, Inc.
3. TransAlta Energy Marketing (U.S.) Inc.
4. Tractebel Energy Marketing, Inc.
5. New Energy Ventures, L.L.C.

under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff.

Comment date: December 8, 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. 98–31707 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence Project Construction

November 23, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Filing:* Request for Extension of Time to Commence Project Construction.

b. *Applicant:* Friends of the North County, Inc.

c. *Project No.:* The proposed AuSable Hydroelectric Project, FERC No. 10836–007 is to be located on the AuSable River in Clinton County, New York.

d. *Date Filed:* October 20, 1998.

e. *Pursuant to:* Public Law 105–191.

f. *Applicant Contact:* Ann Ruzow Holland, Executive Director, Friends of the North Country, Inc., 1A Mill Street, P.O. Box 446, Keeseville, New York 12944, (518) 834–9606, Toll Free (1–888–355–3662).

g. *FERC Contact:* Mr. Lynn R. Miles, (202) 219–2671.

h. *Comment Date:* January 7, 1999.

i. *Description of the Request:* The licensee requests that the deadline for commencement of construction for FERC Project No. 10836 be extended for three consecutive two-year extensions of time. The deadline to commence project construction for the project would be extended to October 27, 2002. The deadline for completion of construction would be extended to October 27, 2004.

j. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rule may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–31704 Filed 11–27–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193–8]

Agency Information Collection Activities Up for Renewal—Water Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) listed below is coming up for renewal. Before submitting the renewal package to the Office of Management and Budget (OMB), EPA is soliciting comments on specific aspects of the collection as described below.

DATES: Comments must be submitted on or before January 29, 1999.

ADDRESSES: Written comments should be submitted to Karen Gourdine, Water Quality Standards Branch, Mailcode 4305, USEPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Karen Gourdine; Telephone (202) 260–1328, Facsimile Number (202) 260–9830.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities affected by this action are the 50 States and 7 Territories (the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands) and Indian Tribes that are seeking or have EPA authorization to administer the water quality standards program contained in section 303 of the Clean Water Act (the Act).

Title: Information Collection Request for the Water Quality Standards Regulation, OMB Control #2040–0049; Expiration Date: March 31, 1999.

Abstract: Water Quality Standards are provisions of State, Tribal, and Federal law which consist of designated uses for waters of the United States, numeric or narrative water quality criteria to protect the designated uses, and an antidegradation policy to protect existing uses and high quality waters. States are required by Federal law to

establish water quality standards. Section 303(c) requires States and certain Indian Tribes (those Tribes that have received EPA authorization to administer the water quality standards program and have had their water quality standards approved by EPA) to review and, if appropriate, revise their water quality standards regulations once every three years and to submit to EPA the results of the review. EPA then reviews each State and Tribal submission for approval or disapproval.

The Water Quality Standards (WQS) Regulation (40 CFR part 131) is the EPA regulation governing the implementation of the water quality standards program. The WQS Regulation describes requirements and procedures for the States and Tribes to develop, review, and revise their water quality standards, and EPA procedures for reviewing and approving the water quality standards. The regulation requires, in some cases, the development and submission of information to EPA. The following paragraphs describe the information collection requirements in part 131.

Section 131.6 establishes minimum requirements for a State or Tribe to submit new or revised water quality standards to EPA including the submissions required every three years by section 303(c) of the Act. The information to be submitted consists of: (a) Use designations for water bodies consistent with sections 101(a)(2) and 303(c)(2) of the Act; (b) methods used and analyses conducted to support water quality standards revisions; (c) water quality criteria sufficient to protect the designated uses; (d) an antidegradation policy consistent with 40 CFR 131.12; (e) certification by the Attorney General or other appropriate legal authority that the water quality standards were duly adopted pursuant to State or Tribal law; and (f) information which will aid EPA in determining the adequacy of the scientific basis of the water quality standards and information on general policies that may affect the implementation of the standards.

Part 131.8 specifies information that an Indian Tribe must submit to EPA in order to determine whether a Tribe is qualified to administer the Water Quality Standards Program. The application must include the following information: (a) Evidence that the Tribe is recognized by the Secretary of the Interior; (b) a statement that the Tribe is currently carrying out substantial governmental duties and powers over a Federal Indian Reservation; (c) a statement of the Tribe's authority to regulate the quality of the reservation's waters; and (d) a narrative statement describing the capability of the Tribe to administer an effective water quality standards program.

Additionally, part 131.7 describes a dispute resolution mechanism that will assist in resolving disputes that arise between States and Tribes over water quality standards on common waterbodies. Implementation of this provision includes collection of information by EPA to determine if initiation of a formal EPA dispute resolution action is justified. Although States and Tribes are not required to request formal EPA dispute resolution action, information collection is necessary where a State or Tribe formally requests EPA intervention.

A Federal agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

EPA is soliciting comments from the public to:

(i) Evaluate whether the proposed collection of information (see Burden statement below) is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The existing estimated total annual burden to the respondents is 193,980 hours per year (based on 77 jurisdictions, including 20 Indian Tribes qualifying to administer the water quality standards program). This estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete and review the collection of information.

Send comments regarding these matters, or any other aspect of the information collection, including suggestions for reducing the burden, to the address listed above.

Dated: November 17, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–31675 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6193–9]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; New Source Performance Standards (NSPS) for Municipal Waste Combustors (MWCs)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for MWCs subpart Ea and subpart Eb, OMB 2060–0210, expires January 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1506.08.

SUPPLEMENTARY INFORMATION:

Title: NSPS for Municipal Waste Combustors (MWCs) Subpart Ea and Subpart Eb (OMB Control No.2060–0210; EPA ICR No.1506.08) expiring 1/31/99. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Municipal Waste Combustors of which (1) construction commenced after December 20, 1989 and on or before September 20, 1994, or (2) modification or reconstruction commenced after December 20, 1989 and on or before June 19, 1996, subpart Ea was proposed on December 20, 1989 and promulgated on February 11, 1991. The NSPS for Municipal Waste Combustors which (1) construction commenced after September 20, 1994, or (2) modification or reconstruction commenced after June 19, 1996, subpart Eb was proposed on September 20, 1994 and promulgated on December 19, 1995. Both of these standards apply to the municipal waste combustors with unit capacities greater than 225 megagrams per day (Mg/yr)]. This information is being collected to assure compliance with 40 CFR part 60, subpart Ea and subpart Eb.

Need for and Use of the Collection Owners or operators of the affected facilities described must make one-time-only notifications and reports, must keep records as required of all facilities subject to NSPS requirements. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to NSPS subpart Ea and subpart Eb provide information on the operation of the emissions control devices and compliance with the MWC organics, MWC metals, MWC acid gases, good combustion practices (GCP), and nitrogen oxides. Owners and operators must submit semiannual and annual compliance reports. In addition, facilities subject to subpart Eb are required to keep records of the weekly amount of carbon used for carbon injection and to calculate the estimated hourly carbon injection rate for hours of operation as a means of determining continuous compliance for mercury. Quarterly reports of excess emissions are required under subpart Ea, while semi-annual reports of excess emissions are required under subpart Eb. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of subpart Ea shall maintain a file of these measurements, and retain the file for at least 2 years. For MWCs subject to subpart Eb all records are required to be maintained at the source for a period of 5 years. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standards, and serve as a record of the operating conditions under which compliance was achieved. The information generated by monitoring, recordkeeping and reporting requirements described in this ICR issued by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment and achieve continuous compliance with the regulation. The collection of this information is mandatory. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 9/4/98 (63 FR 47279); No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 316 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. The total annualized cost burden includes the capital cost for continuous emission monitors (CEMs) of $240,000 and the annualized operation and maintenance costs of $323,010, which includes costs for calibrating the CEMs.

Respondents/Affected Entities: Owners and operators of municipal waste combustors.

Estimated Number of Respondents: 40.

Frequency of Response: one-time, quarterly, semi-annual and annual.

Estimated Total Annual Hour Burden: 67,004 hours.

Estimated Total Annualized Cost Burden: $563,010.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1506.08 and OMB Control No. 2060–0210 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy. Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 20, 1998.

Richard Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31676 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; EPA EMPACT Urban Environmental Issues Study of 86 Cities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: EPA EMPACT Urban Environmental Issues Study of 86 Cities; EPA ICR No. 1864.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1864.01.

SUPPLEMENTARY INFORMATION:

Title: EPA EMPACT Urban Environmental Issues Study of 86 Cities, EPA ICR No. 1864.01. This is a new collection.

Abstract: The Environmental Monitoring for Public Access and Community Tracking Program (EMPACT) is a pilot program of the U.S. Environmental Protection Agency. By the year 2001, it will provide to citizens in 86 of the largest urban areas in the country, up-to-date urban

environmental information they can understand and use in their day-to-day decision making about their health and the environment. As a part of program planning efforts, EMPACT is currently developing a telephone survey. The objective of the survey is to rank citizens' top local urban environmental concerns in each of the 86 EMPACT cities. EMPACT will use this information for the following purposes:

Direct successful FY '99 projects into new metropolitan areas

Guide the selection of EMPACT urban grant recipients

Directing the development of information delivery systems in urban areas

Guiding the development of new/innovative information delivery and public access media and models

Support information needs of concurrent programs

Participation in this data collection effort is voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 3, 1998. Two comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average .20 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: citizens within 86 designated EMPACT cities.

Estimated Number of Respondents: 8,600.

Frequency of Response: one-time collection.

Estimated Total Annual Hour Burden: 1720 hours.

Estimated Total Annualized Cost Burden: $0.00.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No and OMB Control No. in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 19, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31677 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Environmental Information Customer Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Center for Environmental Information and Statistics, Environmental Information Customer Survey. The ICR describes the nature of this information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1853.01

SUPPLEMENTARY INFORMATION:

Title: CEIS Environmental Information Customer Survey (EPA ICR Number 1853.01) This is a new collection.

Abstract: This information collection request covers a *voluntary* program of activities to be implemented by the EPA's Center for Environmental Information and Statistics (CEIS) over the next three years (FY1999–2001). The CEIS was established in EPA's Office of Policy starting in 1997, to provide the public with a single, convenient source of EPA's information on environmental quality, status and trends. In brief, CEIS compiles existing data and information from major EPA databases and makes that information available to the public in plain English and in graphical, easy-to-use formats. The CEIS is providing this information to the public via a Web site on EPA's home page (www.epa.gov/ceis), publications, and in other suitable formats identified by EPA's information customers. Soon after the announcement of the Center, a *Customer Survey Plan* was drafted and peer reviewed to establish a three-year series of survey activities to keep CEIS informed of the public's changing environmental information needs and access preferences. The survey activities identified in this information collection request will ultimately support the achievement of EPA's goals to, "Expand Americans' Right to Know About Their Environment" (per EPA's *Strategic Plan* (EPA/190–E–97–002) . The results of these survey activities will also shape the development and delivery of the Center's products and services over time.

The survey activities in the *Customer Survey Plan* will enable the Center to:

- Identify who among the general public uses environmental information;
- Understand who, among the public, considers themselves to be an EPA environmental information customer;
- Understand, who among the public, considers themselves to be a customer of the new Center,
- Assess what types of data and information CEIS customers need and how they would like to access these data and information, and,
- Develop the capacity to use customer feedback in developing and improving the Center's products and services.

The CEIS *Customer Survey Plan* calls for a three year, iterative program of qualitative and quantitative survey activities including telephone surveys, focus groups, interviews, and self-

administered questionnaires via mail and various electronic media. In addition to assessing customer needs and access preferences, these activities will help CEIS to test product or service concepts (alpha testing); test actual products and services (beta-testing); or determine customer satisfaction with finished products and services. CEIS and its consultants will store survey data and analysis on their computers and in hard copy. Personal or demographic information will be collected and aggregated to maintain confidentiality of responses and to protect the identity of individual respondents.

The activities proposed for this three-year program will involve an estimated 47,040 members of the public and cost an estimated $4.2 million dollars. The estimated total respondent burden hours for the entire three-year set of activities is approximately 18,395 hours.

A national telephone survey of the public's environmental information needs, proposed to start in January, 1999, is described in Part B of this Information Collection Request. EPA's CEIS will submit cost and burden data to OMB for each major survey activity called for in this ICR, once individual survey budgets, survey designs, and/or interview protocols are developed.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 3, 1998; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: The U.S. public.

Estimated Number of Respondents in all proposed survey activities: 47,040.

Frequency of Response: occasional.

Estimated Total Annual Respondent Burden: 6,130 hours

Estimated Total Cost: $0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1853.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OP Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: November 20, 1998.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 98–31803 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–9]

Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses; Public Review of a Notification of Intent To Certify Equipment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency receipt of a notification of intent to certify equipment and initiation of 45 day public review and comment period.

SUMMARY: The Agency has received a request to amend a notification of intent to certify urban bus retrofit/rebuild equipment pursuant to 40 CFR part 85, subpart O from the Engelhard Corporation (Engelhard). On March 20, 1998 (63 FR 13660) EPA certified a Engelhard retrofit catalytic muffler which demonstrated a 25% reduction in particulate matter (PM) for 1992–1993 Cummins L–10 electronically-controlled (EC) petroleum-fueled diesel engines (that are not originally equipped with aftertreatment devices). In the original notification dated October 18, 1996, Engelhard requested approval for all Cummins L–10 engines manufactured prior to and including 1993. However, EPA noted in the March **Federal Register** document that, based on the test engine, certification could only apply to 1992–1993 L–10 EC (electronically controlled) models. EPA stated that should Engelhard provide additional information requesting to extend this certification to additional models, EPA would provide the opportunity for public comment. EPA has since received such information from Engelhard, and Engelhard is requesting that certification be extended to include all pre-1994 Cummins L–10 engines and all other 4-stroke urban bus engines.

In addition to providing a summary of the notification in this document, EPA is identifying the engines that are included in the, ''all other 4-stroke urban bus engine'' classification under the urban bus retrofit/rebuild program. After receipt and review of the comments, EPA will publish in the **Federal Register** a listing of the engines to be included in the ''all other 4-stroke engine'' classification. It is intended that this listing would define the classification ''all other 4-stroke engines,'' as it applies to the candidate equipment of today's document, as well as other previously certified urban bus retrofit/rebuild equipment.

Pursuant to part 85.1407(a)(7), today's **Federal Register** document summarizes the notification below, announces that the notification is available for public review and comment, and initiates a 45-day period during which comments can be submitted. The Agency will review the additional information submitted relative to the notification of intent to certify, as well as comments received, to determine whether the additional models identified in the amendment to the notification of intent to certify should be included in the certification. If certified, the equipment can be used by urban bus operators to reduce the particulate matter of urban bus engines.

The Engelhard amendment information, the original notification of intent to certify, as well as other materials specifically relevant to it, are contained in category XVII–A of Public Docket A–93–42, entitled ''Certification of Urban Bus Retrofit/Rebuild Equipment.'' This docket is at the address below.

Today's document initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the additional models should be included in this notification of intent to certify and whether the models listed for the ''all other 4-stroke

engines'' are appropriate. Comments should be provided in writing to Public Docket A–93–42, Category XVII–A, at the address below. An identical copy should be submitted to Anthony Erb, also at the address below.

DATES: Comments must be submitted on or before January 14, 1999.

ADDRESSES: Submit separate copies of comments to the two following addresses:

1. U.S. Environmental Protection Agency, Public Docket A–93–42 (Category XVII–A), Room M–1500, 401 M Street SW, Washington, DC 20460.

2. Anthony Erb, Engine Compliance and Programs Group, Engine Programs & Compliance Division (6403J), 401 ''M'' Street SW, Washington, DC 20460.

Docket items may be inspected from 8:00 a.m. until 5:30 p.m., Monday through Friday. As provided in 40 CFR Part 2, a reasonable fee may be charged by the Agency for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Anthony Erb, Engine Programs & Compliance Division (6403J), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Telephone: (202) 564–9259.

SUPPLEMENTARY INFORMATION:

I. Background

On April 21, 1993, the Agency published final Retrofit/Rebuild Requirements for 1993 and Earlier Model Year Urban Buses (58 FR 21359). The retrofit/rebuild program is intended to reduce the ambient levels of particulate matter (PM) in urban areas and is limited to 1993 and earlier model year (MY) urban buses operating in metropolitan areas with 1980 populations of 750,000 or more, whose engines are rebuilt or replaced after January 1, 1995. Operators of the affected buses are required to choose between two compliance programs: Program 1 sets particulate matter emissions requirements for each urban bus engine in an operator's fleet which is rebuilt or replaced; Program 2 is a fleet averaging program that establishes specific annual target levels for average PM emissions from urban buses in an operator's fleet.

Certification of retrofit/rebuild equipment is a key element of the retrofit/rebuild. To show compliance under either of the compliance programs, operators of the affected buses must use equipment that has been certified by the Agency. Emissions requirements under either of the two compliance programs depend on the availability of certified retrofit/rebuild equipment for each engine model. To be used for Program 1, equipment must be certified as meeting a 0.10 g/bhp-hr PM standard or as achieving a 25 percent reduction in PM. Equipment used for Program 2 must be certified as providing some level of PM reduction that would in turn be claimed by urban bus operators when calculating their average fleet PM levels attained under the program. For Program 1, information on life cycle costs must be submitted in the notification of intent to certify in order for certification of the equipment to initiate (or trigger) program requirements. To trigger program requirements, the certifier must guarantee that the equipment will be available to all affected operators for a life cycle cost of $7,940 or less at the 0.10 g/bhp-hr PM level, or for a life cycle cost of $2,000 or less for the 25 percent or greater reduction in PM. Both of these values are based on 1992 dollars.

II. Notification of Intent To Certify

By a notification of intent to certify signed November 18, 1996, Engelhard applied for certification of equipment applicable to all Cummins L–10 engines that were originally manufactured prior to and including 1993. The notification of intent to certify stated that the candidate equipment would reduce PM emissions 25 percent or more on petroleum-fueled diesel engines that are rebuilt to Cummins specifications.

The candidate equipment consists of a ''catalytic converter muffler'' or CMX™, that is a muffler containing an oxidation catalyst. The emission testing data is provided in Table A. Applicable engines are discussed further below.

Life cycle cost information was submitted with the original notification, along with a guarantee that the equipment would be offered to all affected operators for less than the incremental life cycle cost ceiling. EPA's certification of this equipment triggered the requirements for operators using compliance option 1, to reduce PM by 25% when rebuilding or replacing 1992–1993 Cummins L–10 EC models. As a trigger of this standard, urban bus operators are required to use this retrofit/rebuild equipment, or other equipment certified to provide a PM reduction on any applicable engine that is rebuilt on or after September 21, 1998.

In a letter to EPA dated April 20, 1998, Engelhard requested that the certification be amended to include all pre-1994 Cummins L–10 models and all other 4-stroke urban bus engines. Table B of this notice provides a listing of the additional 4-stroke urban bus engines to which the candidate equipment is believed to be applicable (refer to footnote 3). EPA requests comment on the appropriateness of the engines currently listed in Table B and information on any additional engines for which this certification may be applicable.

Identification of the engines in this classification was deemed to be necessary based on a letter from Engelhard dated March 16, 1998 which states that the inclusion of ''all other 4-stroke engines'' in the Engine Control Systems certification dated January 29, 1998 (63 FR 4445) was causing confusion in the marketplace because it was not clear which engines were included in the ''all other 4-stroke engine'' classification. Accordingly, this notice seeks to clarify this matter by identifying the applicable engines. EPA is requesting additional information on the appropriateness of the engines identified in Table B of this notice for this classification. It is EPA's intent that the list of engines will apply to the candidate Engelhard certification discussed herein, the Engine Control Systems certification referenced above and to future notifications of intent to certify equipment under the urban bus retrofit regulations that include engines in the ''all other 4-stroke'' classification.

Engelhard is requesting that the amendment be certified as providing a 25% particulate matter emission reduction. Engelhard is requesting that the certification apply to both options 1 and 2. Engelhard has not provided life-cycle cost data in the amendment request relative to the additional engines that are covered in the amendment. Therefore, this amendment request, if approved, will not trigger new requirements for any of the models covered by the amendment.

The equipment to be applied to the engines is a ''catalytic Converter Muffler'' or CMX™, that is a muffler containing an oxidation catalyst. The CMX is intended to replace the standard muffler previously installed in the engine exhaust system. The CMX is intended to be maintenance free, requiring no service for the full in-use compliance period. The engine fuel to be used with this equipment is standard diesel fuel with a maximum sulfur content of 0.05 wt.% sulfur.

Engelhard has requested approval for all Cummins L–10 engines and all other urban bus 4-stroke engines manufactured prior to and including 1993. As a basis for this certification, Engelhard presents exhaust emission data from testing a 1987 240hp Cummins L–10 engine, control parts list number 0777 (CPL# 0777) along with test data to support this certification.

Engelhard states that the test engine selected (CPL# 0777) can be considered worst case. The urban bus regulation states that EPA will allow results to be extrapolated to engine types and model years known to have engine-out PM levels equal to or less than that of the test engine. In the case at hand, the test engine has a pre-rebuild PM emission level of 0.61 g/bhp-hr. The PM levels listed in the table at part 85.1403(c)(1)(iii)(A) for all Cummins models are lower than the stated level for the test engine. Under 40 CFR 85.1406(a), a test engine must represent the ''worst case'' with respect to particulate emissions of all those engine configurations for which the equipment is being certified. The worst case configuration is the engine configuration having the highest engine-out PM level, prior to installation of the retrofit/rebuild equipment. EPA requests comments and information concerning identification of the engines to which the candidate equipment is applicable.

In its amendment request Engelhard also presents additional test data and information on the 1987 Cummins L–10 mechanical injection engine, engine serial number 48407900. This engine was first rebuilt to CPL# 0774 by Cummins Recon in South Carolina and tested for emissions. Subsequently, this engine was rebuilt to CPL# 0777 (rated at 240 horsepower) by Engine Test Services (ETS) in South Carolina and tested for emissions. Both CPLs were tested for baseline emissions and emissions with a CMX installed. All testing was conducted at the ETS laboratory in South Carolina in accordance with the Federal Test Procedure. For CPL# 0774 the test data show a PM level of 0.476 g/bhp-hr for the base engine without the CMX. On CPL# 0774, Engelhard conducted tests on two different catalyst formulations. With the candidate equipment installed, the results show a PM level of 0.326 g/bhp-hr with formulation 1 and a PM level of 0.287 g/bhp-hr with formulation 2. This represents a PM reduction of 31.5% and 39.7% respectively with candidate equipment installed. The test data also show that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption for the baseline engine was 0.399 lb/bhp-hr during the test. Fuel consumption for the tests conducted with the candidate equipment installed was 0.394 lb/bhp-hr for each formulation.

For CPL# 0777 the test data show a baseline PM level of 0.473 g/bhp-hr without the CMX. The results show a PM level of 0.335 g/bhp-hr with the CMX installed (only one formulation was tested). This represents a PM reduction of 29%. The test data also show that hydrocarbon (HC), carbon monoxide (CO), and oxides of nitrogen (NO_x) are less than applicable standards. Fuel consumption for the baseline test was 0.413 lb/bhp-hr. Fuel consumption for the tests conducted with the CMX installed was 0.400 lb/bhp-hr. Engelhard presents smoke emission measurements demonstrating compliance with applicable standards.

Engelhard provided supporting information and testing data regarding this candidate certification in submissions to EPA dated September 29, 1997, January 30,1998, March 30, 1998 and April 20, 1998. In the September, January and March submissions, Engelhard provides testing data demonstrating a 25% on a Cummins L–10 engine built to CPL# 0774 as discussed above. Additionally, the March 30, 1998 submission includes information on the ability of the Engelhard equipment to reduce both soluble and insoluble particulate in the exhaust stream. In the submission of April 20, 1998, Engelhard provides information and testing data demonstrating a 25% reduction on the Cummins L–10 engine built to CPL# 0777.

TABLE A.—EXHAUST EMISSIONS SUMMARY G/BHP–HR

Gaseous and particulate test	1987 L–10 Baseline CPL# 0774	1987 L–10 Baseline CPL# 0777	1987 L–10 w/ CMX CPL# 0774 Formula 1/formula 2	1987 L–10 w/ CMX CPL# 0777
HC	2.29	2.29	1.07/0.68	1.07
CO	2.19	2.65	1.52/1.01	1.31
NO_X	5.50	5.89	5.23/5.09	5.41
PM	0.476	0.473	0.326/0.287	0.335
BSFC [1]	0.399	0.413	0.394/0.394	0.400
Smoke Test:				
ACCEL	8.2%	11.7%	9.3%/11.0%	10.9%
LUG	1.5%	1.7%	1.8%/1.4%	2.0%
PEAK	14.8%	29.2%	15.7%/20.3%	24.8%

[1] Brake Specific Fuel Consumption (BSFC) is measured in units of lb/bhp-hr.

Engelhard has not provided life-cycle cost data relative to this notification amendment. Therefore, this equipment will not be considered for certification in compliance with the life-cycle cost requirements of the standard for the additional engines covered by the amendment.

If the Agency certifies the candidate Engelhard equipment operators will be affected as follows. Under Program 1, this equipment would be available for all rebuilds of applicable Cummins L–10 urban bus engines and other 4-stroke urban bus engines listed in footnote 3 of Table B following the effective date of certification. With regard to the Cummins L–10 models included in this amended notification of intent to certify by Engelhard, triggering equipment has already been certified by EPA. On December 13, 1995 EPA published a document in the **Federal Register** (60 FR 64046) approving certification of equipment for the applicable L–10 models for the Cummins Engine Company.

The requirement to use certified equipment demonstrating at least a 25% reduction in PM will continue for the applicable engines until such time as equipment is certified that triggers the 0.10 g/bhp-hr emission standard for less than a life cycle cost of $7,940 (in 1992 dollars). If the Agency certifies the candidate Engelhard equipment, then operators who choose to comply with Program 2 and install this equipment may use the PM emission level(s) established during the certification review process in their calculations for fleet level as specified in the program regulations. Emission levels proposed by Engelhard are provided in Table B.

TABLE B—ENGELHARD RETROFIT/REBUILD CERTIFICATION LEVELS FOR 4-STROKE ENGINES [2]

Cummins/ other engine family	Control parts list (CPL)	Manufacture Dates	New Engine PM level	Retrofit PM level with CM	Retrofit PM level with CM & Cummins kit
343B	780	11/20/85 to 12/31/87	0.58	0.44	0.26
343B	0781	11/20/85 to 12/31/87	0.59	0.44	0.26
343C	0774	11/20/85 to 12/31/89	0.46	0.34	0.26
343C	0777	11/20/85 to 12/31/89	0.61	0.46	0.26
343C	0996	12/04/87 to 08/19/88	0.61	0.46	0.26
343C	1226	07/26/88 to 12/31/90	0.50	0.38	0.26
343F	1226	07/12/90 to 08/26/92	0.45	0.34	0.26
343F	1441	12/18/90 to 12/31/92	0.46	0.34	0.26
343F	1622	04/24/92 to 12/31/92	0.46	0.34	0.26
343F	1624	04/24/92 to 12/31/92	0.45	0.34	0.26
Other [3] 4-stroke engines	N/A	Pre-1988	0.50	0.38	N/A
Other 4-stroke engines		1988 To 1993	([4])	25 % reduction from certification PM levels	N/A

[2] The New Engine PM certification levels for Cummins engines are based on the certification level or the average test audit result for each engine family. It is noted that for engine family 343F, although the PM standard for 1991 and 1992 was 0.25 g/bhp-hr and the NOx standard was 5.0 g/bhp-hr, Cummins certified the 1226, 1441, 1622, and 1624 CPLs to a Federal Emission Limit (FEL) of 0.49 g/bhp-hr PM and 5.6 g/bhp-hr NOx under the averaging, banking and trading program.

[3] Applicable to the following 4-stroke engines: Caterpillar 8 cylinder engines, General Motors 6 cylinder and 8 cylinder engines, International Harvester/Navistar 8 cylinder engines, MAN 6 and 8 cylinder engines, Saab-Scania 6 cylinder engines, and Volvo 6 cylinder engines installed in applicable urban buses.

[4] Certification level.

* Not applicable.

At a minimum, EPA expects to evaluate this notification of intent to certify, and other materials submitted as applicable, to determine whether there is adequate demonstration of compliance with: (1) The certification requirements of part 85.1406, including whether the testing accurately proves the claimed emission reduction or emission levels; and, (2) the requirements of part 85.1407 for a notification of intent to certify.

The Agency requests that those commenting also consider these regulatory requirements, plus provide comments on any experience or knowledge concerning: (a) Problems with installing, maintaining, and/or using the candidate equipment on applicable engines; and, (b) whether the equipment is compatible with affected vehicles.

The date of this notice initiates a 45-day period during which the Agency will accept written comments relevant to whether or not the equipment described in the Engelhard notification of intent to certify should be certified pursuant to the urban bus retrofit/rebuild regulations. Interested parties are encouraged to review the notification of intent to certify and provide comment during the 45-day period. Please send separate copies of your comments to each of the above two addresses.

The Agency will review this notification of intent to certify, along with comments received from interested parties, and attempt to resolve or clarify issues as necessary. During the review process, the Agency may add additional documents to the docket as a result of the review process. These documents will also be available for public review and comment within the 45-day period.

Dated: November 20, 1998.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 98–31805 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6195–1]

Notice of Deficiency For Clean Air Act Operating Permits Program in Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority at 40 CFR 70.10(b)(1), EPA is publishing this Notice of Deficiency for the State of Oregon's Clean Air Act Title V Operating Permits Program. The Notice of Deficiency is based upon EPA's finding that the State's requirements for judicial standing to challenge State-issued Title V permits does not meet minimum federal requirements for program approval. Publication of this Notice is a prerequisite for withdrawal of the State's Title V program approval, but does not effect such a withdrawal. Withdrawal of program approval, if necessary, will be accomplished through subsequent rulemaking.

FOR FURTHER INFORMATION CONTACT: Adan Schwartz, U.S. Environmental Protection Agency, 1200 Sixth Avenue, ORC–158, Seattle, Washington 98101, (206) 553–0015.

I. Description of Action

EPA is publishing a Notice of Deficiency for the Clean Air Act (CAA or Act) Title V program for the state of Oregon. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a Title V permitting authority is not adequately administering or enforcing a part 70 program. The deficiency being noticed relates to Oregon's requirements for obtaining judicial review of Title V operating permit actions. A recent decision by the Oregon Supreme Court held that organizations do not have standing to represent their members in challenging State-issued environmental permits. Because of this restriction on access to judicial review, the State's program no longer meets the program approval requirements of Title V and 40 CFR part 70.

Title V of the Act provides for the approval of state programs for the issuance of operating permits that incorporate the applicable requirements of the Act. State permitting authorities must submit programs to EPA that meet certain minimum criteria, and EPA must disapprove a program that fails to meet

these criteria. Among these criteria is a requirement that the state program include procedures for ''judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.'' CAA section 502(b)(6). This requirement is echoed in the operating permit program approval regulations promulgated at 40 CFR part 70. *See* § 170.4(b)(3)(x).

EPA has interpreted this requirement to mean that a state must provide the same opportunity for judicial review of Title V permitting actions as would be available in federal court under Article III of the U.S. Constitution. This interpretation has been upheld as ''both authorized by Congress and reasonable.'' *Commonwealth of Virginia v. Browner,* 80 F.3rd 869 (4th Cir., 1996).

Article III generally requires that, to obtain judicial review, a person must suffer an actual or threatened injury. However, an organization that does not suffer actual or threatened injury to itself may obtain judicial review on behalf of its members when (1) the members would otherwise have standing to sue in their own right, (2) the interests the organization seeks to protect are germane to its purpose, and (3) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit. In such a case, the organization itself need not show actual or threatened injury. *See Hunt v. Washington Apple Advertising Comm'n,* 432 U.S. 333, 341–345 (1977). This exception to the Article III requirement for actual or threatened injury is known as ''representational standing.''

On July 18, 1996, the Oregon Supreme Court issued a decision in *Local 290, Plumbers and Pipefitters* v. *Oregon Department of Environmental Quality,* 323 Or. 559, 919 P. 2d 1168 (''*Local 290*''). Interpreting the language of the state Administrative Procedures Act (APA), the Court held that this statute requires that the person seeking judicial review under that statute must be aggrieved (which, under Oregon law, is roughly synonymous with having suffered actual or threatened injury), and that representational standing is therefore not allowed. The Oregon APA governs judicial review for all State environmental permits.

On August 1, 1996, EPA received a petition from a coalition of Oregon environmental groups requesting that EPA withdraw approval of the State's CAA Title V and Clean Water Act National Pollutant Discharge Elimination System (NPDES) programs on the basis that these programs no longer met federal minimum requirements in light of *Local 290.* EPA subsequently received a written opinion from the Oregon Department of Justice, dated October 21, 1996, addressing the question of whether the *Local 290* decision renders the Oregon programs deficient from the standpoint of federal approval. On January 14, 1997, the EPA Region 10 Administrator wrote the Director of the Oregon Department of Environmental Quality informing him that EPA was reviewing the petition for withdrawal. On April 21, 1997, the Regional Administrator again wrote to the Director of ODEQ, informing him that EPA had reviewed the *Local 290* decision, and had reached a preliminary conclusion that the decision rendered the State's Title V program deficient. After noting that *Local 290* appears to preclude an organization from suing on behalf of its members unless the organization itself is aggrieved, the letter inquires whether the State could offer a different opinion regarding the effect of this decision. To date, EPA has not received a formal response to this inquiry.

EPA at this time concludes that the *Local 290* decision should be interpreted to mean that representational standing is not allowed under the State APA. The only analysis of this issue from the state that EPA knows of is the October 21, 1996, opinion from an Assistant Attorney General for the Oregon Department of Justice. While not taking issue with the apparent holding of *Local 290,* the opinion questions whether Title V does in fact require a state program to provide for representational standing. Subsequent to receiving this opinion, EPA has reviewed the question and has again concluded that representational standing is a requirement for Title V approval.

The Oregon Department of Justice opinion also suggests, but does not strongly assert, that Oregon state regulations approved by EPA pursuant to Title V may obviate the effect of *Local 290,* because these regulations provide that any person who submitted comments during the public comment period on a permit is ''adversely affected or aggrieved'' for the purpose of intervening in a contested case hearing under the Oregon APA. *See* Oregon Administrative Rules §§ 340–28–2300(4) and 340–28–2290. The apparent inference is that a party (including an organization representing its members) would be considered ''adversely affected or aggrieved'' in state court merely by virtue of the fact that its submittal of comments gave it standing to intervene in a contested case hearing.

EPA does not believe that this regulatory provision removes the barrier to judicial review created by *Local 290.* First, CAA section 502(b)(6) requires that a state provide an opportunity for judicial review to the permittee *or* to any person who participated in the public comment period. This requirement is not satisfied by merely allowing persons to intervene in a proceeding commenced by the permittee. Second, the State regulation nominally addresses only contested case hearings. The opinion does not explain why a party's standing within the administrative adjudicatory forum would necessarily carry over to State judicial courts. In EPA's opinion, the inference that a party qualifying as ''adversely affected or aggrieved'' in this manner for purposes of a contested case hearing would necessarily have standing in State court is particularly weak given that the State regulation was promulgated prior to *Local 290* and uses the same ''adversely affected or aggrieved'' language employed by the APA provision at issue in the *Local 290* decision. In summary, EPA is not convinced that this or any other existing Oregon regulation obviates the effect of *Local 290* for purposes of State court review of Title V permitting decisions.

As noted above, the barriers to standing created by *Local 290* apply to all environmental permits for which judicial review is governed by the State APA. This includes permits issued pursuant to the State's NPDES program. This decision requires interpretation of the recently promulgated regulation addressing standing for judicial review in state NPDES programs, codified at 40 CFR 123.30. *See* 61 FR 20972 (May 8, 1996). EPA plans to hold a public hearing on this issue if representational standing is not restored for NPDES permits during the next Oregon legislative session. The primary purpose of this hearing would be to gather information regarding the extent to which *Local 290* interferes with public participation in the permitting process. Gathering this information would enable EPA to make a more informed decision regarding whether to proceed with NPDES program withdrawal. For the present, EPA notes that restoring representational standing to challenge State NPDES permits will obviate the need for further inquiry into whether *Local 290* poses a problem for continued EPA approval of the State's NPDES program.

40 CFR 70.10(c)(1) provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever

the approved program no longer complies with the requirements of part 70. This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70 because a court has struck down or limited state authorities to administer the program. 40 CFR 70.10(c)(1)(I)(B).

40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the document be published in the **Federal Register**. Today's document satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the state program, apply any of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a federal Title V program. 40 CFR 70.10(b)(2). Part 70.10(b)(4) provides that, if the state has not corrected the deficiency within 18 months after the date of finding of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw the State's Title V program. Consistent with part 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether the State has taken significant action to correct the deficiency. Any proposal to withdraw approval of the State's Title V program will occur after the end of the 90-day period.

II. Administrative Requirements

As noted above, publication of this notice of deficiency does not effect a withdrawal of the State's Title V program. Program withdrawal, if necessary, will be accomplished through a subsequent notice-and-comment rulemaking. This action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). The Office of Management and Budget has exempted this action from review under Executive Order 12866 (58 FR 51735, October 4, 1993). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

This action is a Notice of Deficiency and does not constitute a rule; therefore Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks does not apply. For the same reason, section 112(d) of the National Technology Transfer Advancement Act of 1995 also does not apply.

Dated: November 20, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–31800 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6194–7]

The Freelove Valley Home Meth Lab Superfund Site; Notice of Proposed Agreement for Payment Future Costs and Recovery of Past Response Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA), notice is hereby given that a proposed CERCLA section 122(h)(i) Agreement for Payment of Past Costs associated with the Freelove Valley Home Meth Lab Superfund Site (Site) was executed by EPA and the Mr. Ramon Cercas. The proposed Agreement would resolve certain claims of EPA under section 107 of CERCLA, 42 U.S.C. 9607. The proposed Agreement would require Mr. Ramon Cercas to pay to EPA $12,000 for the work conducted by EPA at the Site.

For thirty (30) days following the date of publication of this document, EPA will receive written comments relating to the settlement. If requested prior to the expiration of this document, EPA will provide an opportunity for a public meeting in the affected area. EPA's response to any comments received will be available for inspection at the U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before December 30, 1998.

AVAILABILITY: A copy of the proposed Agreement may be obtained from David Rabbino, Assistant Regional Counsel (RC–3), 75 Hawthorne Street, San Francisco, California 94105. Comments should reference the Freelove Valley Home Meth Lab Superfund Site and EPA Docket No. 99–02, and should be addressed to David Rabbino at the above address.

FOR FURTHER INFORMATION CONTACT: David Rabbino, Office of Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne Street, (RC–3), San Francisco, California 94105; E-mail: Rabbino.David@epamail.epa.gov; Telephone: (415) 744–1336.

Keith Takata,

Acting Deputy Director, Superfund Division, Region IX.

[FR Doc. 98–31804 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRC–6194–6]

Southern Wood Piedmont Superfund, Wilmington, New Hanover, North Carolina; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement.

SUMMARY: Pursuant to section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into an Agreement for the Recovery of Past Response Costs with Southern Wood Piedmont, Inc. and its parent company, Rayonier, Inc. (Settling Parties). Pursuant to the Agreement, the Settling Parties will reimburse EPA all response costs expended at the Site, excluding interest that has accrued such costs.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. Copies of the

proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta, Georgia 30303.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: November 12, 1998.

James T. Miller,

Program Services Branch, Waste Management Division.

[FR Doc. 98–31678 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51918; FRL–6044–8]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from October 1, to October 30, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51918]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/ 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPPTS–51918]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51918]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

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

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

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551,

for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0001	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0002	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0003	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aliphatic saturated copolyester
P–99–0004	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0005	10/01/98	12/23/98	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0006	10/02/98	12/31/98	CIBA Specialty Chemicals	(G) Raw material	(S) Benzenesulfonic acid, 2-amino-5-[[2-(sulfooxy) ethyl]sulfonyl]-(9cl)*
P–99–0007	10/02/98	12/31/98	CIBA Specialty Chemicals Corporation - additives division	(S) Corrosion inhibitor for paint primers	(G) Organosilane derivatives
P–99–0008	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0009	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0010	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0011	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0012	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0013	10/01/98	12/30/98	CBI	(G) Coating with open use	(G) Cationic epoxy resin
P–99–0014	10/05/98	01/03/99	Clariant Corporation	(G) Reactant	(S) 2-oxazolidinone*
P–99–0015	10/05/98	01/03/99	CBI	(G) Fuel additives	(G) Alkenes, maleic anhydride polymer reaction product with aminopropyl fatty amine
P–99–0016	10/06/98	01/04/99	CBI	(S) Coagulant for industrial wastewater treatment; coagulant for municipal water treatment	(G) Iron Salt of metal hydroxy chloride phosphate
P–99–0017	10/05/98	01/03/99	CBI	(G) Lubricant and fuel additives	(G) Alkenes, maleic anhydride polymer
P–99–0018	10/05/98	01/03/99	DyStar L.P.	(S) Disperse Dye for coloration of polyester fiber	(G) Propanoic acid, 2-methyl-, 2-[[4-[(3-cyano-5-nitro-substituted)]-3-substituted]ethylamino]ethyl ester
P–99–0019	10/05/98	01/03/99	CIBA Specialty Chemicals	(S) Reactive dye for cellulose, black; reactive dye for cellulose, orange	(G) Benzenesulfonic acid, diamino-3-[[4-2-sulfooxyethyl]sulfonyl]phenyl]azo]-5-4-[[2-(sulfooxy)ethyl]sulfonyl]-sulfonylphenyl]azo]-, sodium salt
P–99–0020	10/05/98	01/03/99	CBI	(G) Lubricant additives	(G) Modified polymeric succinimide disperant
P–99–0021	10/08/98	01/06/99	CBI	(G) Automotive coating	(G) Modified acrylic copolymer
P–99–0022	10/08/98	01/06/99	CBI	(S) Base resin for acrylic modified alkyd	(S) Fatty acids, tall-oil, polymers with benzoic acid, pentaerythritol, phthalic anyhdride, soybean oil and trimethylolpropane
P–99–0023	10/08/98	01/06/99	CBI	(S) Industrial primer for car refinish, fleet primer plastics and metal	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-(1,3-dioxobutyl)-omega-(1,3-dioxobutoxy)-*
P–99–0024	10/07/98	01/05/99	CBI	(G)Open, non dispersive (impact Modifier)	(G) Polyester polyurethane
P–99–0025	10/07/98	01/05/99	Solutia Inc.	(S) Scale inhibitor in off-shore down hole secondary oil recovery	(G) Sodium salt of polyaminophosphonic acid
P–99–0026	10/08/98	01/06/99	OMG Americas, Inc.	(S) Fuel oil additive/ diesel additive	(S) Cerium, hydroxy oleate propionate complexes*
P–99–0027	10/09/98	01/07/99	CBI	(G) Printing Ink Resin	(G) Rosin, maleated, polymer with alkylene glycol; also cmpd. with ethanolamine*
P–99–0028	10/09/98	01/07/99	CBI	(G) Printing Ink Resin	(G) Rosin, maleated, polymer with alkylene glycol; also cmpd. with ethanolamine*
P–99–0029	10/07/98	01/05/99	CBI	(G) Additive for metal cleaning or metal working fluids	(G) Modified fatty acids, salts with mixed alkanolamines
P–99–0030	10/05/98	01/03/99	CBI	(G) Lubricant Additives	(G) Modified polymeric succinimide dispersant
P–99–0031	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0032	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0033	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0034	10/13/98	01/11/99	CBI	(G) Lubricant Additive	(G) Calcuim salts of alkyl salicylate and alkyl phenate
P–99–0035	10/13/98	01/11/99	BASF Corp.	(G) Colorant	(G) 22,7-naphthalenedisulfonic acid, ((substituted)imino)tris(5-hydrocy-6-((1-sulfo-2-naphthalenyl)azo)-, mixed salt*
P–99–0036	10/14/98	01/12/99	CBI	(G) Ingredient for use in consumer products; highly dispersive use	(G) Cyclic Ketonic Diether
P–99–0037	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb Inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aromatic urethane acrylate
P–99–0038	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb Inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aliphatic urethane acrylate
P–99–0039	10/13/98	01/11/99	RAHN USA Corporation	(S) UV/eb inks; uv/eb coatings; uv/eb adhesives; uv/eb fillers	(G) Aliphatic urethane acrylate
P–99–0040	10/13/98	01/11/99	CBI	(G) Destructive use	(G) Polyester resin
P–99–0041	10/13/98	01/11/99	CBI	(G) Open, non-dispersive use	(G) Polyester / acrylic copolymer
P–99–0042	10/13/98	01/11/99	Hampshire Chemical Corp.	(G) Hydrogel polymer	(G) Aliphatic polyurethane prepolymer
P–99–0043	10/13/98	01/11/99	Hampshire Chemical Corp.	(G) Hydrogel polymer	(G) Aliphatic polyurethane prepolymer
P–99–0044	10/13/98	01/11/99	CBI	(S) Bonding agent for mineral aggregates (sand)	(S) Formaldehyde, polymer with phenol and 1,2,3-propanetriol, methylated*
P–99–0045	10/14/98	01/12/99	CBI	(G) Urethane coating component	(G) Polymer of aromatic diisocyanate with polyether polyol
P–99–0046	10/14/98	01/12/99	CBI	(G) Colorant	(G) Sulfonated copper phthalocyanine, substituted with aromatic sulfonamid, sodium salt.
P–99–0047	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) B-alanine, *n*-(substituted)phenyl)azo-3-alkyl(phenyl)-*n*-ethyl-, alkoxy ester
P–99–0048	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) Naphthalenedisulfonic acid, substituted triazine, substituted naphthalenyl azo-, mixed salts
P–99–0049	10/14/98	01/12/99	BASF Corporation	(G) Colorant	(G) 2-naphthalenesulfonic acid, 4-hydroxy-substituted amino - substituted phenylazo, mixed salt
P–99–0050	10/14/98	01/12/99	CBI	(G) Tracer Dye	(G) Amino substituted naphthalimide
P–99–0051	10/16/98	01/14/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0052	10/15/98	01/13/99	3M Company- group compliance 3M automotive and chemical markets group	(S) Chemical Intermediate	(S) Hydrofluoric Acid, reaction products with octane*
P–99–0053	10/14/98	01/12/99	CBI	(G) Multi-purpose adhesive; open, non-dispersive use; laminating adhesive; open. non-dispersive use	(G) Polyurethane prepolymer; polyurethane adhesive
P–99–0054	10/16/98	01/14/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0055	10/16/98	01/14/99	CBI	(S) Site limited intermediate surfactant	(G) Alkoxylated alkyloxypropylamine
P–99–0056	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0057	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0058	10/16/98	01/14/99	CBI	(G) Surfactant	(G) Alkoxylated alkyloxy propylamine oxide
P–99–0059	10/16/98	01/14/99	CBI	(S) Site limited intermediate surfactant	(G) Alkoxylated alkyloxypropylamine
P–99–0060	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Ammonium salt of acrylic copolymer
P–99–0061	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Sodium salt of acrylic co polymer
P–99–0062	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) DMEA Salt of acrylic copolymer
P–99–0063	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) 2-amino-2-methyl-1-propanol salt of acrylic copolymer
P–99–0064	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) MEA salt of acrylic co polymer

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0065	10/13/98	01/11/99	CBI	(G) Polymeric component of an ink or coating	(G) Tea salt of acrylic co polymer
P–99–0066	10/19/98	01/17/99	CBI	(G) Rheology modifier for aqueous systems	(G) Hydrophobically modified polyether
P–99–0067	10/20/98	01/18/99	Arizona Chemical	(G) Printing Ink additive (open, non-dispersive)	(G) Modified glycerol ester of tall oil fatty acid
P–99–0068	10/19/98	01/17/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0069	10/19/98	01/17/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0070	10/15/98	01/13/99	3M Company - group compliance 3M automotive and chemical markets group	(G) Paper or film coating	(G) Amine neutralized acrylate polymer
P–99–0071	10/19/98	01/17/99	H. B. Fuller Company	(S) Hot-melt adhesive for the shoe industry	(G) Polyamide
P–99–0072	10/19/98	01/17/99	CBI	(G) A Destructive use as a chemical intermediate	(G) Polyester resin
P–99–0073	10/19/98	01/17/99	CBI	(G) Paint	(G) Polyisocyanate resin
P–99–0074	10/19/98	01/17/99	BASF Corp.	(S) Plasticizer in concrete	(G) Modified polycoarboxylate
P–99–0075	10/19/98	01/17/99	CBI	(S) Fixing agent in paper making process	(G) Modified polyethyleneimine
P–99–0076	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0077	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0078	10/22/98	01/20/99	CBI	(G) Decorative coating	(G) Acrylic polymer
P–99–0079	10/19/98	01/17/99	Loctite Corporation, Corporate Environmental Health & Safety Affairs	(S) A component of industrial adhesive formulations	(S) 2-propenoic acid, 2-methyl-, monoester with 1,2-propanediol, polymers with hydroxy-terminated acrylonitrile-butadiene polymer, 4,4'-(1-methylethylidene)bis[cyclohexanol] and 4,4-tdi*
P–99–0080	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0081	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aromatic saturated copolyester
P–99–0082	10/21/98	01/19/99	CBI	(G) Prepolymer of polyester urethane	(G) Aliphatic saturated copolyester
P–99–0083	10/21/98	01/19/99	CBI	(G) Additive, open, non-disperive use	(G) Ammonium salt of an acidic polymer
P–99–0084	10/23/98	01/21/99	Union Carbide Corporation	(G) Site limited Chemical Intermediate	(G) Aryl phosphoryl chloride
P–99–0085	10/23/98	01/21/99	CBI	(G) Toner Chemical (open, non-dispersive)	(G) Bisphenol a-type polyester resin
P–99–0086	10/26/98	01/24/99	CBI	(S) Curing agent for epoxy coating and flooring systems	(G) Cycloaliphatic amine adducts
P–99–0087	10/20/98	01/18/99	CBI	(G) Paper manufacture; textile size	(G) Hydroxyalkyl cationic starch, hydrolzed
P–99–0088	10/20/98	01/18/99	CBI	(G) Process intermediate	(G) Hydroxyalkyl cationic starch
P–99–0089	10/26/98	01/24/99	CBI	(G) Colorant for water-based formulations	(G) Polyalkoxylated aromatic amine tint
P–99–0090	10/26/98	01/24/99	Univation Technologies, Exxon Chemical/union carbide joint venture	(S) Polymerization catalyst	(G) Aluminum organometallic compound
P–99–0091	10/28/98	01/26/99	CBI	(G) Open non-dispersive (polyurethane)	(G) Aqueous polyurethane dispersion
P–99–0092	10/28/98	01/26/99	CBI	(G) Open non-dispersive (binding agent)	(G) Polycarbonate
P–99–0093	10/27/98	01/25/99	Witco Corporation	(G) Additive for plastics	(S) 1,4-dioxa-7,9-dithia-8-stannacycloundecane-511-dione, 8,8-dioctyl-(9ci)*
P–99–0094	10/27/98	01/25/99	CBI	(S) Disperse dye for the coloring of polyester fibers, as a granular dye; disperse dye for the coloring of polyester fibers, as a liquid dye	(S) Acetamide, *n*-[2–[(2-bromo-6-cyano-4-nitrophenyl)azo]-5-(diethylamino)phenyl]-*
P–99–0095	10/29/98	01/27/99	CBI	(S) Site limited intermediate	(G) Triazine derivative
P–99–0096	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesive, fillers)	(G) Polyether amino acrylate

I. 104 Premanufacture Notices Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0097	10/29/98	01/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in territory oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Heavy aromatic solvent
P–99–0098	10/29/98	01/27/99	CBI	(S) Paraffin & asphaltene dissolving agent in territory oil recovery; gas compressor wash oil; carrier solvent for polyurethane foam synthesis	(G) Heavy aromatic solvent
P–99–0099	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Polyetheraminoacrylate
P–99–0100	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Polyether amino acrylate
P–99–0101	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Aliphatic urethane acrylate
P–99–0102	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers)	(G) Aliphatic urethane acrylate
P–99–0103	10/29/98	01/27/99	RAHN USA Corporation	(S) Uv/eb (inks, coatings, adhesives, fillers	(G) Acrylated oligoamine
P–99–0105	10/30/98	01/28/99	CBI	(G) Inkjet ink	(G) Soduim salt of substituted copper phthalocyanine derivative

II. 37 Notices of Commencement Received From: 10/01/98 to 10/30/98

Case No.	Received Date	Commencement/Import Date	Chemical
P–94–1659	10/14/98	09/28/98	(S) Ethanol, niobium (5+) salt or niobium etoxide*
P–96–0966	10/19/98	09/21/98	(G) Bis-disubstituted phenylazo substituted sulfonaphthyl azo diphenylamine monosulfonic acid, sodium salt
P–94–0662	10/26/98	10/15/98	(S) A polymer of: methyl methacrylate; ethylene-ethyl acrylate copolymer*
P–94–1371	10/26/98	10/10/98	(G) Triethylamine salt of an aliphatic polyurethane polymer
P–95–1457	10/26/98	10/06/98	(G) Neutralized water based acid functional polymer
P–96–1447	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin
P–96–1448	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, ammonium salt
P–96–1449	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. eith ethanolamine
P–96–1450	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with diethanolamine.
P–96–1451	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with triethanolamine.
P–96–1452	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, compd. with 2(dimethylamino) ethanol.
P–96–1453	10/27/98	10/06/98	(G) Linseed oil, polymer with substituted phenols, formaldehyde, 1,6-hexanediol, maleic anhydride, polyethylene glycol and rosin, sodium salt.
P–97–0176	10/05/98	09/11/98	(G) Cyclopentadiene derivative, sodium salt
P–97–0177	10/05/98	09/11/98	(G) Cyclopentadiene derivative
P–97–0189	10/05/98	09/11/98	(G) Substituted bis(cyclopentadienyl)zirconium dichloride
P–97–0216	10/19/98	09/16/98	(G) Propoxylated, ethoxylated amine
P–97–0480	10/19/98	10/06/98	(G) Mono azo yellow pigment
P–97–0664	10/07/98	09/11/98	(G) Acid fluoride derivative
P–97–0690	10/05/98	09/23/98	(G) Reaction product of: petroleum by products, di ethylene glycol, alphatic branched alcohol, and aliphatic cyclic anhydrides
P–97–0917	10/05/98	09/15/98	(G) Perfluoroalkylfunctional silicone silsesquioxane copolymer
P–97–1079	10/02/98	09/18/98	(G) Alkyl methacrylate copolymer
P–98–0141	10/07/98	09/24/98	(G) Phosphoric acid ester
P–98–0142	10/07/98	09/24/98	(G) Phosphoric acid ester
P–98–0159	10/13/98	10/02/98	(G) Polyamine adduct
P–98–0163	10/14/98	09/23/98	(S) Hexanedioic acid, bis[4-(ethenyloxy)butyl] ester*
P–98–0330	10/06/98	09/26/98	(G) Metallated porphyrin
P–98–0389	10/02/98	09/24/98	(G) Ppdi polyester prepolymer
P–98–0621[1]	07/17/98	07/06/98	(G) Derivative bisphenol sulfone
P–98–0659	10/26/98	10/19/98	(G) Reaction products of formaldehyde, amine substitiuted piperazine, and alkyl amine
P–98–0700	10/13/98	10/03/98	(G) Mixed alkylmetallic mercaptoester sulfides
P–98–0758	10/13/98	09/23/98	(G) Polyester acrylate

II. 37 Notices of Commencement Received From: 10/01/98 to 10/30/98—Continued

Case No.	Received Date	Commencement/Import Date	Chemical
P–98–0802	10/06/98	10/01/98	(G) Isocyanate-fuctionalized polyurethane polymer*
P–98–0814	10/20/98	10/14/98	(G) Styrene/ acrylate copolymer
P–98–0820	10/13/98	09/13/98	(G) Copolymer of styrene and acrylic esters
P–98–0833	10/02/98	09/09/98	(G) Acrylic latex
P–98–0874	10/30/98	10/14/98	(G) Alkyd resin
P–98–0945	10/30/98	10/13/98	(G) Acrylate copolymer

[1]P–98–0621 was inadvertantly omitted from the document of July 15 to 31, 1998, Notices of Commencement, but is now included.

List of Subjects

Environmental protection, Premanufacture notices.

Dated: November 18, 1998.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–31679 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–5]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility in violation of the regulations issued under section 311(j) of the Clean Water Act, 33 U.S.C. 1321(j), (''Oil Pollution Prevention Regulations'' 40 CFR part 112) may be assessed a civil penalty of up to $137,500 by EPA in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits at 40 CFR part 22 (''part 22'').''

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing notice of the following proposed Class II penalty proceeding initiated by the Superfund Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Speedy's Convenience, Inc., Docket No. OPA–09–98–05, filed September 30, 1998; proposed penalty $137,500; for violations of the Oil Pollution Prevention Regulations (40 CFR Part 112) at the oil storage, processing and distribution facility located at Lupton, AZ.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this document.

Dated: September 30, 1998.

Nancy Lindsay,

Associate Director, Superfund Division, Region IX.

[FR Doc. 98–31801 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6189–6]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Assessment of Clean Water Act Class II Administrative Penalty and opportunity to comment.

SUMMARY: EPA is providing notice of a proposed administrative penalty for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed penalty.

EPA is authorized under section 311(b)(6) of the Clean Water Act, 33 U.S.C. 1321(b)(6), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons public notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 311(b)(6), any owner, operator, or person in charge of a vessel, onshore facility, or offshore facility from which oil is discharged in violation of section 311(b)(3) of the Clean Water Act, 33 U.S.C. 1321(b)(3) may be administratively assessed a civil penalty of up to $137,500 by EPA in a ''Class II'' administrative penalty proceeding. Class II proceedings under section 311(b)(6) of the Clean Water Act are conducted in accordance with the ''Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the

Revocation and Suspension of Permits at 40 CFR part 22 (''part 22'').''

Pursuant to section 311(b)(6)(C) of the Clean Water Act, 33 U.S.C. 1321(b)(6)(C), EPA is providing public notice of the following proposed Class II penalty proceeding initiated by the Oil Program, Superfund Division, U.S.EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105:

In the Matter of Kinder Morgan Energy Partners, LP/Santa Fe Pacific Pipeline Partners, LP (Santa Fe); Docket Number OPA–09–98–01, filed September 29, 1998; proposed penalty $50,000.00; for a violation of 311(b) of the Clean Water Act, 33 U.S.C. 1321(b), at Santa Fe's pipeline Rockin, California to Sparks, Nevada 5 miles west of Highway 80 near Donner Summit, California.

The procedures by which the public may submit written comments on a proposed Class II penalty order or participate in a Class II penalty proceeding are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of part 22, review the Complaint or other documents filed by the parties in this proceeding, comment upon the proposed penalty assessment, or participate in any hearing that may be held, should contact the Danielle Carr, Regional Hearing Clerk (RC–1), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1391. Documents filed as part of the public record in this proceeding are available for inspection during business hours at the office of the Regional Hearing Clerk.

In order to provide opportunity for public comment, EPA will not take final action in this proceeding prior to thirty days after issuance of this document.

Dated: September 25, 1998.

Michael T. Feeley,

Deputy Director, Superfund Division, Region IX.

[FR Doc. 98–31802 Filed 11–27–98; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2307]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

November 19, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by December 15, 1998. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region InterLATA Services to Louisiana (CC Docket No. 98–121).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–31688 Filed 11–27–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1994 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

U.S.A. Transport, 330 Broadway, Hillsdale, NJ 07642, Neal Freedman, Sole Proprietor.

Dated: November 23, 1998.

Joseph C. Polking,

Secretary.

[FR Doc 98–31695 Filed 11–27–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10:00 A.M.—December 2, 1998.

PLACE: 800 North Capitol Street, N.W., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be open to the public and the remainder of the meeting will be closed.

MATTER(S) TO BE CONSIDERED: The Open Portion of the Meeting; 1. Proposed Rules (46 CFR) Implementing the Ocean Shipping Reform Act, relating to Agreements, Marine Terminal Operator Schedules, and Ocean Transportation Intermediaries.

The Portion Closed to the Public: 1. Brazilian Maritime Policies Affecting U.S.-Brazil Trades.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary, (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 98–31862 Filed 11–24–98; 4:40 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, December 2, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: November 25, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–31904 Filed 11-25-98; 11:06 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Performance Review Boards for Small Client Agencies Services by the General Services Administration, Names of Members

Sec. 4314©(1) through (5) of Title 5 U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The board shall review and evaluate the initial appraisal by the supervisor of a senior executive's performance, along with any recommendations to the appointing authority relative to the performance of the senior executive. The Performance Review Board also shall make recommendations as to whether the career executive should be recertified, conditionally recertified, or not recertified.

As provided under Section 601 of the Economy Act of 1932, amended 31 U.S.C. 1525, the General Services Administration through its Agency Liaison Division, provides various personnel management services to a number of diverse Presidential commissions, committees, boards and other agencies through reimbursable administrative support agreements. This notice is processed on behalf of the client agencies, and it supersedes all other notices in the **Federal Register** on this subject. Because of their small size, a Performance Review Board register has been established in which SES members from the client agencies participate. The Board is composed of SES members from various agencies. From this register of names, the head of each client agency will appoint executives to a specific board to serve a particular client agency.

The members whose names appear on the Performance Review Board standing roster to serve client agencies are:

Barry M. Goldwater Scholarship and Excellence In Education Foundation

Gerald J. Smith, Executive Secretary

Committee for Purchase From People Who Are Blind or Severely Disabled

Beverly L. Milkman, Executive Director

Federal Retirement Thrift Investment Board

David L. Black, Director of Accounting
Stratos D. Valakis, Director of Contracts and Administration
Lawrence E. Stiffler, Director of Automated Systems
Alisone M. Clark, Director of Benefits and Program Analysis
Veda R. Charrow, Director of Communications
Thomas J. Trabucco, Director of External Affairs
Peter B. Mackey, Director of Investments
John J. Omeara. General Counsel
James B. Petrick, Deputy General Counsel
Elizabeth S. Woodruff, Associate General Counsel

Defense Nuclear Facilities Safety Board

Kenneth M. Pusateria, General Manager
Joseph R. Neubeiser, Deputy General Manager
Richard A. Azaro, Deputy General Counsel for Policy and Litigation
George W. Cunningham, Technical Director
Wallace R. Kornack, Technical Advisor for Technical Studies

Harry S. Truman Scholarship Foundation

Louis H. Blair, Executive Secretary

Japan-United States Friendship Commission

Eric J. Gangloff, Executive Director

Office of Navajo and Hopi Indian Relocation

Christopher J. Bavasi, Executive Director
Michael J. McAlister, Deputy Executive Director

Arctic Research Commission

Garrett W. Brass, Executive Director

National Mediation Board

Ronald M. Etters, General Counsel
Stephen E. Crable, Chief of Staff

Dated: November 12, 1998.

Elaine Dade,

Director, Laision Division.

[FR Doc. 98–31840 Filed 11–27–98; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–1019]

BF Goodrich Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BF Goodrich Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

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 8B4631) has been filed by BF Goodrich Specialty Chemicals, 9911 Brecksville Rd., Cleveland, OH 44141. The petition proposes to amend the food additive regulations in § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles 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: November 10, 1998.

George H. Pauli,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 98–31692 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0994]

Draft Guidance for Industry on BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ‘‘BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation.’’ This

draft guidance provides recommendations to sponsors of new drug applications, abbreviated new drug applications, new animal drug applications, abbreviated new animal drug applications, and holders of drug master files or veterinary master files who intend, during the postapproval period, to change the site of manufacture, the scale of manufacture, the equipment, the specifications, and/or the manufacturing process of intermediates in the synthetic pathway leading to the drug substance.

DATES: Written comments on the draft guidance may be submitted by March 31, 1999. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cvm''. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kasturi Srinivasachar, Center for Drug Evaluation and Research (HFD–110), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5376, or David R. Newkirk, Center for Veterinary Medicine (HFV–142), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2701.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance entitled ''BACPAC I: Intermediates in Drug Substance Synthesis; Bulk Actives Postapproval Changes: Chemistry, Manufacturing, and Controls Documentation.'' This draft guidance defines recommended chemistry, manufacturing and controls tests, and documentation in support of each change. The draft guidance applies to synthetic drug substances and the synthetic steps involved in the preparation of semisynthetic drug substances. It is limited to structurally well-characterized drug substances where impurities can be monitored at the levels recommended. The draft guidance covers changes as follows: (1) Site, scale, and equipment changes involving the synthetic steps up to and including the step that produces the final intermediate, (2) specification changes for raw materials, starting materials, and intermediates, excluding the final intermediate, and (3) manufacturing process changes involving the synthetic steps up to and including the final intermediate. Postapproval changes affecting: (1) Synthetic peptides, (2) oligonucleotides, (3) radiopharmaceuticals, or (4) drug substances derived exclusively by isolation from natural sources or produced by procedures involving biotechnology are not addressed in this document.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on postapproval changes for the manufacture of intermediates in drug substance syntheses. 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 requirement of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft 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 draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 20, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–31765 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0996]

Draft Guidance for Industry on General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products.'' This document is intended to assist applicants who plan to conduct pharmacokinetic (PK) studies in the pediatric population so that drugs and biological products can be labeled for pediatric use.

DATES: Written comments may be submitted on the draft guidance by January 29, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of ''General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products'' to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Copies of this guidance may also be obtained by fax from 1–888–CBERFAX or 301–827–3844 or by mail from the CBER Voice Information System at 800–835–4709 or 301–827–1800.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2330.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled ''General Considerations for Pediatric Pharmacokinetic Studies for Drugs and Biological Products.'' The guidance is intended to assist applicants who plan to conduct pharmacokinetic (PK) studies in the pediatric population so that drugs and biological products can be labeled for pediatric use.

In the past few years, the agency has addressed the need for greater information on the use of drugs in the pediatric population. In the **Federal**

Register of December 13, 1994 (59 FR 64240), FDA published a final rule that encouraged manufacturers to provide more information in the labeling on the use of a drug in the pediatric population. The rule recognized several methods of establishing substantial evidence to support pediatric labeling claims, including relying in certain cases on studies carried out in adults. Under the final rule, products may be labeled for pediatric use based on adequate and well-controlled studies in adults together with other information supporting pediatric use (e.g., pharmacokinetic data, safety data, pharmacodynamic data). In the **Federal Register** of August 15, 1997 (62 FR 43899), FDA published a proposed rule that would require new drugs and biological products to be labeled for use in the pediatric population. The enactment of the Food and Drug Modernization Act of 1997 (Pub. L. 105–111) (Modernization Act) on November 21, 1997, further addressed this need by providing incentives to sponsors for conducting pediatric studies (21 U.S.C. 355a). This draft guidance addresses general considerations for conducting PK studies in the pediatric population.

This draft level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on pediatric pharmacokinetic studies. 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.

Interested persons may submit written comments on the draft 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 draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1998.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 98–31691 Filed 11–27–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Evaluation of National Youth Anti-Drug Media Campaign

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes on Drug Abuse of the National Institutes of Health will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

PROPOSED COLLECTION: *Title:* Evaluation of National Youth Anti-Drug Media Campaign. *Type of Information Collection Request:* New. *Need and use of Information Collection:* The White House Office of National Drug Control Policy has transferred funds to NIDA to conduct an independent, scientifically designed and implemented evaluation of the National Youth Anti-Drug Media Campaign, the first prevention campaign to use paid advertising to discourage youth from drug use. The study will assess the outcomes and impact of the national campaign in reducing illegal drug use among children and adolescents.

For this study, two different surveys will be conducted: (1) the National Survey of Parents and Youth, a cross-sectional household survey; and (2) a Longitudinal Study of Parents and Youth in four communities with an ethnographic component. All data will be collected using a combination of computer-assisted personal interviews (CAPI) and audio computer-assisted self-interviews (ACASI). The findings will form the basis of semiannual and annual reports on campaign progress. These reports will provide assistance in improving the national campaign, and will help to establish a rich data base of information about the process involved in changing attitudes and behaviors by the mass media.

Frequency of Response: The National Survey of Parents and Youth will be carried out in 8 waves over a four-year period. Each data collection wave will last 6 months. The Longitudinal Study will be carried out annually over four years. *Affected Public:* Individuals and households. *Type of Respondents:* Children and parents. The annual reporting burden is as follows:

TABLE 1: RESPONDENT AND BURDEN ESTIMATE

Type of respondents	Estimated number of respondents	Estimated number of responses of per respondent	Average burden hours per response	Estimated total burden hours requested	Estimated annualized burden (over 3 years)
National Survey of Youth and Parents					
Screener respondent	225,600	1	.07	15,792	5,264
Youth 9–11	6,600	1	.50	3,300	1,100
Adolescents 12–18	13,800	1	.75	10,350	3,450
Parents	20,700	1	.75	15,525	5,175
Longitudinal Study					
Screener respondent	38,000	1	.07	2,600	887
Youth 9–11	2,150	3	.58	3,741	1,247
Adolescents 12–14	2,150	3	.92	5,934	1,978
Parents	3,500	3	.92	9,660	3,220
Total	312,500		.21	66,962	22,321

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. Because of the sensitivity of collecting data from families in households involving children as young as 9 years old, and

the importance of minimizing costs for repetitive, return visits to obtain respondent cooperation, NIDA is considering the provision of a reasonable cost incentive to reimburse respondents for their time.

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Susan David, Project Officer; Division of Epidemiology and Prevention Research, National Institutes on Drug Abuse, Room 9A54, 5600 Fishers Lane, Rockville, MD 20857; or call non-toll-free number (301) 443–6543; or fax to (301) 443–2636; or e-mail your request, including your address, to: Sd69t@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 29, 1999.

Dated: November 19, 1998.

Laura Rosenthal,

Executive Officer, NIDA.

[FR Doc. 98–31728 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; Survey of Colorectal Cancer Screening Practices in Health Care Organizations

SUMMARY: In compliance with the provisions of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comments on proposed data collection projects, the National Institutes of Health (NIH), National Cancer Institute (NCI) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

PROPOSED COLLECTION: *Title:* Survey of Colorectal Cancer Screening Practices in Health Care Organizations. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This study will measure primary care and specialty physicians' knowledge, attitudes, and practice patterns related to colorectal cancer screening and diagnostic follow-up. This study also will assess guidelines, policies, and programs to provide or promote colorectal cancer screening within health plans. The purpose of this study is to obtain current, nationally representative data on the physician and health system factors that may influence the use of colorectal cancer screening and diagnostic follow-up for suspected colorectal cancer in community practice. Three questionnaires will be administered by mail, telephone, facsmile, or Internet using national samples of physicians and health plans. Study participants will select their preferred response mode. Study participants will be primary care and speciality physicians with active licenses to practice medicine in the U.S., and the medical directors of health plans listed by the American Association of Health Plans. Burden estimates are as follows:

Questionnaire	Estimated # respondents	# responses per respondent	Average burden hours per response	Estimated total annual burden hours
Primare care physician	1,810	1	0.250	452
Speciality physician	1,544	1	0.333	514
Health plan	453	1	0.333	*151*
Total:				1,117

REQUEST FOR COMMENTS: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) whether the proposed collection of information is necessary for the performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Send comments to Carrie N. Klabunde, Ph.D., Epidemiologist, National Cancer Institute, EPN 313, 6130 Executive Boulevard, MSC 7344, Bethesda, Maryland 20892–7344, telephone 301–402–3362.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received by January 29, 1999.

Dated: November 19, 1998.

Reesa Nichols,

OMB Project Clearance Liaison.

[FR Doc. 98–31729 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Licensing Opportunity and/or Cooperative Research and Development Agreement ("CRADA") Opportunity: Drug And Method For The Therapeutic Treatment of Lymphomas And Leukemias

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The NIH is seeking Licensee(s) and/or a Cooperative Research and Development Agreement ("CRADA") to further develop, evaluate, and commercialize a recombinant immunotoxin, termed RFB4(dsFv)–PE38

or BL22, for use in the therapeutic treatment of lymphomas and leukemias. RFB4(dsFv)–PE38 (BL22) is a disulfide-linked recombinant immunotoxin fused to PE38, a mutant form of Pseudomonas Exotoxin (PE), that binds to CD22—a 135kDa phosphoglycoprotein adhesion molecule present on the surface of B-cells. RFB4 is a mouse monoclonal antibody that recognizes an external epitope on the CD22 cell surface antigen and has no detectable cross-reactivity with any other normal cell types. CD22 is a lineage-restricted B-Cell antigen that belongs to the Ig superfamily and is displayed on chronic B-Lymphocytic Leukemia cells and B-cell Non-Hodgkins Lymphoma cells. To kill CD22-positive cells, the RFB4 antibody was used to make a recombinant immunotoxin. To construct the recombinant PE immunotoxin, the variable portions of the heavy and light chains of RFB4 were cloned and the Fv fragments linked together by a disulfide bond to form a disulfide stabilized (ds) construct. The construct was combined by gene fusion with PE38, a truncated version of PE, to form RFB4(dsFv)–PE38, or BL22.

The inventions are claimed in USPN 4,892,827, entitled: ''Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects''; USSN 07/865,722, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; USPN 5,696,237, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; and USSN 08/461,825, entitled: ''Recombinant Antibody-Toxin Fusion Protein''; and are available for either exclusive or non-exclusive licensing for these aforementioned applications only (in accordance with 35 U.S.C. 207 and 37 CFR part 404).

DATES: Respondees interested in licensing the invention(s) will be required to submit an ''Application for License to Public Health Service Inventions'' on or before March 1, 1999.

Interested CRADA collaborators must submit a confidential proposal summary to the National Cancer Institute (''NCI'') on or before March 1, 1999, for consideration. Guidelines for preparing full CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest. CRADA proposals submitted thereafter may be considered if a suitable CRADA collaborator has not been selected.

ADDRESSES: Questions about licensing opportunities may be addressed to J. R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; Telephone: (301)–496–7056 ext. 206; Facsimile: (301)–402–0200; E-Mail ''DixonJ@OD.NIH.GOV''. Information about Patent Applications and pertinent information not yet publicly described can be obtained under the terms of a Confidential Disclosure Agreement. Respondees interested in licensing the invention(s) will be required to submit an ''Application for License to Public Health Service Inventions''.

Depending upon the mutual interests of the Licensee(s) and the NCI, a Cooperative Research and Development Agreement (CRADA) to collaborate to improve the properties of the RFB4(dsFv)–PE38 immunotoxin may also be negotiated. Proposals and questions about this CRADA opportunity may be addressed to Dr. Patrick Twomey, Technology Development Specialist, Technology Development & Commercialization Branch, National Cancer Institute, 6120 Executive Plaza South-Room 450, Rockville, Maryland 20852; Telephone: (301)–496–0577; Facsimile: (301)–402–2117; email: twomeyp@OTD.NCI.NIH.GOV. Respondees interested in submitting a CRADA proposal should be aware that it may be necessary to secure a license to the above mentioned patent rights in order to commercialize products arising from a CRADA.

SUPPLEMENTARY INFORMATION: NIH/NCI scientists have done toxicity studies with the RFB4(dsFv)–PE38 immunotoxin in mice and cynomolgus monkeys. The immunotoxin is toxic for CD22 positive cells and exhibits antitumor activity in nude mice bearing human B-cell lymphomas. The IC_{50} of BL22 against four Burkitt's lymphoma cell lines range from 0.25–1.5 ng/ml. The dose in mice producing complete regression of subcutaneous CA46 lymphomas was 275 µg/kg on an alternate daily X 3 schedule (WODX3). The LD_{50} in tumors was approximately 1,303 µg/kg and the maximum tolerated dose was 400 µg/kg/dose. Pilot studies in cynomolgus monkeys showed no dose limiting toxicity at doses up to 2,000 µg/kg QODX3 by i.v. bolus. Peak plasma levels were 2.5, 10, and 55 µg/mL in monkeys treated with 100 µg/kg, 500 µg/kg and 2,000 µg/kg BL22, respectively. BL22 was eliminated nonexponentially from plasma with a half-life of approximately 44 to 66 minutes.

In the United States, Non-Hodgkin's lymphomas have a 1998 expected incidence of 55,400 including 24,900 expected deaths. The incidence of Non-Hodgkin's lymphomas has risen 50% during the last 15 years, including 3–4%/year recently, making it one of the most rapidly increasing malignancies in terms of incidence. Chronic lymphocytic leukemias have a 1998 incidence of 7,300 cases with 4,800 deaths. Thus approximately 50,000 patients per year in the U.S. are diagnosed with CD22+ malignant disease, half of which cannot be effectively treated with known modalities. This makes CD22+ malignancies a major public health problem in the U.S. and an appropriate target for newer targeted approaches. Hence, the development of new therapeutic modalities, such as RFB4(dsFv)–PE38, to treat these malignancies is needed.

A Cooperative Research and Development Agreement or CRADA means the anticipated joint agreement to be entered into by NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995 to collaborate to improve the properties of the RFB4(dsFv)–PE38 immunotoxin. The expected duration of the CRADA would be from one (1) to five (5) years.

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the collaborator with samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
3. Planning research studies and interpreting research results.
4. Carrying out research to improve the properties of the RFB4(dsFv)–PE38 which include, but are not restricted to, increased production yield, decreased side effects, increased cytotoxic activity and better tissue penetration.
5. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing sufficient amounts of BL22 for clinical trials.
2. Conducting Phase 2 and Phase 3 clinical trials.
3. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
4. Planning research studies and interpreting research results.
5. Providing samples of the subject compounds to create, optimize, test and develop targeted drugs for clinical studies.
6. Providing technical and/or financial support to facilitate scientific goals and for further design of

applications of the technology outlined in the agreement.

7. Incorporating the immunotoxin into formulations in order to increase the therapeutic efficacy and decrease immunogenicity.

8. Providing immunotoxin for laboratory and animal studies.

9. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

2. The demonstration of adequate resources to perform the research and development of this technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

3. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

4. The demonstration of expertise in the commercial development and production of products related to this area of technology.

5. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

6. The demonstration of expertise pertinent to the development of models to evaluate and improve the efficacy of the RFB4 (dsFv)–PE38 immunotoxin for the treatment of lymphomas and leukemias.

7. The demonstration of expertise in the formulation of drugs.

8. The willingness to cooperate with the NCI in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: November 5, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

Dated: November 16, 1998.

Kathleen Sybert,

Acting Director, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 98–31733 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Dennis H. Penn, Pharm.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 211; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Mitochondrial-Specific ATP-Binding Transporter Gene (ABC7) Is An Iron Transporter In An Interhited Ataxia-Anemia Syndrome

MC Dean, R Allikmets, AA Hutchinson (NCI)

DHHS Reference No. E–181–98/0 filed Oct 23, 1998

The gene responsible for the rare genetic disease, X-linked siderblastic anemia and ataxia (XLSA/A) has been identified and linked to a mutation of the ATP-Binding transporter gene (ABC7). Two sequence changes which correspond to amino acid changes at positions 50 and 396 were detected. This gene may prove useful as a diagnostic for XLSA/A carriers or as a means to rule out XLSA/A from other siderblastic anemias. ABC7, an iron transporter, may prove to be a valuable tool for studying the function and regulation of muscle cells and the loss of motor function associated with many diseases with faculty iron metabolism, i.e. neuromuscular disease, cardiac disorders and neurological disorders.

Compsitions And Uses of FIG-alpha Gene

J Dean, L Liang, S soyal (NIDDK)

Serial No. 60/069,037 filed Dec. 12, 1997

This application related to an isolated and purified polynucleotide encoding an isolated and purified polypeptide associated with the expression of zona pellucida genes. The mouse zona pellucida is composed of three glycoproteins, ZP1, ZP2 and ZP3, encoded by single-copy genes whose expression is temporarlly and spatially restricted to oocytes. All three proteins are required for the formation of the extracellular zona matrix and female mice with a single disrupted zona gene lack a zona and are infertile. An E-box (CANNTG), located approximately 200 bp upstream of the transcription start site of the ZP1, ZP2 and ZP3, forms a protein-DNA complex present in oocytes and, to a much lesser extent, in testes. The integrity of this E-box in ZP2 and ZP3 promoters is required for expression of luciferase reporter genes microinjected into growing oocytes. The presence of the ubiquitous transcription factor E12 in the complex was used to identify a novel basic helix-loop-helix protein FIGα (Factor In the Germline alpha) whose expression was limited to oocytes within the ovary.)

This invention relates to the molecular characterization of FIGα, a novel germ cell specific bHLB transcription factor that binds as a heterodimer with E12 to the E-box in the promoter region of all three mouse zona pellucida genes and has the ability to transactivate reporter gene constructs in vitro. FIGα is critical for folliculogenesis and has a role in the coordinate, oocyte-specific expression of the three zona pellucida genes, the products of which for an extracellular matrix required for fertilization and early development. This invention also relates to monoclonal and polyclonal antibodies, which recognize the FIGα polypeptide.

Ureido Derivatives Of Poly-4-Amino-2-Carboxy-1-Methyl Pyrrole Compounds For Treatment Of inflammation

OM Zac Howard (SAIC), JJ Oppenheim (NCI), WJ Murphy (SAIC), EA Sausville (NCI)

Serial No. 60/067,526 filed Dec 4, 1997

Inflammatory reactions arising from a variety of medical conditions may have serious medical consequences when poorly controlled. Such inflammatory reactions contribute to a variety of disease states such as arthritis, asthma, non-bacterial medicated respiratory distress syndrome, reperfusion injury, and blunt force trauma. Accordingly, there is a need for new methods of diminished inflammation, especially acute inflammation.

This invention describes a method of inhibiting inflammation, particularly non-TNF dependent inflammation, by administering pharmacologically active ureido derivatives of distamycin. Since TNF is only one of many inducers of chemokines, this invention provides a more inclusive method for treatment of many inflammatory conditions, including conditions in which TNF does not play a substantial deleterious role in the pathology of the condition.

Therapeutic Chemokine Antagonists

JJ Oppenheim, JM Wang, OY Chertov, LO Arthur, F Ruscetti (NCI)

DHHS Reference No. E–170–96/0 filed Sep 06, 1996; PVT/US97/15594 filed Sep 05, 1997

This invention relates to a new class of chemoattractant antagonists, which are therapeutic candidates for treating disease conditions involving recruitment of inflammatory cells. These chemoattractant antagonists are comprised of a group consisting of gp120, gp41, domains and variants of gp41 and gp120.

Chemoattractants include the subgroup of chemokines and are known to mediate chemotaxis and other pro-inflammatory phenomena. The chemoattractants are generally short peptides. The family of chemokines is subdivided into distinct subfamilies, C–X–C and C–C, based on the arrangements of the first two cysteines of the primary amino acid sequence.

Members of the chemokine subfamily have remarkable similarities in their structural organization and biochemical properties. These homologies are consistent with the similarities observed in their biological effects, both in vitro and in vivo. These properties have prompted speculation that chemokines are mediators in autoimmune and allergic disorders.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31730 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing: Drug and Method for the Therapeutic Treatment of Primary Brain Tumors (Such as Intracranial Human Glioma, Astrocytomas, Medulloblastomas and Metastatic Tumors to the Central Nervous System)

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) is seeking Licensees to further develop, evaluate, and commercialize a Transforming Growth Factor-alpha-Pseudomonas Exotoxin fusion protein, known a TGF-alpha-PE38, for the therapeutic treatment of refractory brain tumors such as intracranial human glioma, astrocytomas, medulloblastomas and metastatic tumors to the central nervous system (''SNS'').

The invention claimed in USPN 4,892,827, Entitled: ''Recombinant Pseudomonas Exotoxins: Construction of an Active Immunotoxin with Low Side Effects,'' is available for licensing on an exclusive or non-exclusive basis (in accordance with 35 USC 207 and 37 CFR part 404) with the Field of Use limited to the therapy of primary brain tumors, metastatic carcinomas, and leptomeningeal carcinomatosis.

ADDRESSES: Licensing information and copies of the U.S. patent referenced above may be obtained by contacting J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 206; fax: 301/402–0220; e-mail: ''DixonJ@od.nih.gov''. Respondees interested in licensing the invention will be required to submit an ''Application for License to Public Health Service Inventions.''

SUPPLEMENTARY INFORMATION: Epidermal growth factor receptor (''EGFR'') is amplified or over expressed in many malignant gliomas, other primary brain tumors, and carcinomas of epithelial origin (e.g., breast, lung, etc.) but is low or undetectable in normal brain tissue. TGF-alpha-PE38 represents a growing class of recombinant toxins designed for use in targeted cancer therapy. These genetically engineered chimeric proteins consist of a targeting moiety and a cytotoxic moiety. While TGF-alpha-PE38 is extremely toxic to tumor cells that have a relatively high expression of EGFR, it is also active against primary human brain tumor cells which are known to have moderate to high EGFR expression. Direct delivery of TGF-alpha-PE38 into brain tumors by intratumoral implanted catheters or controlled-release biodegradable polymers or intrathecal administration into the cerebrospinal fluid of patients with leptomeningeal carcinomatosis, may represent clinically useful applications of recombinant toxin therapy in tumors with high EGFR expression.

Anaplastic astrocytoma and glioblastoma, the most common primary brain tumors in adults, respond poorly to all current therapies: Median survival for patients with these tumors ranges from 19 to 57 weeks. Local tumor recurrence also constitutes a significant problem in medulloblastoma, the most common childhood brain tumor. Despite 5-year survivals for medulloblastoma exceeding 80% in some studies, nearly half of these patients will eventually die from progressive tumor. Treatment failure in patients with brain tumors is a multifactorial process involving the intrinsic resistance of these tumors to radiation therapy and chemotherapy, the development of acquired treatment resistance, and limitations of drug delivery due to blood-brain barrier restrictions. Local recurrence of brain tumors represents the most common pattern of treatment failure. Accordingly, the identification of new therapeutic agents that have high intrinsic activity against brain tumors and are appropriate for local therapy remains a major goal of the NIH.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31731 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel.

Date: December 15, 1998.

Time: 12:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Riverwalk Marriott, 555 S. Alamo St., San Antonio, TX 78205.

Contact Person: Harvey Stein, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, 301–496–7481.

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.

(Catalog 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: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31741 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: December 1–2, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Deborah R Jaffe, PhD, PhD, MS, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, (301–496–7221.

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: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31742 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; 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 Heart, Lung, and Blood Institute Special Emphasis Panel, Cellular & Molecular Interrelationships of Atherosclerosis & Hypertension.

Date: December 18, 1998.

Time: 8:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Ivan C. Baines, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Room 7184, Bethesda MD 20892–7924, (301) 435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: November 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31737 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ADK1 GRB–B(J1)P.

Date: December 13–15, 1998.

Time: December 13, 1998, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn on the Lane, 328 West Lane Avenue, Columbus, OH 43201.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB (J2) P.

Date: January 10–12, 1999.

Time: January 10, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Edmond Meany Hotel, 4507 Brooklyn NE, Seattle, WA 98105.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Building 45, Room 6AS–25S, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31734 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB 4 J1.

Date: December 16–17, 1998.

Time: December 16, 1998, 7:30 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Campus Inn, 615 East Huron Street, Ann Arbor, MI 48104.

Contact Person: William Elzinga, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8895.

(Catalogue of Federal Domestic Assistance Program Nos. 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.847, Diabetes, Endocrinology and Metabolic Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31735 Filed 11–27–98; 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 Special Emphasis Panel.

Date: December 2, 1998.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

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, 301–443–7216.

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: National Institute of Mental Health Special Emphasis Panel.

Date: December 4, 1998.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–105, 5600 Fishers Lane, Rockville, MD 20857 (Telephone Conference Call).

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, 301–443–7216.

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. 93.242, 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).

Dated: November 19, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31736 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; 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 Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 8, 1998.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Bethesda Ramada, 8400 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

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: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: December 9, 1998.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: John R. Lymangrover, PhD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

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. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31739 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAMS.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Arthritis and Musculoskeletal and Skin Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAMS.

Date: December 15–16, 1998.

Time: 8:30 AM to 4:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, Room 9S235, Bethesda, MD 20892.

Contact Person: Linda Peterson, Board Secretary, National Institutes of Health, NIAMS, Building 10, Room 9N228, Bethesda, MD 20892, 301–496–3375.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31740 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, SEP ZDK1 GRB–D (J1).

Date: December 15, 1998.

Time: 12:45 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 6as37F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, PhD, Chief, Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Phs, Dhhs, Rm. 6as37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

(Catalog of Federal Domestic Assistance Program Nos. 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research; 93.847, Diabetes, Endocrinology and Metabolic Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31743 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following 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 Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB D (J2).

Date: November 25, 1998.

Time: 1:30 pm to adjournment.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, 45 Center Drive, Room 6as37F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, PhD, Chief, Review Branch, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6as37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

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. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: November 23, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31744 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National 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: Center for Scientific Review Special Emphasis Panel.
Date: December 1, 1998.
Time: 9:00 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: The Carlton Hotel, 932 Sixteenth Street, Washington, DC 20006.
Contact Person: David L Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892, (301) 435–1278.

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 MBC–2 (03).
Date: December 1, 1998.
Time: 10:00 AM to 11:30 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact 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.

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.
Date: December 1, 1998.
Time: 1:00 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sami A Mayyasi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

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.
Date: December 2, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Gerhard Ehrenspeck, MS, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, (301) 435–1022, ehrenspeckg@nih.drg.gov.

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.
Date: December 2, 1998.
Time: 10:00 AM to 11:00 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
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.

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.
Date: December 2, 1998.
Time: 1:00 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5198, MSC 7848, Bethesda, MD 20892, (301) 435–1717.

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(2).
Date: December 2, 1998.
Time: 1:30 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Camilla E. Day, PhD, 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 MBC–2(04).
Date: December 2, 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: 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.

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.
Date: December 2, 1998.
Time: 3:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Daniel B. Berch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5204, MSC 7848, Bethesda, MD 20892, 301–435–1256.

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.
Date: December 2, 1998.
Time: 12:30 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge II, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6172, MSC 7890, Bethesda, MD 20892, 301–435–1045.

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.
Date: December 3, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Joe Marwah, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, 301–435–1253.

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 REN 1.
Date: December 3–4, 1998.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

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 .

Date: December 3, 1998.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

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 .

Date: December 4, 1998.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

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 .

Date: December 4, 1998.

Time: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gloria B. Levin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7848, Bethesda, MD 20892, (301) 435–1017.

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. 93.306, 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: November 20, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–31738 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Drug and Method for the Therapeutic Treatment of Ovarian Cancer and Mesotheliomas

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice in accordance with 35 U.S.C. 209 (c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to U.S. Patent Applications 08/776,271 entitled: ''Mesothelium Antigen and Methods and Kits for Targeting it'' and 60/067,175 entitled: ''Antibodies, Including Fv Molecules and Immunoconjugates having High Binding Affinity for Mesothelin and Methods for their Use'' and corresponding foreign patent applications to NeoPharm, Inc. having a place of business in Bannockburn, Illinois. The patent rights in these inventions have been assigned to the United States of America and the contemplated license may be limited to the use of the SS(dsFv)–PE38 immunotoxin and relevant patent applications for the therapeutic treatment of ovarian cancer and mesotheliomas.

DATES: Only written comments and/or applications for a license which are received by NIH on or before March 1, 1999, will be considered.

ADDRESSES: Requests for copies of the patent applications, inquiries, comments and other materials relating to the contemplated licenses should be directed to: J.R. Dixon, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804. Telephone: (301) 496–7735 ext. 206; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive copies of the patent applications.

SUPPLEMENTARY INFORMATION: The technology disclosed in USPA 08/776,271 relates to the discovery of a differentiation antigen termed mesothelin which is associated with mesotheliomas and ovarian cancers. The 08/776,271 technology includes uses for the amino acid and nucleic acid sequences for mesothelin, recombinantly expressed mesothelin antigen, methods for targeting and/or detecting the antigen and its expression level as an indication of the presence of tumor cells, and kits for such detection. In normal tissue, mesothelin is limited in its expression to mesothelial cells and basal cells of the trachea (low expression).

The provisional 60/067,175 patent application is directed to anti-mesothelin antibodies, including Fv molecules, with particularly high affinity for mesothelin, and immunoconjugates employing them. Also described in the provisional and application are diagnostic and therapeutic methods using the antibodies.

Note: Mesothelin is a differentiation antigen present on the surface of ovarian cancers and mesotheliomas. Because in normal tissues, mesothelin is only present on mesothelial cells, it represents a good target for antibody mediated delivery of cytotoxic agents.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within ninety (90) days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the use of the SS(dsFv)–PE38 immunotoxin under the relevant patent applications for the therapeutic treatment of ovarian cancer and mesotheliomas.

Applications for a license [i.e., completed ''Applications for License to Public Health Service Inventions] in the field of use of the SS(dsFv)–PE38 immunotoxin and the relevant Patent Applications for the therapeutic treatment of ovarian cancer and mesotheliomas filed in response to this notice will be treated as objections to the grant of the contemplated licenses. Comments and objections will not be made available for public inspection and, to the extent permitted by law, will not be subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552.

Dated: November 16, 1998.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 98–31732 Filed 11–27–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice Requesting Public Comments on our Re-evaluation of Whether Designation of Critical Habitat Is Prudent for 245 Hawaiian Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: On August 10, 1998, the U.S. Fish and Wildlife Service (Service) was ordered by U.S. District Court (Civil No. 97–00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*) to publish proposed critical habitat designations or non-designations for at least 100 federally listed Hawaiian plant species by November 30, 2000, and to publish proposed rules for an additional 145 listed plants by April 30, 2002. At this time, the Service seeks comments, suggestions or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party on our re-evaluation of whether designation of critical habitat is prudent for these 245 species of federally protected Hawaiian plants.

DATES: Comments from all interested parties must be received by March 1, 1999.

ADDRESSES: Comments and materials concerning the notice should be sent to Robert P. Smith, Pacific Islands Manager, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850 (telephone: 808/541–2749; facsimile: 808/541–2756).

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor, Ecological Services (see **ADDRESSES** section) (*telephone:* 808/541-3441; *facsimile:* 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1997, the Sierra Club Legal Defense Fund (now Earthjustice Legal Defense Fund) filed a lawsuit on behalf of the Conservation Council for Hawaii, the Sierra Club, and the Hawaiian Botanical Society in U.S. District Court in Honolulu, Hawaii, for the Service's failure to designate critical habitat for 278 endangered or threatened Hawaiian plant taxa. Because the statute of limitations had elapsed for many of the plants, this list of plants was later reduced to 245 taxa.

Critical habitat is defined in section 3 of the Endangered Species Act (Act) of 1978, as amended, 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 propose critical habitat at the time the species is determined to be endangered or threatened. Service regulations (50 CFR 424.12(a)(1)) state that 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. Additional Service regulations (50 CFR 424.12(a)(2)) state that designation of critical habitat is not determinable when one or both of the following situations exist: (1) Information sufficient to perform required analyses of the impacts of the designation is lacking, or (2) the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) of the Act requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by such agency does not jeopardize the continued existence of a federally listed species, or does not destroy or adversely modify designated critical habitat. The requirement that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat through any action authorized, funded or carried out by such agency (agency action) is in addition to the section 7 prohibition on jeopardizing the continued existence of a listed species; and, it is the only mandatory, legal consequence of a critical habitat designation. Any future Federal action that may affect the species will be subject to section 7 consultation to ensure that the action does not jeopardize the continued existence of the species. Implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to 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 of habitat means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.'' Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. An action that appreciably diminishes habitat for recovery and survival may also jeopardize the continued existence of the species by reducing reproduction, numbers, or distribution because negative impacts to such habitat may reduce population numbers, decrease reproductive success, or alter species distribution through habitat fragmentation.

The addition of critical habitat for these species in Hawaii may have the effect of drawing more Federal actions into formal consultation—actions that would not be subject to consultation without designated critical habitat. The reason for this is that critical habitat often includes large habitat areas that are unoccupied by the species, but could be occupied in the future. Therefore, it is possible that formal section 7 consultation may be triggered by Federal actions that trip the ''may affect'' threshold for consultation solely because such actions cause changes to unoccupied critical habitat.

The 245 plant species that are the subject of this notice were listed by 6the Service over a period of several years, between 1990 and 1996, at which time the Service determined that designation of critical habitat was not prudent for one or more of the following three reasons: designation of critical habitat would increase the likelihood of illegal taking or vandalism; designation of critical habitat would not be beneficial for plant species located on private property; and, designation of critical habitat for plant species located on Federal lands provides little or no additional benefit beyond the existing

precautions the Federal government must take under section 7 of the Act.

The 245 plant taxa are: *Abutilon eremitopetalum, Abutilon sandwicense, Acaena exigua, Achyranthes mutica, Adenophorus periens, Alectryon macrococcus, Alsinidendron lychnoides, Alsinidendron obovatum, Alsinidendron trinerve, Alsinidendron viscosum, Amaranthus brownii, Argyroxiphium kauense, Argyroxiphium sandwicense* ssp. *macrocephalum, Asplenium fragile* var. *insulare, Bidens micrantha* ssp. *kalealaha, Bidens wiebkei, Bonamia menziesii, Brighamia insignis, Brighamia rockii, Canavalia molokaiensis, Cenchrus agrimonioides, Centaurium sebaeoides, Chamaesyce celastroides* var. *kaenana, Chamaesyce depone, Chamaesyce halemanui, Chamaesyce herbstii, Chamaesyce kuwaleana, Chamaesyce rockii, Clermontia drepanomorpha, Clermontia lindseyana, Clermontia oblongifolia* ssp. *brevipes, Clermontia oblongifolia* ssp. *mauiensis, Clermontia peleana, Clermontia pyrularia, Colubrina oppositifolia, Ctenitis squamigera, Cyanea asarifolia, Cyanea acuminata, Cyanea copelandii* ssp. *copelandii, Cyanea dunbarii, Cyanea grimesiana* ssp. *grimesiana, Cyanea grimesiana* ssp. *obatae, Cyanea hamatiflora* ssp. *carlsonii, Cyanea humboldtiana, Cyanea koolauensis, Cyanea lobata, Cyanea longiflora, Cyanea macrostegia* ssp. *gibsonii, Cyanea mannii, Cyanea mceldowneyi, Cyanea pinnatifida, Cyanea platyphylla, Cyanea procera, Cyanea recta, Cyanea remyi, Cyanea st.-johnii, Cyanea shipmanii, Cyanea stictophylla, Cyanea superba, Cyanea truncata, Cyanea undulata, Cyperus trachysanthos, Cyrtandra crenata, Cyrtandra cyaneoides, Cyrtandra dentata, Cyrtandra giffardii, Cyrtandra limahuliensis, Cyrtandra munroi, Cyrtandra polyantha, Cyrtandra subumbellata, Cyrtandra tintinnabula, Cyrtandra viridiflora, Delissea rhytidosperma, Delissea rivularis, Delissea subcordata, Delissea undulata, Diellia erecta, Diellia falcata, Diellia pallida, Diellia unisora, Diplazium molokaiense, Dubautia herbstobatae, Dubautia latifolia, Dubautia pauciflorula, Eragrostis fosbergii, Eugenia koolauensis, Euphorbia haeleeleana, Exocarpos luteolus, Flueggea neowawraea, Gahnia lanaiensis, Gardenia mannii, Geranium arboreum, Geranium multiflorum, Gouania meyenii, Gouania vitifolia, Hedyotis cookiana, Hedyotis coriacea, Hedyotis degeneri, Hedyotis mannii, Hedyotis parvula, Hedyotis st.-johnii, Hesperomannia arborescens, Hesperomannia arbuscula, Hesperomannia lydgatei, Hibiscadelphus giffardianus, Hibiscadelphus hualalaiensis, Hibiscadelphus woodii, Hibiscus arnottianus* ssp. *immaculatus, Hibiscus brackenridgei, Hibiscus clayi, Hibiscus waimeae* ssp. *hannerae, Huperzia mannii, Ischaemum byrone, Isodendrion hosakae, Isodendrion laurifolium, Isodendrion longifolium, Isodendrion pyrifolium, Kokia kauaiensis, Labordia cyrtandrae, Labordia lydgatei, Labordia tinifolia* var. *wahiawaensis, Lepidium arbuscula, Lipochaeta fauriei, Lipochaeta kamolensis, Lipochaeta lobata* var. *leptophylla, Lipochaeta micrantha, Lipochaeta tenuifolia, Lipochaeta waimeaensis, Lobelia gaudichaudii* ssp. *koolauensis, Lobelia monostachya, Lobelia niihauensis, Lobelia oahuensis, Lycopodium nutans, Lysimachia filifolia, Lysimachia lydgatei, Lysimachia maxima, Mariscus fauriei, Mariscus pennatiformis, Marsilea villosa, Melicope adscendens, Melicope balloui, Melicope haupuensis, Melicope knudsenii, Melicope lydgatei, Melicope mucronulata, Melicope ovalis, Melicope pallida, Melicope quadrangularis, Melicope reflexa, Melicope saint-johnii, Melicope zahlbruckneri, Munroidendron racemosum, Myrsine juddii, Myrsine linearifolia, Neraudia angulata, Neraudia ovata, Neraudia sericea, Nothocestrum breviflorum, Nothocestrum peltatum, Nototrichium humile, Ocrosia kilauaensis, Panicum niihauense, Peucedanum sandwicense, Phyllostegia glabra* var. *lanaiensis, Phyllostegia hirsuta, Phyllostegia kaalaensis, Phyllostegia knudsenii, Phyllostegia mannii, Phyllostegia mollis, Phyllostegia parviflora, Phyllostegia racemosa, Phyllostegia velutina, Phyllostegia warshaueri, Phyllostegia waimeae, Phyllostegia wawrana, Plantago hawaiensis, Plantago princeps, Platanthera holochila, Pleomele hawaiiensis, Poa mannii, Poa sandvicensis, Poa siphonoglossa, Portulaca sclerocarpa, Pritchardia affinis, Pritchardia aylmer-robinsonii, Pritchardia kaalae, Pritchardia munroi, Pritchardia napaliensis, Pritchardia remota, Pritchardia schattaueri, Pritchardia viscosa, Pteralyxia kauaiensis, Pteris lidgatei, Remya kauaiensis, Remya mauiensis, Remya montgomeryi, Rollandia crispa, Sanicula mariversa, Sanicula purpurea, Schiedea apokremnos, Schiedea haleakalensis, Schiedea helleri, Schiedea hookeri, Schiedea kaalae, Schiedea kauaiensis, Schiedea kealiae, Schiedea lydgatei, Schiedea membranacea, Schiedea nuttallii, Schiedea sarmentosa, Schiedea spergulina* var. leiopoda, Schiedea spergulina var. *spergulina, Schiedea stellarioides, Schiedea verticillata, Sesbania tomentosa, Sicyos alba, Silene alexandri, Silene hawaiiensis, Silene lanceolata, Silene perlmanii, Solanum incompletum, Solanum sandwicense, Spermolepis hawaiiensis, Stenogyne bifida, Stenogyne campanulata, Stenogyne kanehoana, Tetramolopium arenarium, Tetramolopium capillare, Tetramolopium filiforme, Tetramolopium lepidotum* ssp. *lepidotum, Tetramolopium remyi, Tetramolopium rockii, Tetraplasandra gymnocarpa, Trematolobelia singularis, Urera kaalae, Viola chamissoniana* ssp. *chamissoniana, Viola helenae,Viola kauaensis* var. *wahiawaensis, Viola lanaiensis Viola oahuensis, Wilkesia hobdyi, Xylosma crenatum, Zanthoxylum dipetalum* var. *tomentosum, and Zanthoxylum hawaiiense.*

In accordance with the U.S. District Court's August 10, 1998, order (Civil No. 97–00098ACK Conservation Council for Hawaii, *et al.* vs. Bruce Babbitt, *et al.*), the Service is hereby reconsidering the not prudent determinations that were made for these 245 plant species and is seeking any new information that may affect whether the Service proceeds with a proposal to designate critical habitat for these species.

Public Comments Solicited

Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this notice are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, vandalism, or other relevant data concerning any threat to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species;

(4) Current or planned activities in the subject area and their possible impacts on these species;

(5) Additional information on the principal biological or physical constituent elements that are essential to the conservation of these species. These primary constituent elements may include, but are not limited to, the following: seasonal wetland or dryland, water quality or quantity, plant

pollinator, geological formation, vegetation type, and specific soil types;

(6) Information on existing management for any of these species and benefits to these species.

The decision on whether to propose critical habitat for any of the subject species will take into consideration the information received in response to this request. Proposed designations or non-designations of critical habitat will also solicit public comments, and any comments received will be considered before making a final decision.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 19, 1998.

Thomas J. Dwyer,

Acting Regional Director.

[FR Doc. 98–31757 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1220–00]

Correction to Description of Occupancy and Camping Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Occupancy and Camping Closure on Selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9858 and 9859 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office announced the Closure of certain public lands in the Las Vegas Valley to occupancy and camping. The original description listed the southern boundary as generally following Lake Mead Blved. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146).* A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The increase in population and growth in employment in the Las Vegas area, has attracted many short term and transient residents and workers. Many of these individuals set up residence on public lands under the guise of ''camping.'' This problem is particularly prone to occur on public lands within the urban Las Vegas Valley.

Trash accumulation and human refuse are impacting public and private lands. There are no public facilities on any of these lands. The existing 14 day camping stay limit has been effective in correcting this situation. In addition, many of these lands are now adjacent to, or included within, private residential and commercial development due to the inter-mixed public-private land ownership pattern in Law Vegas Valley. This action is being taken to help ensure public safety, prevent unnecessary environmental degradation and prevent long-term occupancy of public lands.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affective are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E and certain lands in Townships 23 S and 24 S Ranger 61 E to 63 E MDM; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management.

Exceptions to Closure

Camping locations which may be designated by the Las Vegas Field Office Manager for over night use. Such designations may be by the posting of appropriate signs, by publications in the **Federal Register**, or be made available to the public by other means deemed appropriate by the authorized officer.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Camp or engage in camping.

b. Park, stop, or leave personal property, whether attended or unattended.

c. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement, create a safety hazard, or endanger any person, property, or natural feature. Vehicles so parked are subject to citation and impoundment at the owner's expense.

d. Take, drive, or operate any vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

Definitions

''Camp'' or Camping means the erection of a tent or shelter, preparing a sleeping bag or other bedding material for use, or the parking of a vehicle, motor home, or trailer for the apparent purpose of sleeping or overnight occupancy.

Personal Property includes but is not limited to bicycles, vehicles (whether propelled by living or non-living power sources), motor vehicles, trailers, tents, campers, pets, and livestock.

''Public Lands'' means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts or Eskimos (43 CFR 1601.0–5(I)).

This closure order is issued under the authority of 43 CFR 8364.1. Violation of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager, or Ron Crayton, Ranger, Ken Burger, Ranger, at the Bureau of Land Management, Las Vegas, Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31788 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Correction to Description of Shooting Closure on Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Shooting Closure on selected Public Lands in Clark County, Nevada.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register** Vol. 63, No. 38, page 9860 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office

announced the Closure of certain public lands in the Las Vegas Valley to Shooting. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146).* A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The Closure is intended to compliment and supplement an existing Clark County shooting closure. The rapid increase in population and growth of the Las Vegas Valley has created conflicts between new urban areas and traditional public land users accustomed to target shooting on public lands around Las Vegas. There have been incidents of indiscriminate shooting toward residential areas and other public land users, destruction of property, injury, and one fatality. Trash accumulation from items being used as targets are impacting public lands. This action is being taken to help ensure public safety, prevent environmental degradation, and provide consistency with the Clark County shooting closure. This Closure does not apply to hunting under the laws and regulations of the State of Nevada.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affected are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E and certain lands in Townships 23 S and 24 S Ranges 61 E to 63 E MDM; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East. Also included but not described above are public lands contained within the portions of the existing Clark County Shooting Closure that are outside the above boundaries (Goodsprings Township).

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas, Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) Hunting with valid state hunting license and in accordance with the laws and regulations of the State of Nevada; (2) Paintball game devices used within approved areas; and (3) Areas which may be designated by the Las Vegas Field Office Manager as target shooting areas. Such designation may be made by the publishing of notices in the local media and by the posting of appropriate signs marking the boundary of such area(s).

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Discharge any firearm.

b. Possess any firearm in violation of Federal regulations.

Definitions

Firearm: means a loaded or unloaded pistol, rifle, shotgun or other weapon which is designed to, or may be readily converted to, expel a projectile by the ignition of a propellant or release of compressed gases.

''Public Lands'' means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos (43 CFR 1601.0–5(i)).

This closure order is issued under the authority of 43 CFR 8364.1. Violations of any of the terms, conditions, or restrictions contained within this closure order, may subject the violator to citation or arrest, with penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; and Ken Burger, Law Enforcement Ranger; Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, telephone number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31789 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1220–00]

Correction to Description of Off-Highway Vehicle Closure of Certain Public Lands in the Las Vegas Valley Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction to Closure of selected Public Lands in Clark County, Nevada to use by Off-Highway Vehicles.

SUMMARY: This notice corrects the legal and geographic description of a closure notice published in the **Federal Register**, Vol. 63, No. 38, page 9858 on February 26, 1998 wherein the Field Office Manager of the Las Vegas Field Office announced the Closure of certain public lands in the Las Vegas Valley to Off-Highway Vehicle (OHV) use. The original description listed the southern boundary as generally following Lake Mead Blvd. (State Route 147). The correct description should have been *Lake Mead Drive (State Route 146).* A correction has also been made to remove certain restrictions listed in the original Closure Notice that were confusing, redundant or gave the impression of Federal enforcement of State statute. The lands included are public lands managed by the Bureau of Land Management which, due to urban expansion, are now included within or are immediately adjacent to urban areas developed for residential or business purposes. This action is being taken to reduce the amount of dust and particulate matter generated from the use of public lands, ensure health and public safety and prevent environmental degradation. This action will assist local governmental efforts to meet Environmental Protection Agency air quality standards and to reduce dust production from unpaved roads within the Las Vegas Valley Non-attainment Area.

EFFECTIVE DATE: Effective immediately upon publication (November 30, 1998).

Closure Area

Public Lands affected are within the following townships: All public lands within Townships 18 S to 22 S and Ranges 59 E to 64 E MDM and certain lands in Townships 23 S and 24 S Ranges 61 E to 63 E; which can generally be described as falling within the area encompassed by Lake Mead Drive (State Route 146), on the South; the Red Rock Canyon National Conservation Area Boundary; on the

West; the Lee Canyon Road (State Route 156), Corn Creek Road and the southern boundary of the Desert Game Range on the North; and the Lake Mead National Recreation Area Boundary on the East.

Maps depicting the area affected by this closure order are available for public inspection at the Las Vegas Field Office, Bureau of Land Management, 4765 W. Vegas Drive, Las Vegas, Nevada.

Exceptions to Closure

(1) OHV use areas which may be designated by the Las Vegas Field Office Manager. Such designations may be made by the publishing of notice in the local media and by the posting of appropriate signs and marked boundaries; (2) Roads and trails designated and signed for OHV use; (3) Roads included within transportation systems managed by Clark County and/or the cities of Las Vegas, North Las Vegas, and Henderson; and (4) Official travel by government agencies.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Operate an Off-Highway Vehicle (OHV) or motor vehicle off of designated roads and/or trails.

b. Take, drive, or operate any OHV or motor vehicle through, around or beyond a restrictive sign, barricade, fence, or traffic control barrier or device.

Definitions

''Designated Road'' means a road or roads identified on a map which will be available for public inspection at the Las Vegas Field Office, Bureau of Land Management.

''Designated Trails'' means a trail, trails or routes, identified on a map available for public inspection at the Las Vegas Field Office, Bureau of Land Management.

''Designated Areas'' means areas that are designated within the closed area by the Las Vegas Field Office Manager as OHV use areas. These areas will be signed with set boundaries. Maps will be made available at the Las Vegas Field Office.

''Off-Highway Vehicle'' (OHV) means any motorized or non-motorized mechanized vehicle designed for or capable of travel off maintained roadways including but not limited to 2 and 4 wheel drives vehicles, motorcycles, ATVs, and mountain bikes. OHV as defined herein is synonymous with ''Off-road Vehicle'' as defined in 43 CFR Part 8440.0-5(a). Off-Highway Vehicle is the term more commonly used.

''Public Lands'' means any lands or interest in lands owned by the United States and administered by the Secretary of the Interior through the Bureau of Land Management, except lands located on the Outer Continental Shelf and lands held for the benefit of Indians, Aleuts and Eskimos (43 CFR 1601.0-5(i)).

This closure order is issued under the authority of 43 CFR 8341.1 and Part 8364.1. Violation of any of the terms, conditions or restrictions contained within this closure order, may subject the violator to citation or arrest, with a penalty of fine or imprisonment or both as specified by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Assistant District Manager, Recreation; Ron Crayton, Law Enforcement Ranger; or Ken Burger, Law Enforcement Ranger, at the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada 89108, Telephone Number (702) 647–5000.

Dated: November 18, 1998.

Michael F. Dwyer,

Field Office Manager.

[FR Doc. 98–31790 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–7122–00–5513; AZA 28793; AZA 29640]

Extension of Public Comment Period for Draft Environmental Impact Statement (DEIS) for the Dos Pobres/San Juan Project Case Number AZA 28973 and AZA 29640, Safford Field Office, Graham County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of Public Comment Period.

SUMMARY: The notice published in the **Federal Register** on Thursday, September 24, 198, in Vol. 63, No. 185, page 51091, provided for the acceptance of written comments relating to the Draft Environmental Impact Statement for the Dos Pobres/San Juan Project to be accepted until November 25, 1998. This notice will extend the public comment period to December 18, 1998.

Dated: November 19, 1998.

William T. Civish,

Field Office Manager.

[FR Doc. 98–31797 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ030–1010–00; AZA–29861]

Notice of Availability of Final Hualapai Mountains Land Exchange Environmental Impact Statement/Plan Amendment and; Notice of Realty Action

AGENCY: Bureau of Land Management.

ACTION: Notice of Availability and Notice of Realty Action.

SUMMARY: Pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended and section 102(2)(C) of the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kingman Field Office, Arizona, has prepared an EIS/Plan amendment to analyze the effect of a proposed land exchange and a proposed plan amendment to the Kingman Resource Management Plan. The EIS addresses the effects of a proposal to exchange approximately 70,000 acres of public land for approximately 70,000 acres of private land. The Equal Appraised Value Alternative, the BLM preferred, would result in approximately 70,000 acres coming into public ownership while transferring approximately 60,000 acres to private ownership. The proposed land exchange is entirely within Mohave County, Arizona. The amendment is needed because the Proponent selected public lands that were not identified for disposal in the Kingman Resource Management Plan by Township, Range, and Section. The plan amendment will assess impacts of proposed changes to land tenure classification decisions and resource management.

The Realty Action is in accordance with sections 1 and 7 of the Taylor Grazing Act, 43 U.S.C. 315 and 315f, the selected public lands described in the FEIS are hereby classified for disposal by exchange. This disposal classification is pursuant to the Taylor Grazing Act and the decision to amend the Kingman Resource Management Plan to re-categorize approximately 10,000 acres for disposal will follow the 30 day protest period.

DATES: Written comments will be accepted until 30 days following Environmental Protection Agency's **Federal Register** Notice of Filing. The Notice of Filing is expected to occur on December 4, 1998. The EPA Notice of Filing date also begins a 30-day protest

period for the proposed plan amendment.

Comments

Comments should be sent to the Team Leader, Hualapai Mountain Project, Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629. Comments should pertain to the overall land exchange as plan protest procedures are explained below.

Plan Protest Procedures

The BLM's planning process includes an opportunity for administrative review via a plan protest to the BLM Director. This plan protest procedure is only applicable to the proposed plan amendment.

The protest must specifically address the proposal to categorize certain parcels as available for disposal (Appendix A, Part 2 of the final EIS). These parcels were not determined to be disposal lands when the Kingman Resource Management Plan (RMP) was approved in March 1995. Currently, no decision has been made on the overall exchange, so the exchange itself cannot be protested. Only the proposal to amend the Kingman RMP to place parcels (Appendix A, Part 2 of the final EIS) into the disposal category can be protested.

To protest the proposed plan amendment, file a letter of protest with: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

The overnight mail address is: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator (WO–210), 1620 L Street NW, Room 1075, Washington, DC 20036.

To expedite consideration, in addition to the original sent by mail or overnight mail, a copy of the protest may be sent by fax to (202) 452–5112 or e-mail to bhudgens@wo.blm.gov.

WO–210 will immediately acknowledge receipt of the protest and fax/e-mail a copy to the appropriate BLM State Director and the assigned field support staff. Protests filed late or filed with the BLM State Director or district, field or area manager shall be rejected by the BLM Washington Office (WO–210).

At minimum, the letter of protest must contain the following information.

1. The name, mailing address, telephone number and interest of the person filing the protest.

2. A statement of which parcel or parcels (by township, range and section) are being protested.

3. A copy of each document addressing the parcels proposed to be categorized as disposal lands, such as letters sent during the plan amendment process that addresses parcels within the proposed plan amendment.

4. A statement of reasons why the BLM State Director's proposed decision to place the lands in the disposal category is believed to be incorrect. All relevant facts need to be included in the statement of reasons. These facts, reasons and documentation are very important to understand the protest rather than merely expressing disagreement with the proposed decision.

ADDRESSES: Copies of the document are available at the following locations: Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman, Arizona, 86401–3629 and Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203.

FOR FURTHER INFORMATION CALL: Don McClure, phone: (520) 692–4400.

SUPPLEMENTARY INFORMATION: The land exchange includes both public and non-public land in Mohave County in northwestern Arizona, encompassing approximately 140,000 acres. Issues that have been addressed are ranching, biological resources, socioeconomics, recreation/access, soil erosion, cultural resources, realty, riparian areas, mineral resources, and areas of critical environmental concern. Proposed modifications to the Kingman Resource Management Plan have been integrated with the proposed Hualapai Mountains Land Exchange, and the impacts thereof will be presented in a single EIS-level analysis.

Dated: November 23, 1998.

John R. Christensen,

Field Manager.

[FR Doc. 98–31760 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–09–1430–01; CACA–39899]

Notice of Realty Action; Land Use Lease of Public Lands, El Dorado County, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Land Use Lease of Public Lands, CA–39899.

SUMMARY: The following described public land (surface only) located in El Dorado County is being considered for a land use lease pursuant to Section 302 of the Federal Land Policy and Management Act of October 21, 1976 as amended (43 U.S.C. 1732):

Mount Diablo Meridian

T. 9N., R. 10E.

Sec 12: Portion of lot 1.

El Dorado County, California;

Containing .50 acre more or less.

The above parcel of public land would be leased to Betty J. Luke to resolve a trespass situation. The trespass resulted due to the construction of a home located partially on public land and removal would constitute a severe hardship for the occupant. The lease would be issued for the remainder of Mrs. Luke's life, and upon her death, all improvements would have to be removed from the public land. The rental shall be based on the appraised fair market value. The public interest will be served because it will enable the Bureau to rectify a trespass situation.

All necessary clearances, including clearances for cultural and historical resources, threatened and endangered plants and animals, will be completed on these lands prior to authorization of the lease.

This notice, as provided in 43 CFR 2201.1(b), segregates the above-described public land being considered for this exchange from settlement, location and entry under the public land laws, including the mining laws. The segregative effect shall terminate upon publication in the **Federal Register** of a termination of the segregation.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Folsom Field Office, 63 Natoma Street, Folsom, CA 95630.

FOR FURTHER INFORMATION CONTACT: Jodi Lawson, Realty Assistant, BLM Folsom Resource Area, 63 Natoma St., Folsom, CA 95630, (916) 985–4474.

Dated: November 17, 1998.

D.K. Swickard,

Area Manager.

[FR Doc. 98–31794 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–00; N–63039]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, has filed an application (N–63039) to withdraw 913.66 acres of public land for flood control facilities in Clark County, Nevada. This notice closes the lands for up to 2 years from surface entry and mining.

DATE: Comments and requests for meeting should be received on or before March 1, 1999.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 702–861–6532.

SUPPLEMENTARY INFORMATION: On November 19, 1998, the Department of the Army, Los Angeles District, Corps of Engineers, filed an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 21 S., R. 59 E.,

Sec. 3, lots 5 to 8, inclusive;
Sec. 15, lots 10, 11, 16, and 17;
Sec. 22, lots 1, 2, 7, and 8.

T. 22 S., R. 59 E.,

Sec. 13, NE¼, N½SE¼, N½S½SE¼, SW¼SW¼SE¼, W½SE¼SW¼SE¼, E½SW¼SE¼SE¼, SE¼SE¼SE¼, E½NW¼SE¼SW¼, NE¼SE¼SW¼, SE¼NW¼, and NE¼SW¼.

The areas described aggregate 913.66 acres in Clark County.

The purpose of the proposed withdrawal is for the Tropicana and Flamingo Washes Flood Control Project at Las Vegas, Nevada.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested person who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

The temporary segregation of the land in connection with a withdrawal application shall not affect administrative jurisdiction over the land, and the segregation shall not have the effect of authorizing any use of the land by the Corps of Engineers.

Dated: November 23, 1998.

Michael R. Ford,

Deputy State Director, Natural Resources, Lands and Planning.

[FR Doc. 98–31758 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council, Bay-Delta Advisory Council's Ecosystem Roundtable Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will hold its next meeting in Sacramento, California on December 10, 1998. The BDAC will review, discuss and provide recommendations to the CALFED Bay-Delta Program on components of CALFED's proposed draft preferred alternative. The BDAC will be asked specifically to provide comments on CALFED's proposed water management strategy, and the proposed actions on groundwater and surface storage and on Delta conveyance options. The Bay-Delta Advisory Council's Ecosystem Roundtable will hold a workshop to discuss the FY 99 spending program in coordination with the CALFED Integration Panel on December 7, 1998. The BDAC Ecosystem Roundtable will also meet on December 11, 1998, to discuss several issues including: an implementation and tracking system update, the development of other directed funding programs including water quality, the spending plan for FY 99, funding coordination, and other issues. Should additional time be necessary to complete items listed for the December 11, 1998, meeting, an additional meeting day of December 16, 1998, has been reserved as a back-up. These meetings are open to the public. Interested persons may make oral statements to the BDAC and Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council will meet on Thursday, December 10, 1998 from 9:00 a.m.–5:00 p.m. The BDAC Ecosystem Roundtable workshop will be held from 1:00 p.m. to 4:00 p.m. on Monday, December 7, 1998. The BDAC Ecosystem Roundtable regular meeting will be held from 9:30 a.m. to 12:00 p.m. on Friday, December 11, 1998. If needed, an additional meeting will occur on December 16, 1998 from 1:00 p.m. to 4:00 p.m.

ADDRESSES: The Bay-Delta Advisory Council will meet at the Sacramento Convention Center, 1030 15th Street, Room 307, Sacramento, CA 95814. The BDAC Ecosystem Roundtable will meet at the Resources Building, 1416 Ninth Street, Room 1131, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: For the Bay-Delta Advisory Council, Mary Selkirk (916) 657–2666; for the BDAC Ecosystem Roundtable, Cindy Darling, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural Environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory

responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as Advisory Council BDAC to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 17, 1998.

Roger Patterson,

Regional Director, Mid-Pacific Region.

[FR Doc. 98–31762 Filed 11–27–98; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; Overseas Private Investment Corporation, December 15, 1998 Board of Directors Meeting

TIME AND DATE: Tuesday, December 15, 1998, 1:00 pm (Open Portion), 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

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 September 22, 1998 (Open Portion)
3. Appointments:
   Simon Ferro
   John J. Pikarski, Jr.
   Mark Van de Water

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Insurance Project in Philippines
2. Insurance Project in Guatemala
3. Insurance Project in Russia
4. Approval of September 22, 1998 Minutes (Closed Portion)
5. Pending Major Projects
6. Report on Worker Rights Monitoring
7. Report on Russia

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: November 25, 1998.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 98–31958 Filed 11–25–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Judgment Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on November 24, 1998, a proposed Consent Judgment in *United States* v. *General Motors Corporation, et al.,* Civil No. 98–CV–10368 BC, was lodged in the United States District Court for the Eastern District of Michigan. The Complaint filed by the United States pursuant to section 107 of CERCLA, 42 U.S.C. 9607, sought to recover damages for injuries to natural resources in and around the Saginaw River and Saginaw Bay, as a result of releases of polychlorinated biphenyls (PCBs) from several facilities owned or operated by General Motors Corporation, the City of Saginaw, the City of Bay City, and the Michigan Department of Transportation. The State of Michigan and the Saginaw Chippewa Tribe have also filed actions in the United States District Court for the Eastern District of Michigan seeking damages from these defendants for injuries to natural resources in Saginaw River and Bay as a result of releases from defendants' facilities.

The proposed Consent Judgment would resolve claims asserted against defendants in all of the above-referenced civil actions. Under the proposed Consent Judgment, settling parties will: (1) Pay up to $10.89 million into a fund that will be used to finance the dredging and disposal of PCB-contaminated sediments from designated areas in the Saginaw River in accordance with a Dredge Plan approved by the natural resource Trustees; (2) convey certain ecologically valuable properties to the Federal, State and Tribal Trustees, who will manage the properties for the benefit of natural resources; (3) perform specified natural resource restoration activities, including measures to restore coastal wetland or lakeland prairie conditions on certain properties conveyed to the State Trustee and measures to restore fish habitat in the Tobico Marsh; (4) pay approximately $3.1 million into a fund that will be used for monitoring and other activities to evaluate the effectiveness of the activities undertaken pursuant to the Consent Judgment, or for other purposes consistent with CERCLA; (5) grant the United States Fish and Wildlife Service (USF&WS) a 99 year lease in property comprising the Greenpoint Environmental Learning Center (with an option to renew for an additional 99 years, rent free) and pay $520,000 to USF&WS for use at the Greenpoint Environmental Learning Center in restoring, replacing or acquiring the equivalent of injured natural resources; (6) pay a total of $2 million to Federal and State Trustees for past and future natural resource damage assessment and restoration costs; and (6) establish certain recreational areas. In addition, pursuant to previous agreements in principle among parties to the settlement, defendants have previously paid $260,000 into an account used to finance design of the sediment dredging and disposal work contemplated under the Consent Judgment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments

concerning the proposed Consent Judgment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *General Motors Corporation, et al.,* D.J. Ref. No. 90–11–2–1041.

The proposed Consent Judgment may be examined at any of the following offices: (1) the United States Attorney for the Eastern District of Michigan, 203 Federal Building, 106 Washington Street, Bay City, MI 48708 (contact Assistant United States Attorney Michael Hluchaniuk); (2) the United States Fish and Wildlife Service, East Lansing Field Office, 2651 Coolidge Road, East Lansing, Michigan 48823 (contact Lisa Williams); and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Judgment may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, telephone (202) 624–0892. For a copy of the Consent Judgment, please enclose a check in the amount of $58.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–31861 Filed 11–27–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that two collections of information have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval numbers and expiration dates.

FOR FURTHER INFORMATION CONTACT: Renee Carter, Office of General Industry Compliance Assistance, Directorate of Compliance Programs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, telephone (202) 693–1850.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 7, 1997, (62 FR 60284–60285), and February 3, 1998, (63 FR 5572–5573), the Agency announced its intent to request revision of a currently approved collection for the Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes (29 CFR part 24) and a reinstatement of its OMB approval for the Notice of Alleged Safety and Health Hazards, OSHA–7 Form. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has approved both information collections and assigned OMB control number 1218–0236 to the Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes and number 1218–0064 to the Notice of Alleged Safety and Health Hazards, OSHA–7 Form. The approvals expire April 30, 2001 and September 30, 2001, respectively.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: November 19, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–31785 Filed 11–27–98; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–164]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before December 30, 1998.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: NASA Form 1018.

Title: NASA Property in the Custody of Contractors.

OMB Number: 2700–0017.

Type of Review: Extension.

Need and Uses: NASA is required to account for Government-owned/ contractor-held property in accordance with SFFAS #6. Contractors' records are the official Government property records. NASA Form 1018 provides for the annual collection of summary data from these records to ensure the accurate reflection of Agency assets and related depreciation on the financial statements and essential property management information.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 1400.

Responses Per Respondent: 1.

Annual Responses: 1400.

Hours Per Request: 400@16 hrs ea, 1000 @ 2hrs ea.

Annual Burden Hours: 8,400.

Frequency of Report: Annually.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–31690 Filed 11–27–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Reassessment of Support for Arts Organizational Resources

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of Availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist in a reassessment of the Endowment's support for arts organizational resources. The project as envisioned will include: convening a series of colloquia; conducting research; assessing the impact of past awards on 12 grantee organizations; synthesizing colloquium discussions, related papers and research; and, preparing a report detailing potential options for future National Endowment for the Arts organizational support. Those interested in receiving the Solicitation should reference Program Solicitation PS 99–01 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will be honored.

DATES: Program Solicitation PS 99–01 is scheduled for release approximately

December 15, 1998 with proposals due on January 20, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreement and Contracts.

[FR Doc. 98–31795 Filed 11–27–98; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 21, 1998, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on November 19, 1998 to the following applicant:

Jerry L. Mullins Permit No. 99–013

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 98–31821 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Networking Infrastructure Research; 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 Panel in Advanced Networking Infrastructure Research (#1207).

Date & Time: Janaury 14 and 15, 1999; 8:30 AM–5:00 PM.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Tatsuya Suda, Division of Advanced Networking Infrastructure Research, Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1950.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Special Projects Program 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: November 28, 1998.

M. Rebecca Sinkler,

Committee Management Officer.

[FR Doc. 98–31724 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Astronomical Sciences (1186); Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces that the Special Emphasis Panel in Astronomical Sciences (1186) will be holding panel meetings for the purpose of reviewing proposals submitted to the Galactic Astronomy Program in the area of Astronomical Sciences. In order to review the large volume of proposals, panel meetings will be held on December 15 and 16, 1998, (2). All meetings will be closed to the public and will be held at the National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia, from 8:30 AM to 5:00 PM each day.

Contact Person: Dr. Eileen Friel, Program Director, Galactic Astronomy, Division of Astronomical Sciences, National Science Foundation, Room 1030, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1826.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidental nature, includng technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1998.

Mr. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31721 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological 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 Panel in Biological Sciences #1754).

Date and Time: December 17th, 1998, 8:00 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 615, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Gerald Selzer, Program Director, Living Stock Collections, Room 615, National Science Foundation, 4201 Wilson Boulevard, Va 22230 Telephone: (703) 306–1469.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Living Stock Collections program announcement (NSF 97–80).

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: Novembert 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31722 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; 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 Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: December 14, 15, 16, and 17, 1998, 8:00 a.m.-5:30 p.m.

Place: Rooms 310, 320, 330, 340, 360, 370, 380, 390, 680, and 1120, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Ming Leu, Program Director, Manufacturing, Machines, and Equipment, Dr. Delcie Durham, Program Director, Material Processes and Manufacturing, Dr. George A. Hazelrigg, Program Director, Design and Integration Engineering, Dr. Larry Seiford, Program Director, Operations Research and Production Systems, (703), 306-1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recmmendations concerning proposals submitted to the NSF for financial support.

Agenda: To review and evaluate unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals assoicated with the proposals. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31725 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–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 and Committee Code: Special Emphasis in Mathematical Sciences (1204).

Date and Time: December 14–16, 1998; 8:30 A.M. until 5:00 P.M.

Place: Rooms 320, 1020, 1060, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Drs. Keith N. Crank, James Rosenberger, and Javier Rojo, Program Directors, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice to Program Officers concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Statistics and Probability Program, 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: November 23, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–31723 Filed 11–27–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant Paducah, Kentucky

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Paducah Gaseous Diffusion Plant. The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: April 24, 1998.

Brief description of amendment: The amendment proposes to revise the Technical Safety Requirements (TSRs) which specify the C–310, C–315, and C–360 facilities crane design features credited for safety. The proposed change will specify the design requirement for the crane brakes as opposed to listing the specific type of brake for each

facility crane. USEC is committing to ANSI B30.2–1990, ''Overhead and Gantry Cranes'' for the hoist brakes on the cranes.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed changes to revise the design requirements for the cranes in C–310, C–315, and C–360 have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modifications will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed TSR revisions will not change or increase maintenance, testing or operational requirements for the affected equipment; implementation of the revised TSRs will not increase exposure. The changes do not relate to controls used to minimize occupational radiation exposures. Therefore, the changes will not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed TSR changes involve a change to the description of the safety features on the cranes in the withdrawal and toll transfer and sampling facilities. The current TSRs specify the type of brakes on the cranes. The proposed TSR would require that the brake designs comply with the requirements of the standard on cranes (ANSI B30.2–1990). The brakes will continue to perform their safety function. The change to the design requirements does not increase the probability of occurrence or consequences of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modifications will require the brakes to comply with ANSI B30.2–1990. The brakes will continue to perform their safety function. The specific type of brake required will no longer be specified in the TSR. The proposed changes will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed TSR changes involve a change to the description of the brake safety feature. Instead of specifying the type of brake, the TSR will commit to a brake design that complies with the requirements of the industry standard for cranes (ANSI B30.2–1990). Although the previous brake designs complied with the standard, it was not required by the TSR. The safety function of the brakes remains unchanged and the brakes will continue to perform their safety function. As such, the changes do not decrease the margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 30 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise TSRs 2.1.5.2 and 2.3.5.2 to change the design requirement for the crane brakes in the C–310, C–315, and C–360 facilities.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Elizabeth Q. Ten Eyck,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–31812 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 1); Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley Authority (the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment would include provisions in Technical Specification (TS) 4.3 which allows for the storage of fuel assemblies having a maximum nominal enrichment of 5.0 weight percent (w/o) Uranium 235 (U–235) in the new fuel storage racks and would revise requirements governing the placement of fuel assemblies in the new fuel storage pit. The proposed action is in accordance with the licensee's application for amendment dated May 6, 1998, as supplemented on June 5, 1998.

The Need for the Proposed Action

The proposed changes are needed so that the licensee can use higher fuel enrichment to provide the flexibility of extending the fuel irradiation and to permit operation for longer fuel cycles.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would permit use of fuel assemblies enriched to a maximum nominal of 5.0 w/o U–235. The safety considerations associated with reactor operation with higher enrichment and extended irradiation have been evaluated by the NRC staff. The staff has concluded that such changes would not adversely affect plant safety. The proposed changes have no adverse effect on the probability of any accident. The higher enrichment, with increased fuel burnup, may slightly change the mix of fission products that might be released in the event of a serious accident, but such small changes would not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure.

The environmental impacts on the uranium fuel cycle and transportation resulting from the use of higher enrichment fuel and extended irradiation were discussed in the NRC staff Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on February 29, 1988 (53 FR 6040). These impacts were also discussed in the staff

assessment entitled, ''NRC Assessment of the Environmental Effects of Transportation Resulting from Extended Fuel Enrichment and Irradiation,'' dated July 7, 1988. This assessment was published in connection with an Environmental Assessment related to the Shearon Harris Nuclear Plant, Unit 1, which was published in the **Federal Register** (53 FR 30355) on August 11, 1988, as corrected on August 24, 1988 (53 FR 32322). As indicated therein, the environmental cost contribution of an increase in the fuel enrichment of up to 5.0 w/o percent U–235 and irradiation limits of up to 60,000 gigawatt days per metric ton (GWD/MT) are either unchanged or may, in fact, be reduced from those summarized in 10 CFR 50.51(b), Table S–3, and in Table S–4 as set forth in 10 CFR 51.52(c). These findings are applicable to the proposed increase at Watts Bar given that the proposal involves fuel enrichment of up to 5.0 w/o U–235 and burnup of less than 60,000 GWD/MT. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential non-radiological impacts of reactor operation with higher enrichment and extended irradiation, the proposed action involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any other alternative would have equal or greater environmental impacts and need not be evaluated.

The principal alternative would be to deny the requested amendment (no-action alternative). This would not reduce the environmental impact of plant operations and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for WBN, Units 1 and 2, dated April 1995.

Agencies and Persons Consulted

In accordance with its stated policy, on October 22, 1998, the staff consulted with the Tennessee State official, Mr. E. Nanney of the Division of Radiological Health, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

The staff has reviewed the proposed modification to WBN, Unit 1, TS relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff has concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to the proposed action, see the licensee's letter dated May 6, 1998, as supplemented by letter dated June 5, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee.

Dated at Rockville, Maryland, this 18th day of November 1998.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–31813 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on December 16–17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

A portion of this meeting will be closed to public attendance to discuss Westinghouse proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, December 16, 1998—8:30 a.m. until the conclusion of business.

Thursday, December 17, 1998—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss the application of the Westinghouse Electric Company's WCOBRA/TRAC best-estimate large-break LOCA code to nuclear power plants with upper head plenum injection; the NRC Thermal-Hydraulic Code Review Action Plan; and the status of the NRC thermal-hydraulic research program. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of Westinghouse, the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: November 23, 1998.

Noel F. Dudley,

Acting Chief, Nuclear Reactors Branch.

[FR Doc. 98–31811 Filed 11–27–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

November 1, 1998.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of November 1, 1998, of one rescission proposal that has been pending for more than 45 days and was contained in a special message for FY 1998 and two deferrals contained in the first special message for FY 1999. These messages were transmitted to Congress on July 24, and October 22, 1998.

Rescissions (Attachments A and C)

As of November 1, 1998, one rescission proposal totaling $5.2 million had been transmitted to the Congress. Attachment B shows the status of the FY 1998 rescission proposals.

Deferrals (Attachments B and D)

As of November 1, 1998, $168 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information from Special Messages

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

63 FR 41303, Monday, August 3, 1998. As of this date, the October 22, 1998, special message has not been published.

Jacob J. Lew,

Director.

ATTACHMENT A—STATUS OF FISCAL YEAR 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	5.2
Rejected by the Congress	
Currently before the Congress	5.2

ATTACHMENT B—STATUS OF FISCAL YEAR 1999 DEFFERALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	167.6
Routine Executive releases through November 1998 (OMB/Agency releases of $0)	
Overturned by the Congress	
Currently before the Congress	167.6

ATTACHMENT C—STATUS OF FISCAL YEAR 1999 RESCISSION PROPOSALS—AS OF NOVEMBER 1, 1998

[Amounts in thousands of dollars]

Agency/Bureau/Account	Amounts pending before Congress: Rescission No.	Less than 45 days	More than 45 days	Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
Department of the Interior								
Bureau of Land Management								
Mineral leasing and associated payments.	R98–25		5,200	7–24–98	5,200	10–16–98		
Total, Rescissions		0	5,200		5,200		0	

ATTACHMENT D—STATUS OF FISCAL YEAR 1999 DEFRERALS—AS OF NOVEMBER 1, 1998

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted: Original request	Subsequent change(+)	Date of message	Releases(−): Cumulative OMB/agency	Congressionally required	Congressional action	Cumulative adjustments	Amount deferred as of 11–1–98
Department of State									
Other									
United States emergency refugee and migration assistance fund.	D99–1	82,858		10–22–98					82,858

ATTACHMENT D—STATUS OF FISCAL YEAR 1999 DEFRERALS—AS OF NOVEMBER 1, 1998—Continued

[Amounts in thousands of dollars]

Agency/Bureau/Account	Deferral No.	Amounts transmitted		Date of message	Releases(−)		Congressional action	Cumulative adjustments	Amount deferred as of 11–1–98
		Original request	Subsequent change(+)		Cumulative OMB/agency	Congressionally required			
International Assistance Programs International Security Assistance Economic support fund.	D99–2	84,777		10–22–98					84,777
Total, Deferrals.		167,635	0		0			0	167,635

[FR Doc. 98–31727 Filed 11–27–98; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26943]

Filings Under the Public Utility Holding Company Act of 1935, as amended (''Act'')

November 20, 1998.

Notice is hereby giving that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) and any amendment is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 15, 1998, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 15, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–9021)

American Electric Power Company, Inc. (''AEP''), a registered holding company, and AEP Resources, Inc. (''Resources''), a subsidiary of AEP (collectively ''Applicants''), both located at 1 Riverside Plaza, Columbus, Ohio 43125, have filed a post-effective amendment to an application-declaration filed under sections 6(a), 7, 9(a), 13(b), 32 and 33 of the Act and rules 45 and 54 under the Act.

By order dated April 27, 1998 (HCAR No. 26864), the Commission authorized AEP to use the net proceeds of common stock sales and borrowings to acquire interests in, and to issue guarantees of, the obligations of exempt wholesale generators, as defined under section 32 of the Act (''EWGs''), and foreign utility companies, as defined under section 33 of the Act (''FUCOs'' and together with EWGs, ''Exempt Projects''). Under that order, the aggregate amount of such sales, borrowing and guarantees would not, when added to AEP's ''aggregate investments'' (as defined in section 32) in all Exempt Projects, exceed 100% of AEP's ''consolidated retained earnings'' (as defined in section 32).

Applicants now request authority to make investments, through December 31, 2000, in Exempt Projects, directly or indirectly through one or more subsidies (''Intermediate Subsidiaries''). Any direct or indirect investment in an Intermediate Subsidiary holding an interest in an Exempt Project will be treated for purposes of rule 53 under the Act as if it were an investment in the Exempt Project.

In addition, Applicants request authority to provide preliminary project development, marketing, management and administration services and related goods to nonassociates through one or more subsidiaries organized exclusively for this purpose (''Special Purpose Subsidiaries''). Resources also requests authority to provide these goods and services to nonassociates. All services and goods rendered by Special Purpose Subsidiaries and Resources to nonassociates will be priced at fair market value. Also, Applicants propose that Intermediate Subsidiaries and Special Purpose Subsidiaries provide these respective services and goods to any subsidiary of Resources that is an Exempt Project or qualifying facility at fair market prices, under an exemption from the at cost standards of section 13(b).

Further, Applicants request authority directly or indirectly to acquire, through December 31, 2000, interests in one or more financing subsidiaries (''Finance Subsidiaries''). The Finance Subsidiaries would be wholly owned by Intermediate Subsidiaries. The exclusive function and business activity of any Finance Subsidiary will be to issue securities and loan the proceeds to the Intermediate Subsidiary. Issuances of securities by the Finance Subsidiaries and borrowings by the Intermediate Subsidiary of the proceeds of those issuances will comply with rule 52 under the Act.

CMP Group, Inc., et al (70–9367)

CMP Group, Inc. (''CMP Group''), a Maine electric public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except

section 9(a)(2),[1] and New England Gas Development Corporation (''New England Gas''), a wholly owned nonutility subsidiary of CMP Group, both located at 83 Edison Drive, Augusta, Maine 04336, have filed an application under sections 9(a)(2) and 10 of the Act.

CMP Group requests authority to acquire, through New England Gas, up to 50% of the membership interests in CMP Natural Gas, L.L.C. (''Maine GasCo''), a Maine limited liability company.[2] New England Gas requests an order under section 3(a)(1) exempting it from all provisions of the Act, except section 9(a)(2), following the proposed acquisition. In addition, CMP Group requests an order under section 3(a)(1) granting it an exemption from all provisions of the Act, except section 9(a)(2), following the proposed acquisition.

CMP Group's principal utility subsidiary, Central Maine Power Company (''CMP''), is an investor-owned public utility company primarily engaged in the business of generating, purchasing, transmitting, distributing and selling electricity to wholesale customers and retail customers in Maine. CMP is the largest electric utility in Maine and serves approximately 528,000 customers in its 11,000 square-mile service area in southern and central Maine. CMP had approximately $954 million in consolidated electric operating revenues in 1997. CMP is subject to the regulatory authority of the Maine Public Utilities Commission (''MPUC'').

CMP is also a Maine electric public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except section 9(a)(2). CMP currently has three utility subsidiaries, each of which is organized and operates almost exclusively in Maine: Maine Electric Power Company, Inc. (''MEPCo''), Aroostook Valley Electric Company (''AVEC''), and NORVARCO. MEPCo owns and operates a 345–kV transmission interconnection between the Maine-New Brunswick, Canada international border at Orient, Maine. AVEC owns and operates a 31–MW wood-fired generating plant in Fort Fairfield, Maine, the output of which is sold to CMP.[3] NORVARCO is one of two general partners in Chester SVC Partnership, a general partnership which owns certain transmission assets in Chester, Maine, adjacent to MEPCo's transmission interconnection described above.[4]

CMP Group owns, directly or indirectly, the following nonutility subsidiaries: CNEX (formerly CMP International Consultants), MaineCom Services, Inc., MainePower, TeleSmart, The Union Water-Power Company (''Union Water''),[5] Central Securities Corporation, Cumberland Securities Corporation, Kennebec Hydro Resources, Inc. (''Kennebec Hydro''),[6] Water Power Company (''Kennebec Water'') and The Gulf Island Pond Oxygenation Project (''GIPOP'').[7] These subsidiaries are engaged in utility support services (such as training, research, project management and technical consulting), telecommunications, river facilities management, administrative services, and real estate activities. MainPower is currently preparing to operate as a competitive energy marketer once electric competition commences in Maine.

The MPUC has authorized Maine GasCo to furnish natural gas service, on a non-exclusive basis, in certain areas of Maine not currently receiving natural gas service. Maine GasCo plans to construct, own and operate a local natural gas distribution system in Maine consistent with the MPUC authorization. When fully developed, Maine GasCo expects to derive at least 50% of its supply of natural gas from the Western Canadian Sedimentation Basin via the TransCanada Pipeline and the proposed Portland Natural Gas Transmission System Pipeline. As a public utility under Maine law, Maine GasCo will be subject to regulation by the MPUC as to rates and other matters.

New England Gas and Energy East Enterprises, Inc. (''EEC Enterprises''), the other proposed member of Maine GasCo, are parties to a Joint Venture Agreement dated as of November 13, 1997, as amended (''Joint Venture Agreement''), which provides for, among other things, the formation of Maine GasCo. Each member's ownership interest is subject to adjustment under the terms of the Joint Venture Agreement. The Joint Venture Agreement establishes a management committee consisting of three New England Gas appointees and three EEC Enterprises appointees and generally vests a designated manager, who will be located in Maine, with exclusive authority to manage the business of Maine GasCo within the limitations contained in the Joint Venture Agreement. The Joint Venture Agreement authorizes the manager to perform any and all acts customary or incident to the business of Maine GasCo. The Joint Venture Agreement also authorizes the manager to delegate authority and to hire or contract for appropriate and necessary services. Certain actions may be taken by the manager only upon the affirmative vote of a majority of the members of the management committee. The Joint Venture Agreement provides for the resolution of stalemates or impasses among the management committee by appeal to the chief executive officers of the Maine GasCo members, and by arbitration in the event that the chief executive officers of the members of Maine GasCo are unable to resolve the impasse.

CMP Group states that Maine GasCo's affiliate with CMP Group is expected to result in economies of scale and efficiencies in several areas. These include: (i) Meter installation and reading operations; (ii) information systems and telecommunications; (iii) billing support; and (iv) customer call center operations. The Applicants also expect significant administrative economies and efficiencies to result from the provision by CMP Group's subsidiaries of corporate services, such

[1] CMP Group is exempt under section 3(a)(1) of the Act by order of the Commission dated August 7, 1998 (HCAR No. 26903).

[2] The remaining membership interests of Maine GasCo will be held by Energy East Enterprises, Inc., a wholly owned subsidiary of Energy East Corporation, an exempt public utility holding company and the parent holding company of New York State Electric & Gas Corporation, an electric and gas utility company. Energy East Corporation and Energy East Enterprises, Inc. have an application pending before the Commission, in File No. 70–9369, for an order authorizing, among other things, their acquisition of membership interests in Maine GasCo.

[3] CMP has reached an agreement with a nonassociate, FLP Group, to sell its interests in AVEC, as part of a sale of substantially all of its nonnuclear assets.

[4] CMP also owns a 38% common stock interest in Maine Yankee Atomic Power Company, which owns the Maine Yankee nuclear electric generating plant in Wiscasset, Maine. The Maine Yankee plant was permanently shut down on August 6, 1997. In addition, CMP owns (i) a 9.5% common stock interest in Yankee Atomic Electric Company, which has permanently shut down its plant located in Rowe, Massachusetts, (ii) a 6% common stock interest in Connecticut Yankee Atomic Power Company, which has permanently shut down its plant in Haddam, Connecticut, and (iii) a 4% common stock interest in Vermont Yankee Nuclear Power Corporation, which owns a nuclear plant in Vernon, Vermont. Under a joint ownership agreement, CMP also has a 2.5% direct ownership interest in the Millstone 3 nuclear unit in Waterford, Connecticut.

[5] Union Water owns 25% of the voting stock of Androscoggin Reservoir Company, which owns a storage reservoir and dam on the Androscoggin River and owns real estate and other facilities at Aziscohos Dam in northwestern Maine that it leases to a qualifying facility. Union Water's interest in Androscoggin Reservoir Company will be sold to a nonassociate, FPL Group.

[6] Kennebec hydro owns a 50% interest in The Merimil Limited Partnership, which owns a qualifying facility.

[7] CMP has agreed to sell its interests in Kennebec hydro, Kennebec Water and GIPOP to a nonassociate, FPL Group.

as accounting, financial planning and analysis, financial reporting, human resources, regulatory affairs, insurance, legal, payroll, purchasing, tax, training, treasury, transportation, real estate, facilities management and engineering, construction and environmental services.

Applicants state that CMP Group will continue to qualify for exemption under section 3(a)(1) of the Act as an ''intrastate'' holding company, and that New England Gas will also qualify for this exemption, after acquiring Maine GasCo's voting securities. CMP Group and New England Gas state that they, and their public utility subsidiaries, will be predominantly intrastate in character and will carry on their business substantially in Maine, the state in which they are all organized.

Energy East Corporation, et al. (70–9369)

Energy East Corporation (''EEC''), a New York public utility holding company exempt under section 3(a)(1) from all provisions of the Act, except section 9(a)(2),[8] and Energy East Enterprises, Inc. (''EEC Enterprises''), a wholly owned nonutility subsidiary of EEC, both located at P.O. Box 12904, Albany, New York 12212–2904, have filed an application under sections 9(a)(2) and 10 of the Act.

EEC requests authority to acquire, through EEC Enterprises, at least 50% of the membership interests in CMP Natural Gas, L.L.C. (''Maine GasCo''), a Maine limited liability company.[9] EEC Enterprises requests an order under section 3(a)(1) exempting it from all provisions of the Act, except section 9(a)(2), following the proposed acquisition. In addition, EEC requests an order under section 3(a)(1) for an exemption from all provisions of the Act, except section 9(a)(2), following the proposed acquisition.

EEC's utility subsidiaries are New York State Electric & Gas Corporation (''NYSEG'') and NGE Generation, Inc. (''NGE Generation''). NYSEG is a combination electric and gas utility company engaged in the business of generating, transmitting and distributing electricity, as well as transporting and distributing natural gas, in central, eastern and western parts of New York. NYSEG provides electricity to approximately 815,000 customers and provides natural gas to approximately 240,000 customers. In providing these services, NYSEG is subject to the regulatory authority of the New York Public Service Commission with respect to retail rates charged and to regulation by the Federal Energy Regulatory Commission with respect to wholesale rates.

NYSEG has transportation and/or storage contracts with eight major interstate pipelines, two major intrastate pipelines, the TransCanada Pipeline and four New York local distribution companies. Approximately 28.5% of NYSEG's gas supply originates from the Western Canadian Sedimentation Basin, 63.0% from the Texas and Louisiana basins, 7.2% from Appalachia and 1.3% from other sources. The natural gas NYSEG receives from the Western Canadian Sedimentation Basin is delivered through the TransCanada Pipeline.

NGE Generation was organized to engage in the generation business. NGE Generation currently owns 50% of the Homer City generating station and owns and operates the Kintigh, Milliken, Groudey, Greenidge, Hickling and Jennison generating stations and certain associated assets and liabilities (''Generation Assets'').[10]

NYSEG has two direct nonutility subsidiaries. These are Somerset Railroad Corporation, which owns a rail line used to transport coal and other materials to one of NYSEG's generating plants, and NGE Enterprises, Inc. NGE Enterprises, Inc. owns interests in various companies engaged in power marketing, environmental and conservation engineering and consulting, energy-related financial services, energy usage information services, demand-side management services, utility-related software development, and energy management services.

The Maine Public Utility Commission (''MPUC'') has authorized Maine GasCo to furnish natural gas service, on a non-exclusive basis, in certain areas of Maine not currently receiving natural gas service. Maine GasCo plans to construct, own and operate a local natural gas distribution system in Maine consistent with the MPUC authorization. When fully developed, maine GasCo expects to derive at least 50% of its supply of natural gas from the Western Canadian Sedimentation Basin via the TransCanada Pipeline and the proposed Portland Natural Gas Transmission System Pipeline. As a public utility under Maine law, Maine GasCo will be subject to regulation by the MPUC as to rates and other matters.

EEC Enterprises and New England Gas Development Corporation (''New England Gas''), the other proposed member of Maine GasCo, are parties to a Joint Venture Agreement dated as of November 13, 1997, as amended (''Joint Venture Agreement''), which provides for, among other things the formation of Maine GasCo. Each member's ownership interest is subject to adjustment under the terms of the Joint Venture Agreement. The Joint Venture Agreement establishes a management committee consisting of three EEC Enterprises appointees and three New England Gas appointees and generally vests a designated manager, who will be located in Maine, with exclusive authority to manage the business of Maine GasCo within the limitations contained in the Joint Venture Agreement. The Joint Venture Agreement authorizes the manager to perform any and all acts customary or incident to the business of Maine GasCo. The Joint Venture Agreement also authorizes the manager to delegate authority and to hire or contract for appropriate and necessary services. Certain actions may be taken by the manager only upon the affirmative vote of a majority of the members of the management committee. The Joint Venture Agreement provides for the resolution of stalemates or impasses among the management Committee by appeal to the chief executive officers of the Maine GasCo members, and by arbitration in the event that the chief executive officers of the Maine GasCo members are unable to resolve the impasse.

Applicants state that they believe the proposed acquisition will provide significant financial and organizational advantages to Maine GasCo. Applicants further state that NYSEG's experience in operating a local natural gas distribution system will enable Maine GasCo to construct a safe and efficient system of its own.

Applicants state that EEC will continue to qualify for exemption under section 3(a)(1) of the Act as a New York ''intrastate'' holding company, and EEC Enterprises will qualify for exemption

[8] EEC is exempt under section 3(a)(1) of the Act by order of the Commission dated March 4, 1998 (HCAR No. 26834).

[9] The remaining membership interests of Maine GasCo will be held by New England Gas Development Corporation, a wholly owned subsidiary of CMP Group, Inc., an exempt public utility holding company and the parent holding company of Central Maine Power Company, an electric utility company. CMP Group, Inc., and New England Gas Development Corporation have an application pending before the Commission, in File No.

[10] Among its other activities, NGE Generation sells some electricity at wholesale from certain of its generating stations into the Pennsylvania-New Jersey-Maryland Interconnection (''PJM Power Pool'') which sales in 1997 accounted for less than 5% of NYSEG's total operating revenues. In August 1998, NGE Generation accepted offers to sell the Generation Assets to The AES Corporation and Edison Mission Energy. After consummation of the sale of the Generation Assets, NGE Generation will no longer make these sales into the PJM Power Pool.

as a Maine ''intrastate'' holding company, after acquiring Maine GasCo's voting securities, because both EEC and EED Enterprises, and their respective public utility subsidiaries, will be predominantly intrastate in character and will carry on their business substantially in their respective states of organization.

EUA Energy Investment Corporation (70–9385)

EUA Energy Investment Corporation (''EEIC''), P.O. Box 2333, Boston Massachusetts 02107, a nonutility subsidiary company of Eastern Utilities Associates, a registered holding company, has filed an application-declaration under sections 9(a), 10 and 12(b) of the Act and rules 45 and 54.

By orders dated December 4, 1987 and January 11, 1988 (HCAR Nos. 24515 and 24515A, respectively) the Commission authorized EEIC, among other things, to conduct energy and energy conservation research and to invest, directly or indirectly up to $2 million in these activities.

By order dated June 6, 1996 (HCAR No. 26529; (''June 1996 Order''), the Commission authorized EEIC to invest, through December 31, 1998, approximately $4 million to acquire approximately 1,053,630 shares of common stock of Separation Technologies, Inc., (''STI''). STI is engaged in the research, development, design, sale, installation, construction and servicing of solid and liquid materials separation systems and facilities including, without limitation, a system for economically separating unburned carbon from coal (or fly) ash produced by utility generation plants.

The Commission, in the June 1996 Order also authorized EEIC, through December 31, 1998, to make project financing available up to an aggregate principal amount of $15 million for the installation and construction of STI fly ash separation projects. The Commission authorized that the financing by EEIC was to be provided through joint arrangements between EEIC and STI at locations where STI equipment would be installed. EEIC's investment in these utility locations was anticipated to range between $0.5 million and $2.5 million per installation. EEIC's investments in these projects with STI would take the form of, without limitation, joint ventures, general partnerships, limited partnerships, teaming agreements, royalties or other revenue sharing, special purpose entities, loans and equity participations. The aggregate amount of the project investments currently outstanding totals $2,875 million. Since the issuance of the June 1996 Order, EEIC has determined that in certain circumstances, instead of project investments, it may also be desirable to make additional direct investments in STI.

EEIC proposes, through December 31, 2002, to provide financial assistance to STI in the form of project financing up to an additional principal amount of $15 million under the terms and conditions stated in the June 1996 Order. EEIC's direct investments may take the form of the purchase of additional securities of STI, short- or long-term loans, open account advances or capital contributions.

The Southern Company (70–9393)

The Southern Company (''Southern''), a registered holding company under the Act, has filed an application under sections 9(a) and 10 of the Act and rule 54 under the Act.

Southern proposes to purchase from Chesapeake Utilities Corporation 218,464 shares of the common stock, par value $1.50 per share (''Shares''), of Florida Public Utilities Company, a nonaffiliate electric and gas utility company (''FPU''), at a price of $16.50 per Share, or a total of approximately $3.6 million. The Shares represent approximately 7.3% of the outstanding common stock of FPU. Their acquisition would cause FPU to be an affiliate of Southern.

FPU provides natural and propane gas service, electric service and water service to consumers in Florida. The company has four divisions. One division provides retail natural gas services to approximately 28,000 customers in southeast Florida, and another division provides this service to approximately 8,000 customers in middle Florida. A third division provides electricity at retail to approximately 12,000 customers in the Florida panhandle, and a fourth division provides this service to approximately 12,000 customers in extreme northeast Florida.

Interstate Energy Corporation (70–9395)

Interstate Energy Corporation (''Interstate''), a registered holding company, and its nonutility subsidiary, Alliant Industries (''Alliant''), both located at 222 West Washington Avenue, Madison, Wisconsin 53703–0192, and Alliant's nonutility subsidiary, Whiting Petroleum Corporation (''Whiting Petroleum''), located at 1700 Broadway, Suite 2300, Denver, Colorado 80290, (collectively ''Applicants'') have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and rules 45 and 54 under the Act.

Alliant serves as the holding company for Interstate's energy-related and nonutility investments and subsidiaries. Whiting Petroleum purchases, develops, and produces crude oil and natural gas. It currently has an interest in 333 wells in Oklahoma and is operator of 29 wells.

Interstate requests authority to acquire all of the issued and outstanding common stock of Golden Gas Production Company (''Golden Gas''), an independent oil and gas producer located in Oklahoma, for an amount of Interstate common stock (''Interstate Stock'') equal in value to approximately $9.5 million (''Sale Price''), subject to adjustment. Golden Gas' assets consist primarily of interests in 240 gas and oil wells, most of which are in Oklahoma. For the year ended December 31, 1997, Golden Gas had revenues of $4.4 million and net income of $662,000. Golden Gas does not own or operate any facilities used for the distribution at retail of natural of manufactured gas.

In accordance with an Agreement and Plan of Reorganization among Interstate, Whiting Petroleum, Golden Gas and Alan R. Staab, sole shareholder of Golden Gas (''Shareholder''), dated September 15, 1998 (the ''Agreement''), Interstate would acquire from Shareholder all of the issued and outstanding common stock shares of Golden Gas (''Golden Gas Shares'') through a tax-free exchange of these shares for Interstate Stock. in order to accomplish the exchange, Interstate requests authority to issue shares of Interstate Stock up to the amount described below.

Under the Agreement, the number of shares of Interstate Stock used to purchase the Golden Gas Shares would be determined by dividing the Sale Price by $32. In addition, if the Market Price (as defined in the Agreement) of the Interstate Stock is less than $32 per share on the date of closing, the Shareholder will be entitled to receive an additional number of shares of Interstate Stock on the second anniversary of the date of the Agreement. This additional amount will represent the difference, if any, between $32 per share and the greater of (i) the average of the trading prices for Interstate Stock for the 90 days immediately preceding that second anniversary (''Average Trading Price''), or (ii) the Market Price, provided that in no event would the difference exceed $4 per share. The Shareholder will not be entitled to any additional shares of Interstate Stock if the Average Trading Price for the Interstate Stock exceeds $32.

Interstate has reserved 246,875 unissued shares of Interstate Stock to be exchanged at closing for the Golden Gas Shares, representing, on a pro forma basis, about .32% of the issued and outstanding shares of Interstate Stock as of July 31, 1998. In addition, Interstate has reserved 35,268 shares of Interstate Stock, representing the maximum number of shares of Interstate Stock required to be delivered to Shareholder on the second anniversary date of the Agreement.

Whiting Petroleum will manage the oil and gas assets of Golden Gas. In order to facilitate this plan, Interstate proposes to contribute the Golden Gas Stock to Alliant, and Alliant proposes to contribute those shares to Whiting Petroleum.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31715 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23543; 813–188]

Sixty Wall Street Fund, L.P. et al.; Notice of Application

November 20, 1998.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (''Act'') exempting the applicants from all provisions of the Act, except section 9, sections 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)) and 30 (other than certain provisions of paragraphs (a), (b), (e) and (h)), sections 36 through 53, and the rules and regulations under the Act.

SUMMARY OF APPLICATION: Applicants request an order superseding a prior order [1] to exempt certain limited partnerships formed for the benefit of key employees of J.P. Morgan & Co. Incorporated (''JP Morgan'') and its affiliates from certain provisions of the Act. Each partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

APPLICANTS: Sixty Wall Street Fund, L.P. (''Master Partnership''), Sixty Wall Street SBIC Fund, L.P. (''SBIC Partnership''), and JP Jorgan on behalf of other partnerships or other investment vehicles that may be formed in the future (together, with the Master Partnership and the SBIC Partnership, the ''Partnerships'').

FILING DATES: The application was filed on October 30, 1997. Applicants have agreed to file a amendment to the application, the substance of which is reflected in this notice during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 15, 1998, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549. Applicants, c/o J. Edmund Colloton, J.P. Morgan Capital Corporation, 60 Wall Street, New York, New York 10260.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney Advisor, at (202) 942–0569, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. JP Morgan Group, as defined below, is a global financial firm. J.P. Morgan Securities Inc., a wholly-owned subsidiary of JP Morgan, is the principal broker-dealer affiliate of JP Morgan and is registered under the Securities Exchange Act of 1934 (''Exchange Act''). JP Morgan and its affiliates, as defined in rule 12b–2 of the Exchange Act, are referred to in this notice collectively as ''JP Morgan Group'' and individually as a ''JP Morgan Group entity.''

2. Applicants propose to offer various investment programs for the benefit of certain key employees of JP Morgan Group. The programs may be structured as different Partnerships or as separate plans within the same Partnership. Each Partnership will be a limited partnership or limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of JP Morgan Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. Sixty Wall Street Corporation, a Delaware corporation, will act as the general partner of the Master Partnership and Sixty Wall Street SBIC Corporation, a Delaware corporation, will act as general partner of SBIC Partnership (together with any affiliate that controls, is controlled by or is under common control with JP Morgan and that acts as a Partnership's general partner, the ''General Partner''). The General Partner will manage and operate each of the Partnerships. The General Partner will be authorized to delegate management responsibility to JP Morgan Group or to a committee of JP Morgan Group employees. A JP Morgan Group entity will act as the investment adviser to a Partnership and will be registered as an investment adviser under the Investment Advisers Act of 1940.

4. Interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act''), or Regulation D under the Securities Act, and will be sold without a sales load only to ''Eligible Employees'' and ''Qualified Participants,'' in each case as defined below, or to JP Morgan Group (collectively, ''Participants''). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that the Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or ''Consultant'' of JP Morgan Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question (''Managing Employees''), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity

[1] Sixty Wall Street Fund 1995, L.P., *et al.*, Investment Company Act Release Nos. 21451 (Oct. 25, 1995) (notice) and 21536 (Nov. 21, 1995) (order).

that is a current or former ''Consultant'' of JP Morgan Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[2] Eligible Employees will be experienced professionals in the banking and financial services businesses, or in related administrative financial, accounting, legal, or operational activities.

5. Managing Employees, who also will qualify as Eligible Employees, will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the Participants in the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with and knowledgeable with respect to the Partnership's affairs, (b) be an officer or employee of JP Morgan Group, and (c) have reportable income from all sources (including any profit sharing and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (a) is an eligible Family Member or Qualified entity (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D.[3] An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is: (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee,[4] of (c) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, in a limited partnership agreement (the ''Limited Partnership Agreement''), which will be furnished at the time of Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, deductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General partner. No person will be admitted into a Partnership as a Partner unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a JP Morgan Group entity.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (a) the Eligible Employee's relationship with JP Morgan Group is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of JP Morgan Group, or (c) the Eligible Employee voluntarily resigns from employment with JP Morgan Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (b) the fair market value of the Interest as determined at the time of repurchase in good faith by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (a) a JP Morgan Group entity, (b) a portfolio company, (c) any Partner or any person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with JP Morgan Group and over which a JP Morgan Group entity will exercise investment discretion (''Third Party Fund''), or (e) any partner or other investor of a Third Party Fund that is not affiliated with JP Morgan Group (a ''Third Party Investor''). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any JP Morgan Group entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A JP Morgan Group entity (including the General partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''usual and customary.'' Fees or other compensation will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. JP Morgan Group entities, including the General Partner, also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt

[2] A ''Consultant'' is a person or entity whom JP Morgan Group has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with JP Morgan Group and JP Morgan Group employees.

[3] ''Partner'' means any partner of a Partnership, including the General Partner.

[4] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''qualified Entities'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between JP Morgan Group and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the General Partner or JP Morgan Group.

employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the SEC will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits investment companies that are not registered under section 8 from selling or redeeming their securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under section 6(b) and 6(e) of the Act exempting the Partnerships from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53 of the Act, and the rules and regulations under the Act.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit: (a) a JP Morgan Group entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any JP Morgan Group entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any JP Morgan Group entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any JP Morgan Group entity or Third Party Fund is or will become otherwise affiliated; and (c) any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with a Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with JP Morgan Group. Applicants also state that, as professionals employed in the banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and JP Morgan Group will provide the best protection against any risk of abuse.

5. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of an affiliated person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with JP Morgan Group, JP Morgan Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be organized for the benefit of Eligible Employees as an incentive for them to remain with JP Morgan Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with JP Morgan Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of JP Morgan Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by JP Morgan Group will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d-1 were designed to prevent. Applicants state that the concern that premitting co-investment by JP Morgan Group and a Partnership might lead to less advantageous treatment of the Partnership should be mitigated by the fact that JP Morgan Group will be acutely concerned with its relationship with the investors in the Partnership, and fact that senior officers and directors of JP Morgan Group entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of the affiliated person) made a similar investment.

8. Co-investments with Third Party Funds, or by a JP Morgan Group entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3 below. Applicants note that it is common for a Third Party Fund to require that JP Morgan Group invest its own capital in Third Party Fund investments, and that the JP Morgan Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants state that it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or othewise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to JP Morgan Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by JP Morgan Group in the employer/employee

context, whereas the same concerns are not present with respect to the Partnerships and a Third Party Fund.

9. Section 17(e) and rule 17e-1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a JP Morgan Group entity (including the General Partner) that acts as an agent or broker to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a JP Morgan Group entity will be deemed ''usual and customary'' only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because JP Morgan Group does not wish to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a JP Morgan Group entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not ''interested persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all of the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a JP Morgan Group entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants state that, because of the community of interest between JP Morgan Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and given certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the General Partner's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4, and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transactions otherwise prohibited by section 17(a) or section 17(d) of the Act and rule 17d–1 under the Act to which a Partnership is a party (the ''Section 17 Transactions'') will be effected only if the General Partner determines that: (a) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners and do not involve overreaching of the Partnership or its Partners on the part of any person concerned; and (b) the transaction is consistent with the interests of the Partners, the Partnership's organizational documents, and the Partnership's reports to its Partners. In addition, the General Partner will record and preserve a description of all Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the

findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[5]

2. In connection with the Section 17 Transactions, the General Partner will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of such person, promoter, or principal underwriter.

3. The General Partner will not invest the funds of any Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d-1 in which the Partnership and a Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one days, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (a) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) JP Morgan Group; (c) an officer or director of JP Morgan Group; or (d) an entity (other than a Third party Fund) in which the General Partner acts as general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a ''parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to a spouse, parent, child, spouse of child, brother, sister, or grandchild of the Co-Investor or a trust or other investment vehicle established for any family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; 9d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 thereunder; or (e) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which such foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to the Participants, and agree that all such records will be subject to examination by the SEC and its staff.[6]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year or at other times as necessary in accordance with customary practice, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the Participant of his or its federal and state income tax returns, and a report of the investment activities of the Partnership during that year.

6. In any case where purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a JP Morgan Group director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31716 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[5] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

[6] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 30, 1998.

A closed meeting will be held on Tuesday, December 1, 1998, at 11:00 a.m. An open meeting will be held on Wednesday, December 2, 1998, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, December 1, 1998, at 11:00 a.m., will be:

Institution and settlement of injunctive actions.

Institution and settlement of administrative proceedings of an enforcement nature.

Formal order of investigation.

The subject matter of the open meeting scheduled for Wednesday, December 2, 1998, at 10:00 a.m., will be:

The Commission will consider adopting rules regarding the regulation of alternative trading systems under the Securities

Exchange Act. In addition, the Commission will consider adopting Rule 19b–5 and amendments to Rule 19b–4, under the Securities Exchange Act, that address the rule filing requirements for self-regulatory organizations. For further information contact: Marianne H. Duffy, Special Counsel at (202) 942–4163 or Kevin Ehrlich, Staff Attorney at (202) 942–0778, Office of Market Supervision, Division of Market Regulation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: November 24, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–31905 Filed 11-25-98; 11:50 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission held the following meeting during the week of November 23, 1998.

A closed meeting was held on Wednesday, November 25, 1998, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries attended the closed meeting. Certain staff members who have a interest in the matters were also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matter at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the item listed for the closed meeting in a closed session.

The subject matter of the closed meeting held on Wednesday, November 25, 1998, at 11:00 a.m., was:

Settlement of injunctive actions.

At times, changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

November 25, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–32019 Filed 11–25–98; 3:49 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40701; File No. SR–OPRA–98–1]

Options Price Reporting Authority; Order Granting Approval of Amendment to OPRA Plan Adopting a New Rider to OPRA's Vendor Agreement Permit Vendors to Utilize Electronic Contracts

November 23, 1998.

I. Introduction

On September 18, 1998, the Options Price Reporting Authority (''OPRA'')[1] submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The proposed amendment adds a new Electronic Contract Rider (''Rider'') to OPRA's Vendor Agreement that would permit OPRA's vendors to utilize electronic contracts with certain categories of Internet or other on-line customers in satisfaction of the requirement of the Vendor Agreement for written agreements between vendors and their customers.

The proposed amendment was published for comment in the **Federal Register** on October 20, 1998.[2] No comments were received on the proposal. This order approves the proposal.

II. Description and Purpose of the Amendment

The purpose of the proposed amendment is to allow OPRA vendors who wish to offer Internet or other on-line access to options market information to Nonprofessional Subscribers or PC Dial-Up customers to make use of electronic contracts in satisfaction of the requirement of the Vendor Agreement that there be written agreements between OPRA's Vendors and these categories of customers. This amendment is proposed in response to requests from an increasing number of OPRA vendors (including some whose activities as vendors are in support of their primary function as electronic brokers) to be able to conduct all of their business with customers electronically, including contract administration.

The Rider imposes several conditions on the use of these electronic contracts by vendors. As a threshold matter, a vendor is permitted to use these electronic contracts only if the vendor's other agreements with its customers may be entered into electronically. In addition, the vendor is required to submit for OPRA's approval an ''Attachment A'' that describes the procedures and systems the vendor intends to utilize in administering its electronic contracts. The Rider requires vendors to use the forms of electronic contracts (one for Nonprofessional Subscribers and one for Dial-Up Customers), except that vendors are permitted to use their own forms of electronic contracts for Dial-Up Customers, subject to the approval of OPRA. In this respect the Rider is comparable to the existing Vendor Agreement, which requires the use of a specified form of written Nonprofessional Subscriber Agreement and requires OPRA's approval of each form of Dial-Up Agreement.

The Rider imposes certain requirements on vendors concerning the manner in which they present electronic contracts to their customers and how customers may indicate their assent to these contracts. These requirements are intended to assure that customers are given an opportunity to read the full text of each contract before they are asked to assent to it, and that procedures are in place to verify the identity of the customers who enter into agreements electronically and to confirm the terms of the electronic contracts to which they have agreed. Vendors are required to maintain detailed records of all electronic contracts entered into, and to make such records available for OPRA's inspection. Finally, each time a customer accesses the Options Information Service, the vendor must give the customer notice concerning the electronic contract and must make the text of that contract available for the customer's review.

Vendors are also required to indemnify OPRA against loss in the

[1] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Exchange Act and Rule 11Aa3–2 thereunder. *See* Exchange Act Release No. 17638 (March 18, 1981).

The Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges which agreed to the OPRA Plan are the American Stock Exchange (''AMEX''); the Chicago Board Options Exchange (''CBOE''); the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''Phlx'').

[2] *See* Exchange Act Release No. 40547 (October 13, 1998) 63 FR 56051.

event electronic contracts are held to be invalid or unenforceable by reason of their having been entered into or administered electronically. Because the law on electronic contracts is still developing, OPRA believes it is reasonable to ask those vendors who wish to use electronic contracts to assume any risk that such contracts may be found to be unenforceable or invalid.

The Rider also provides OPRA with the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice concerning electronic contracts or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason. In light of the continuing evolution of the law of electronic contracts, OPRA believes it should be able to amend or withdraw permission to use electronic contracts if such contracts are likely to be held invalid or unenforceable or are otherwise found to be deficient.

III. Discussion

After careful review, the Commission finds that the proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder.[3] Specifically, the Commission believes that the proposed amendment, which accommodates the use of electronic contracts by vendors, is consistent with Rule 11Aa3–2 in that it will contribute to the maintenance of fair and orderly markets and remove impediments to and perfect the mechanisms of a national market system.

The Commission notes that the proposed amendment will require a number of conditions intended to ensure that OPRA's interests are protected, regardless of the type of contract used by its vendors. First, OPRA limits the use of electronic contracts to those vendors that allow their customers to enter into other agreements electronically. Second, vendors must submit for OPRA's approval an ''Attachment A,'' describing the vendors' procedures and systems.[4] Third, OPRA requires vendors to use OPRA's forms for electronic contracts, except that vendors may use their own forms for Dial-Up Customers, subject to OPRA's approval. Fourth, vendors must keep detailed records of all electronic contracts, and make such records available for review by OPRA. Fifth, the vendor must give the customer notice and make the text of the electronic contract available for the customer's review every time the customer accesses the Options Information Service. Sixth, vendors must indemnify OPRA against loss due to a determination that any electronic contract is invalid or unenforceable. Finally, the amendment also grants OPRA the right to modify or terminate the electronic contracts in the event of changes in the law or industry practice or if OPRA determines that the required electronic contracts are likely to be held unenforceable or invalid for any reason.

The Commission believes that, in the absence of substantial historical experience with electronic contracts and given the current unsettled state of the law in this area, it is reasonable for OPRA to take precautions, such as those proposed, to protect its interests. The Commission believes that the above-mentioned conditions imposed by OPRA on vendors desiring to use electronic contracts are reasonable and consistent with the Act. Accordingly, the Commission believes that the proposed amendment will provide additional flexibility to OPRA vendors by allowing them to use electronic contracts under certain circumstances while providing OPRA with the contractual protections that it requires.

IV. Conclusion

It is therefore ordered, pursuant to Rule 11Aa3–2 of the Act, that the proposed Plan amendment (SR–OPRA–98–1) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31814 Filed 11–27–98; 8:45 am]

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[3] In approving this rule, the Commission has considered the proposed Plan Amendment's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[4] In its review of vendors' Attachment A, OPRA will consider ''the reasonableness of the procedures that the vendor plans to use to identify its customers, to ensure that those customers are who they say they are, and to keep track of the exact form of agreement that is assented to by each customer'' in light of the then-current industry practices. OPRA will also review the security procedures that vendors will use. *See* Letter from Lisa Winger, Schiff, Hardin & Waite, to Deborah Flynn, Division of Market Regulation, Commission, dated October 21, 1998.

[5] 17 CFR 200.30–3(a)(29).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40696; File No. SR–DTC–98–18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Validation Testing

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 1, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC will require that its participants successfully complete a Year 2000 validation test.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, DTC 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 III below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspect of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 1, 2000, certain computer programs may misinterpret the Year 2000 as the Year 1900. Because DTC depends on computer technology to allow its participants to input and retrieve settlement transaction reports and to complete the daily settlement of securities transactions, such a misinterpretation could have serious

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

consequences for DTC and its participants. Accordingly, DTC is assessing its own Year 2000 readiness as well as the Year 2000 readiness of all its participants.

Under the proposed rule change, DTC is setting forth a policy statement with respect to DTC's Rule 2. That rule provides the standards and obligations that entities must meet to become DTC participants and to retain their status as participants. Pursuant to Rule 2, a participant must furnish to DTC upon DTC's request information that demonstrates the participant has satisfactory operational capability.

In accordance with Rule 2, DTC will require participants that provide input to DTC through a computer to computer link to conduct a Year 2000 validation test directly with DTC at some point during the first nine months of 1999. Because DTC recognizes the importance in obtaining assurances that participants are individually prepared to receive settlement transaction reports from DTC, input settlement transactions to DTC, and complete settlement, DTC's validation testing process will focus on a limited number of scripted transactions in certain settlement-related areas. The validation test will require participants to process a series of scripted transactions and to balance with DTC's position and settlement statements. DTC will require that each participant provide DTC with a standard testing acknowledgment, signed by a senior internal auditor, that the participant has balanced to the position and settlement statements and has done so in a Year 2000 compliant environment.[3]

In DTC's view, a participant's failure to successfully complete the Year 2000 validation test will constitute a failure to demonstrate the sufficient operational capability required by Rule 2.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because the proposed validation testing will reduce the risk of participant failures caused by computer programs that misinterpret the Year 2000 as the Year 1900. The Year 2000 validation test will help ensure that DTC participants have sufficient operational capability to properly interface with DTC before, on, and after the Year 2000.

[3] If a participant does not have an internal auditor, the testing acknowledgment may be executed by a senior compliance officer or other equivalent officer.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

DTC 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.

The Year 2000 validation test requirement has been received positively by the Securities Industry Association (''SIA'') Year 2000 Steering Committee. A draft testing acknowledgment has been reviewed without comment by SIA's Legal and Compliance subcommittee as well as the New York Clearing House Year 2000 Committee.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this obligation because the Year 2000 validation test should allow DTC to address any potential problems associated with its participants' Year 2000 readiness. As a result, DTC should be able to continue to provide for the prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice should allow DTC and its participants to immediately begin to prepare for DTC's Year 2000 validation testing.

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 in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–98–18 and should be submitted by December 21, 1998.

[4] 15 U.S.C. 78q-1(b)(3)(F).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–DTC–98–18) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31815 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40700; File No. SR–DTC–98–16]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving a Proposed Rule Change Modifying the Initial Public Offering Tracking System

November 20, 1998.

On August 19, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–DTC–98–16) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] notice of the proposal was published in the **Federal Register** on October 21, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change modifies DTC's Initial Public Offering (''IPO'') tracking system.[3] Under the rule change, DTC

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40552 (October 14, 1998), 63 FR 56279.

[3] For a detailed description of the IPO tracking system, refer to Securities Exchange Act Release No.

will process resales of IPO shares by institutional customers without first determining the identity of the syndicate members that distributed the shares being resold. In addition, DTC will fill stock loans of shares in new issues with shares purchased in the secondary market prior to using shares received in the initial distributions.

I. Resales of IPO Shares by Institutions

DTC's IPO tracking system allows lead managers of new issues to monitor "flipping" of shares in new issues that are distributed through DTC by book-entry movement rather than by use of certificates.[4] When a lead manager in an IPO notifies DTC of its decision to use the IPO tracking system, the system establishes a database of information about the customers who purchased the IPO shares ("IPO database"). Before DTC processes a resale of IPO shares, the delivering participant must provide to DTC information about its customer. DTC compares the customer information with the customer detail in the IPO database. DTC then reports to the lead manager the identity of the syndicate member whose customer has resold IPO shares.

When IPO shares are sold by a retail customer, the customer information is normally provided by the same participant that populated the IPO database (*i.e.,* the syndicate member). Therefore, the processing of a retail customer's resale of IPO shares is usually not delayed because of a failure to match the identity of the reselling customer with any of the customers included in the IPO database.

In contrast, when IPO shares are distributed to an institutional customer, the syndicate member that makes the distribution is rarely the same participant that acts as the institution's agent for settlement. According to DTC, many redeliveries of IPO shares for institutional customers during the period from three days prior to closing to three days after closing are delayed because the customer detail provided by the institution's agent does not match any customer in the IPO database.[5] For example, a failure to match can occur if the syndicate member enters incorrect customer account information (*e.g.,* information with missing digits or transposed characters) into the IPO database because that information will not match the customer account information entered by the reselling institution's agent. A failure to match may also occur when on the day an issue closes an institution's agent attempts to redeliver IPO shares that were not distributed to its participant account until late in the processing day. Ordinarily, the redelivery would be effected if the agent had a sufficient position in an issue. However, if an issue is being tracked by the system, the redelivery will fail because account information relating to the reselling institutional customer will not be resident in the IPO database.

Therefore, under the rule change DTC will process resales of tracked issues by institutional customers without first determining the identity of syndicate members that distributed the shares being resold. DTC has informed the Commission that the IPO tracking system will continue to try to determine the identity of the syndicate members whose institutional customer has resold IPO shares.

2. Stock Loans

Currently, when a participant that has received a distribution of shares in an issue that is being tracked makes a stock loan in that issue, the system attempts to fulfill the stock loan delivery by first using shares received during the initial distribution. DTC then reports these transactions to the lead manager. Under the rule change, DTC will attempt to satisfy the stock loan by first using the lending participant's "secondary market shares" (*i.e.,* shares that have previously been reported to the lead manager as having been "flipped" or shares purchased by the participant in the secondary market). As a result, stock loan transactions will not be reported to the lead manager to the extent that they are processed using secondary market shares.

II. Discussion

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(F) because it should ensure more efficient processing of trades through the IPO tracking system. Specifically, the rule change should reduce the amount of failed trades in IPO shares that result from processing delays in the IPO tracking system. In addition, the rule change should reduce the amount of processing for loans of IPO shares.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–98–16) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31819 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

37208 (May 13, 1996) (order approving proposed rule change).

[4] Flipping occurs when a syndicate's lead manager is supporting an IPO with a stabilization bid (*i.e.,* the lead manager is purchasing shares in the secondary market in order to keep the price of the issue from dropping below its initial offering price), and shares in the IPO that had been distributed to investors are resold by those investors in the secondary market to a syndicate member. The lead manager may wish to identify flipped transactions so that underwriting concessions (*i.e.,* the discount from the offering price received by syndicate members) can be recovered from the appropriate syndicate members.

[5] Because shares in new issues can be traded on a when-issued basis, the IPO tracking system allows participants to enter redeliveries of IPO shares as early as three business days prior to the date the issue closes and is distributed through the depository.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40702; File No. SR–MBSCC–98–03]

Self-Regulatory Organizations, MBS Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to an Increase in the Number of Directors

November 23, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 5, 1998, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by MBSCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves an amendment to MBSCC's by-laws to

[1] 15 U.S.C. 78s(b)(1).

increase the number of directors on its board from thirteen to fifteen.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MBSCC 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. MBSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change will amend Article 3, Section 3.1 of MBSCC's by-laws to increase the number of directors from thirteen to fifteen.[3] Currently MBSCC has thirteen directors divided into three classes. Classes I and II each consist of four directors, and Class III consists of five directors. Under the proposed rule change, each class will consist of five directors.

MBSCC's shareholders agreement provides that one director represents management, one director represents National Securities Clearing Corporation, and the remaining directors represent MBSCC's participants. Under the proposed rule change, the two additional directors will represent MBSCC's participants. Accordingly, MBSCC believes that the proposed rule change will increase the opportunity for participants to be represented on MBSCC's board of directors.

MBSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, MBSCC believes the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,[4] which requires that the rules of a clearing agency be designed to assure the fair representation of shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[2] The Commission has modified the text of the summaries prepared by MBSCC.

[3] Article 3, Section 3.1 governs the number, election, and term of office of directors.

[4] 15 U.S.C. 78q–1(b)(3)(C).

(B) Self-Regulatory Organization's Statement on Burden on Competition

MBSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments relating to the proposed rule change have been solicited or received. MBSCC will notify the Commission of any written comments received by MBSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which MBSCC comments, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, 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 in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. SR–MBSCC–98–03 and should be submitted by December 21, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31816 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40694; File NO. SR–NASD–98–70]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. to Establish a Logon Identification Fee for Nasdaq's Mutual Fund Quotation System

November 19, 1998.

I. Introduction

On September 18, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder.[2] In its proposal, Nasdaq sought to establish a logon identification fee for its Mutual Fund Quotation Service (''MFQS''). Notice of the proposal was published in the **Federal Register** on October 19, 1998. (''Notice'').[3] No comments were received on the filing. This order approves the proposal.

II. Description of the Proposal

Nasdaq proposed to amend NASD Rule 7090 to charge a $75 logon identification fee for subscribers of Nasdaq's MFQS. Currently, subscribers of the MFQS transmit pricing information and other data to Nasdaq through the service. Nasdaq then distributes the information to the news media and market data vendors. Until recently, Nasdaq could not use the MFQS to collect price information on closed-end funds because of technological limitations. However, using web based technology, Nasdaq re-designed and upgraded the MFQS. The upgraded system can now handle the pricing of closed-end funds. Further, the enhancements allow MFQS subscribers

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40543 (Oct. 9, 1998), 63 FR 55907 (File No. SR–NASD–98–70).

to transmit price information and other data to Nasdaq over the Internet.

As part of the upgrade, Nasdaq created software to protect the information transmitted over the Internet. Each MFQS subscriber will be given a unique logon identification which will allow the subscribers to securely transmit price information and other data to Nasdaq. A logon identification can only be used by one person at a time; if a subscriber wants two people to simultaneously submit its pricing information, the subscriber must order two logon identifications. According to Nasdaq, the Internet security software was also developed to protect sensitive information transmitted to the NasdaqTrader.com system. In the future, Nasdaq indicates that it may also use the Internet security system with other NASD web-based services.

Nasdaq estimates that the MFQS's share of the on-going costs to administer and maintain the Internet security system will be $239,000. To pay for the administrative and maintenance costs of the MFQS, Nasdaq proposed to charge $75 a month for each logon identification a subscriber orders. According to Nasdaq, the fee will only be used to cover the administrative and maintenance costs of the Internet security software; Nasdaq maintains that the fee will not be used to pay for the development costs of the software.

III. Discussion

As discussed below, the Commission has determined to approve the Association's proposal creating a $75 logon identification fee for subscribers of Nasdaq's MFQS. The standard by which the Commission must evaluate a proposed rule change is set forth in Section 19(b) of the Act. The Commission must approve a proposed NASD rule change if it finds that the proposal is consistent with the requirements of Section 15A of the Act [4] and the rules and regulations thereunder that govern the NASD.[5] In evaluating a given proposal, the Commission examines the record before it. In addition, Section 15A of the Act establishes specific standards for NASD rules against which the Commission must measure the proposal.[6]

Specifically, the Commission believes that the proposal is consistent with Section 15A(b)(5) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Association operates or controls. In its proposal, the Association sought to charge MFQS subscribers $75 a month for each logon identification fee the subscriber orders.

The Commission believes that this charge provides for the reasonable allocation of fees among those who use the system. MFQS subscribers, who benefit from the Internet security system, are the only ones who are charged with the fee. Moreover, Nasdaq represented to the Commission that the fee will only be used to cover the maintenance and administrative costs of operating the Internet security system and not to cover the development costs of the security system. Nasdaq also represented to the Commission that the fee will be allocated between the MFQS and the NasdaqTrader.com service based on each service's proportionate usage of the security system.[7] Because the fee is only assessed against those who benefit from the Internet security system and the fee will only be used to cover the MFQS's portion of the on-going operational costs of the security system, the Commission believes that the NASD has provided for the equitable allocation of fees among persons using a system which the Association operates and controls.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the Act, and, particularly, with Section 15A thereof.[8] In approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NASD–98–70) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31820 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78s(b).

[6] 15 U.S.C. 78*o*–3.

[7] Along with SR–NASD–98–70, the NASD also filed SR–NASD–98–71. The NASD has withdrawn SR–NASD–98–71. *See* Securities Exchange Act Release No. 40658 (Nov. 10, 1998), 63 FR 64136 (Nov. 18, 1998) (notice of withdrawal of SR–NASD–98–71).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78(c)f.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40698; File No. SR–NYSE–98–40]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program to Amend Paragraph 902.02 of the Exchange's Listed Company Manual and Requesting Permanent Approval of the Pilot Program

November 20, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 20, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposed rule change instituting a three-month pilot program pending the Commission's review of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a three-month pilot program (the ''Pilot'') to amend Paragraph 902.02 of the Exchange's Listed Company Manual (the ''Manual''). In addition, the Exchange seeks permanent approval of the proposed amendments to Paragraph 902.02 of the Manual. Paragraph 902.02 of the Manual contains the schedule of current listing fees for companies listing securities on the Exchange.

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in Item III below. The NYSE 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 amends the listed company fee schedule, set forth in Paragraph 902.02 of the Manual, as it applies to certain business combinations. Specifically, the Exchange seeks to adopt a reduced fee structure for mergers between an NYSE-listed company and a non-NYSE listed company, other than for those considered to be ''back door listings'' pursuant to Paragraph 703.08(E) of the Manual.

The Exchange proposes to reduce the basic initial listing fee such that the fee is 25% of the applicable basic initial listing fee for the above specified listings that occur within 12 months of the merger. However, if the merger and subsequent listing occur within 12 months of the initial listing of the NYSE-listed company, the Exchange proposes to reduce the basic initial listing fee for the merged entity to the lesser of (a) 25% of the applicable basic initial listing fee for the merged entity; or (b) the full applicable basic initial listing fee for the merged entity less the fee already paid by the NYSE-listed company at the time of its initial listing.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(4) [3] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

[3] 15 U.S.C. 78f(b)(4).

III. 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 in the Commission's Public Reference Room at 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–40 and should be submitted by December 21, 1998.

IV. 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.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of section 6 of the Act.[4] More specifically, the Commission believes that the portion of the proposed rule change dealing with the three-month pilot is consistent with section 6(b)(4) of the Act [5] which requires that the rules of an exchange assure the equitable allocation of reasonable dues, fees, and other charges among members, issuers, and other persons using its facilities.[6] The Commission believes that the proposal may ease the financial burdens of merger transactions with Exchange-listed issuers, thus facilitating capital formation and competition among exchanges and other markets.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

The Commission finds good cause for approving the three-month pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. This accelerated approval will permit Exchange-listed issuers to take advantage of the Exchange's initial listing fee reduction program on an expedited basis while the Commission undertakes a more exhaustive review of the proposal. Accordingly, the Commission believes that good cause exists, consistent with section 6(b)(5) and section 19(b)(2) of the Act, to grant accelerated approval to the three-month pilot.[7] The Commission notes, however, that approval of the pilot should not suggest a predisposition regarding the ultimate approval of the proposal on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–98–40) is approved on an accelerated basis until February 19, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31817 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40695; File No. SR–NYSE–98–27]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Arbitration Rules

November 19, 1998.

I. Introduction

On September 8, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission

[6] In approving the three-month pilot, the Commission has considered the pilot's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

(''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 to amend Rule 600 to exclude shareholder derivative actions from arbitration; to amend Rules 604 and 621 to allow arbitrators to dismiss pleadings, with or without prejudice, as a sanction for a willful failure to comply with their orders; to amend Rules 608 and 613 to increase the minimum notice of the appointment of arbitrators and the initial hearing date from eight to fifteen business days; to amend Rule 608 to reflect the proposed change to Rule 609 to extend the time within which to exercise a peremptory challenge, with regard to replacement arbitrators; to amend Rules 609 and 611 to extend the time to exercise a peremptory challenge from five to ten business days; and to amend Rule 627 to require the award to be served contemporaneously on all parties and to allow the Exchange to serve awards via facsimile or other electronic means. The proposed rule change also adds new Rule 638 to require, on a two year pilot basis, a single mediation session in non-customer cases, where the amount of the claim is $500,000 or more. Rule 638 will also provide mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more, and provide for mediation in all other cases upon the consent of the parties and at their expense. Finally, the proposed rule change adds new Rule 639 which will require, on a two year pilot basis, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. The NYSE states that the proposed rule change, with the exception of amendments to Rule 600 and new Rules 638 and 639, is based on proposals developed by the Securities Industry Conference on Arbitration.

Notice of the proposed rule change, together with the substance of the proposal, was published for comment in Securities Exchange Act Release No. 40524 (October 6, 1998), 63 FR 55170 (October 14, 1998). One comment was received on the proposal.[3] This order approves the proposed rule change as proposed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Stephen G. Sneeringer, Chairman, Securities Industry Association (''SIA'') Arbitration Committee, to Margaret H. McFarland, Deputy Secretary, Commission, dated November 3, 1998 (''SIA Letter'').

II. Description

The Exchange proposes to amend Rule 600 to exclude shareholder derivative actions from arbitration. The Exchange also proposes amendments to Rules 604 and 612 to provide that arbitrators may dismiss claims or defenses, with or without prejudice, as a sanction for a willful failure to comply with their orders. The Exchange will keep records of any dismissals under the amended rules. The proposed rule change amends Rules 608 and 613 to provide that the minimum notice of the appointment of arbitrators and the initial hearing date be extended from eight to 15 business days. Additionally, the proposed rule change amends Rules 609 and 611 to extend the parties' time to exercise a peremptory challenge from five to ten business days after notification of the identity of the arbitrators. The proposed rule change also amends Rule 627 to provide that the Exchange may serve awards via facsimile or other electronic means, and that the Director of Arbitration (''Director'') shall try to serve a copy of the award contemporaneously on all parties.

The proposed rule change adds Rule 638 which requires, on a pilot basis for two years from the date of Commission approval, a single mediation session, in non-customer cases where the amount of the claim is $500,000 or more. The mediator's fee for this first session will be borne by the Exchange. The pilot will also provide for mediation, with the parties' consent, in cases involving public customers where the amount of the claim is $500,000 or more. The mediator's fee for this first session also will be borne by the Exchange. Moreover, mediation will be available upon the consent of the parties and at their expense in all other cases. Where the parties have not selected a mediator on their own, the Exchange will provide the names and profiles of five mediators.[4] The parties have ten days to agree on a mediator from the list, or choose their own mediator. If the parties cannot agree, the Director will select a mediator from the list, unless the parties object to all the names on the list, in which case the Director will appoint a mediator from outside the list.

The NYSE states that the current ''Arbitrator Profile'' form will be used to provide the parties with biographical and disclosure data regarding the proposed mediators. The profile form includes the employment histories of the mediators for the past ten years and any information disclosed regarding conflicts of interest. The profile also includes information about the mediator's education, business and professional background, mediation experience and training and membership in professional associations.

[4] If the parties select their own mediator from outside the list of mediators proposed by the NYSE, the parties are responsible for any difference in the mediator's fee.

Finally, the proposed rule change adds Rule 639, which requires, on a pilot basis for two years from the date of Commission approval, an administrative conference between the parties and arbitrators in all cases where the amount of the claim is $500,000 or more. The Director shall schedule the conference within thirty days after the answer is filed. At the hearing, the arbitrators can establish a schedule for discovery and the hearing, issue subpoenas and direct the appearance of witnesses, and resolve or narrow any other issue which may expedite the arbitration.

III. Summary of Comments

The Commission received one comment letter on the proposal, which supports the proposed amendments and, subject to certain qualifications and clarifications, supports the new rules pertaining to mediation and administrative conferences.[5]

The SIA supports proposed Rule 638 to the extent it would encourage litigants in non-customer cases of $500,000 or more to participate in a mediation session, but opposes the portion of Rule 638 which would make a mediation session mandatory with respect to these cases. The SIA believes that mediation should always be a voluntary process. In addition, the SIA requests that the final rules, adopting release, or accompanying Information Circular clarify that the mediation sessions or administrative conference provided for in Rules 638 and 639, respectively, be conducted via telephone at the request of any party.

The NYSE, in its response to the SIA Letter,[6] agrees that mediation by its very nature is a voluntary process, but that the proposed rule change does not alter that. The NYSE states that while the rule requires participation in a mediation session, it does not mandate that the mediation be successful, nor does it require the parties to compromise their positions. The NYSE developed the mediation program based upon its experience in non-customer disputes involving large damage claims;

[5] *See supra* note 3.

[6] *See* letter from Robert S. Clemente, Director, Arbitration, to Jonathan G. Katz, Secretary, Commission, dated November 11, 1998 (''NYSE Response'').

these cases often contain multiple allegations that can be quickly resolved or eliminated through mediation. In addition, early resolution of some issues can minimize time and expense of resolving core issues. The NYSE states that the mediation program is intended to encourage parties to sit down early in the process and try to find an agreeable resolution before each side incurs the expense of preparing for a hearing.

The NYSE also states that, with regard to conducting mediation and administrative conferences by telephone, the decision on how to proceed should be left to the arbitrators, and that the rule leaves open the possibility that a mediator may decide that a telephone session is sufficient. However, the NYSE states that experience shows that telephone conferences with all three arbitrators become counter-productive, and that while it may be technically possible to conduct a mediation over the telephone, it would be impractical in most circumstances. The Exchange believes that to be successful, a mediation should be conducted in person.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.[8] In particular, the Commission believes that the proposed rule change will help ensure that NYSE members and member organizations and the public have a fair and impartial forum for the resolution of their disputes.

The Commission believes it is reasonable for the Exchange to exclude derivative actions from arbitration. The Exchange's Arbitration rules already exclude class actions. The Exchange believes that shareholder derivative actions, like class actions, are representative in nature,[9] and that the court system is better equipped to manage shareholder derivative actions which involve parties in different jurisdictions and issues such as the notification of shareholders, the appointment of counsel and the awarding of attorneys' fees. The Commission also notes that the Exchange has previously declined the use of its arbitration facilities for shareholder derivative actions pursuant to Article XI, section 3 of the Exchange Constitution, which grants the Exchange discretion to "decline in any case to permit the use of the arbitration facilities of the Exchange."

The Commission believes that the portion of the proposed rule change to Rules 604 and 612, relating to dismissal of arbitration proceedings with and without prejudice, is consistent with the Act. This portion of the proposed rule change will help provide for a fair, efficient and cost-effective arbitration process by clarifying that the arbitrators can dismiss the proceeding either with or without prejudice; currently, Rule 604 does not distinguish between these two choices. Also, the proposed rule change amends Rule 604 to add that the arbitrators, when dismissing without prejudice, can refer the parties to any dispute resolution forum agreed to by the parties, in addition to their judicial remedies.

The Commission believes that the proposed change to Rule 604 allowing for dismissal with prejudice, which is intended to encourage compliance with the arbitrators' orders on discovery issues and other pre-hearing matters, should help establish clearly that arbitrators have the power to issue orders in aid of the arbitration process and to enforce those orders by use of the sanction of dismissal with prejudice. Such a sanction could be used, for example, where a party refused to produce documents that the arbitrators already have ordered them to produce as necessary for another party's claim or defense. In such instances, after the arbitrators have imposed lesser sanctions that have not induced compliance with their order, the arbitrators may dismiss a claim, defense, or the entire arbitration proceeding, with prejudice. The Commission also believes that this proposed rule change would provide for a more efficient arbitration process because it will allow the arbitrators to assert greater control over the proceedings and will provide parties with clear notice of the possible consequences of non-compliance with an order of the arbitrators. It also would help to protect all parties to an arbitration, and ensure that one party to the proceeding does not take advantage of the other.[10]

The Commission believes that the proposed changes to Rules 608, 609, 611, and 613 providing for an extension of time limitations relating to the notice of the appointment of arbitrators and the initial hearing date, peremptory challenges, and arbitrator disclosures are consistent with the Act because they allow the parties additional time to prepare for the arbitration proceedings. Specifically, the amendments will allow parties more time to research and gather information on the arbitrators, in order to evaluate the arbitrators and decide whether to issue a peremptory challenge.[11]

The Commission believes that the proposed change to Rule 627 that allows for service by means other than registered mail or personal service, such as facsimile or other electronic transmission, is reasonable under the Act because it will help to provide for more efficient service. The Commission notes that the proposed rule change provides adequate safeguards to allow for all parties to receive notice of the awards contemporaneously, for purposes of time limitations on post-award motions. The amendment is intended to enable the Exchange to deliver the award in the fastest and most reliable way. The amendment is intended to adapt Exchange arbitration practices to technological changes.

The Commission believes that it is consistent with the Act to allow for mediation of arbitration because it may result in savings of time and money for

[7] 15 U.S.C. 78f(b).

[8] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] "Shareholder controversies are not appropriately within the mandatory arbitration provisions of the Exchange's Constitution." *In re Salomon Inc. Shareholders' Derivative Litigation,* 68 F.3d 554, 556 (1995) (Judge McLaughlin of the Second Circuit quoting from the Exchange's decision denying jurisdiction in a shareholder derivative action).

[10] The Commission notes that the NYSE has stated its intention to keep records of any dismissals under the amended rules. The Commission believes the NYSE should maintain records of any dismissals so it can monitor the use of this sanction.

[11] The proposed changes extend the time limitations for a party to (1) seek additional information under Rules 608 and 611 about initial and replacement arbitrators, by extending the time that the Director shall inform the parties of the names of the arbitrators, as well as any information on the arbitrators, from eight to fifteen days prior to the initial hearing session, and extending the time within which a party can exercise the right to challenge a replacement arbitrator; and (2) exercise a peremptory challenge under Rules 609 and 611, from 5 days to 10 business days after notification of the identity of the person(s) proposed as arbitrators. In addition, the proposed rule change amends Rule 608 to change the Director's obligation to provide the parties with the names and histories of the arbitrators from eight to fifteen days before the date of the first hearing. Also, the proposed rule change amends Rule 613 to extend the time when the Director must give notice of the time and place of the initial hearing from eight to fifteen business days prior to the date fixed for the hearing.

the parties. Mediation is a method of dispute resolution where a mediator attempts to facilitate a settlement of the dispute. The NYSE states that when mediation is successful, cases are settled earlier, often with significant cost savings. The Commission recognizes the SIA's concern that mediation should be a voluntary process and that the proposed new rule requires a single mediation session in certain instances. However, the Commission believes that in this instance, where the requirement is limited to non-customer cases, is only for large cases, and is required for a two year period the possible benefits outweigh any perceived inequity.[12] In addition, the Commission notes it is only the first session that is mandatory, that the NYSE is paying the mediator's fee, and that any settlement reached must be with the participation and consent of each party.

Finally, the Commission believes it is reasonable under the Act to require an administrative conference between the parties and the arbitrator in all large cases, in order to attempt to expedite the arbitration process and reduce costs of the arbitration. An administrative conference early in the process will allow the arbitrators to intervene to establish discovery schedules, resolve discovery disputes and other preliminary matters, and to attempt to narrow the issues in dispute and avoid costly contests over procedural matters.[13]

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–98–27) is approved. The mediation program, Rule 638, and the administrative conference rule, Rule 639, are each approved on a two-year pilot basis through November 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–31818 Filed 11–27–98; 8:45 am]

BILLING CODE 8010–01–M

[12] The Commission expects the NYSE to review the effectiveness of the requirement over the two year pilot period.

[13] In responses to SIA's comment, the Commission notes that the rules do not restrict arbitrators from conducting mediation sessions and administrative conferences by telephone, and that the decision whether or not to do so is best left to the arbitrators.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3147]

State of Florida (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated November 16, 1998, the above-numbered Declaration is hereby amended to include Palm Beach County, Florida as a disaster area due to damages caused by Tropical Storm Mitch beginning November 4, 1998 and continuing through November 5, 1998.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Broward, Glades, Hendry, and Martin in the State of Florida may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is January 5, 1999 and for economic injury the termination date is August 6, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: November 19, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–31834 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[License # 06/06–0286]

Sunwestern Ventures, Ltd.; Notice of License Surrender

Notice is hereby given that *Sunwestern Ventures, Ltd. (''Sunwestern''), 12221 Merit Drive, Suite 1300, Dallas, Texas 75251* has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (''the Act''). *Sunwestern* was licensed by the Small Business Administration on *October 22, 1984.*

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on *October 31, 1998,* and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance program No. 59.011, Small Business Investment Companies)

Dated: November 17, 1998.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 98–31836 Filed 11–27–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 2922]

Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three (23) letters.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State {(703) 875–6644}.

SUPPLEMENTARY INFORMATION: Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: October 28, 1998.

William J. Lowell,

Director, Office of Defense Trade Controls.

BILLING CODE 4710–25–M

United States Department of State

Washington, D.C. 20520

OCT 8 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of remote sensing satellite technical data and a regional operations center to Greece.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 69-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 21 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export to Greece of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of 919 TOW 2A Anti-Tank Missiles to the Hellenic Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 97-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 21 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of four S70B SEAHAWK helicopters, spare parts, ground support equipment and logistical support to Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 98-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment or defense services sold under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of 6 M88A2 Tracked Armor Recovery Vehicles, spare parts, tech manuals and operator and preventive maintenance training to Thailand.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 99-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Canada.

The transaction described in the attached certification involves the manufacture of various computer systems for use by the U. S. Navy, the U. S. Army, the Royal Australian Air Force, and the Canadian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 103-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of certain PATRIOT System components to support the PATRIOT Product Improvement Program in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 106-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of ten MK 45 gun mounts, spare parts, and associated equipment for the Australian ANZAC Shipbuilding Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 113-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the cooperative design and manufacture of a cryogenic upper stage engine for use on the Delta IV launch vehicle and the Japanese H-II launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 116-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F-15 electrohydraulic flight control systems in Japan for use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 117-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 199

Dear Mr. Speaker:

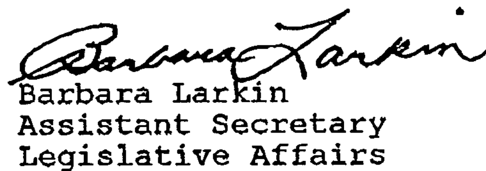
Pursuant to section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves upgrading Japanese F-15 aircraft for AMRAAM capability, and modernizing the avionics to include the APG-63(V)1 radar.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,



Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 120-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export, installation, and support of a border air surveillance system, including four (4) AN/TPS-70 radars, to Algeria.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 124-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture in Israel of avionics in support of the U. S. Air Force T-38 Avionics Upgrade Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 126-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of two shipsets of MK 41 Vertical Launch Systems for use by the Japanese Maritime Self-Defense Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 127-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of 2,180 TOW 2A, 380 TOW 2B and 240 TOW Practice Missiles to the Government of Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 128-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Singapore of support services for the T-55-L-714A engine used on CH-47 helicopters.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 129-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 8 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith notification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached notification involves the sale of 110 U2 Self-Propelled Howitzers to the Singapore Ministry of Defense Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 130-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT – 5 199[illegible]

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F100-PW-100 engines for use in Japanese Defense Agency F-15 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 131-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 5 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of F100-PW-229/-229A engine parts in Norway for use on F-16 aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 132-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of military vehicle wiring harnesses in Mexico.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 133-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the manufacture of transmissions in South Korea for use on the Korean K95 Howitzer and the K1A1 Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 138-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

SEP 29 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of major defense equipment sold under a contract in the amount of $14,000,000 or more.

The transaction described in the attached certification involves the sale of two (2) CH-47D helicopters to the Government of Australia.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 140-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 9 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $14,000,000 or more.

The transaction contained in the attached certification involves the export of eighteen (18) Model 139A Vertical Launch ASROC (VLA) Missiles, less payload for use in the Japan Defense Agency's vessels.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 143-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

United States Department of State

Washington, D.C. 20520

OCT 16 1998

Dear Mr. Speaker:

Pursuant to section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of six hundred NULKA Electronic Payloads and related technical data.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Barbara Larkin
Assistant Secretary
Legislative Affairs

Enclosure:
Transmittal No. DTC 144-98

The Honorable
Newt Gingrich,
Speaker of the House of Representatives.

[FR Doc. 98–31791 Filed 11–27–98; 8:45 am]
BILLING CODE 4710–25–C

DEPARTMENT OF STATE

[Public Notice #2937]

U.S. International Telecommunication Advisory Committee (ITAC); Charter Renewal

The Department of State has renewed the Charter of the United States International Telecommunication Advisory Committee (ITAC). This advisory committee will continue to obtain the views and advice of American experts and interested parties with respect to a broad range of technical, operational and administrative questions in the telecommunications and information sector. ITAC's focus is on U.S. participation in the work of international treaty organizations, primarily the International Telecommunication Union (ITU) and the OAS Inter-American Telecommunication Commission (CITEL).

The committee's principal work, which is to develop, coordinate and recommend contributions to and positions for international meetings and conferences, has been a major factor in ensuring effective U.S. preparations for the relevant international activities. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

Membership in the ITAC is unlimited and may include representatives of all parties interested in the telecommunications and information fields or in the work of ITAC, including U.S. Government agencies, recognized operating agencies, service providers, manufacturers, users, associations, academia, and the public in general. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided in the **Federal Register** at least 15 days prior to the meeting date.

For further information, please call: Richard Beaird, ITAC Chairman and Director, Office of Multilateral Affairs, International Communications and Information Policy, (202) 647–5832; fax (202) 647–5957.

Dated: November 16, 1998.

Ambassador Vonya B. McCann,

U.S. Coordinator, Communications and Information Policy.

[FR Doc. 98–31792 Filed 11–27–98; 8:45 am]

BILLING CODE 4210–45–P

DEPARTMENT OF STATE

[Public Notice #2938]

United States International Telecommunications Advisory Committee (ITAC), Radiocommunication Sector (ITAC–R); Notice of Meetings

The Department of State announces that a meeting of the National Committee of the Radiocommunications Sector of the U.S. International Telecommunication Advisory Committee will be held December 8, 1998, 9:30 A.M.–1:00 P.M. in Room 4517 of the Department of State, 2201 ''C'' Street, NW, Washington, DC. The purpose of the National Committee is to advise the Department's ITAC-R on policy, technical and operational matters with respect to international radiocommunication issues. Related meetings of the ITAC CITEL Permanent Consultative Committee II-Broadcasting PCC III-Radiocommunications will be held January 7, 1999. PCC II will convene at 9:30 and PCC III at 2:00 P.M.

The National Committee meeting will consider the preparatory process and guidelines for participation in ITU Radiocommunication meetings, review relevant results of the 1998 Plenipotentiary Conference, begin preparatory activities for the Radiocommunication Advisory Group meeting February 22–26, 1998, and review Study Group and Conference Preparatory Meeting (CPM) activities.

The PCC II and PCC III preparatory meetings will review the results of the December COMCITEL meeting and consider U.S. preparations for international meetings in the Spring of 1999.

Members of the General Public may attend these meetings and join in the discussions, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In this regard, entrance to the Department of State is controlled. Persons intending to attend the meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or a U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Enter from the 'C' Street Main Lobby.

Dated: November 16, 1998.

John T. Gilsenan,

Chairman, U.S. ITAC for Radiocommunication Sector.

[FR Doc. 98–31793 Filed 11–27–98; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–22]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 15, 1998.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____________________, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–CMTS@faa.dot.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267–3132

FOR FURTHER INFORMATION CONTACT: Brenda Eichelberger (202) 267–7470 or Terry Stubblefield (202) 267–7624, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on November 23, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29202.

Petitioner: Boeing Commercial Airplane Group.

Sections of the FAR Affected: 14 CFR 25.961(a)(5).

Description of Relief Sought/ Disposition: To allow Boeing Commercial Airplane Group an 85°F maximum fuel temperature limitation for JP–4 and Jet-B fuels on Boeing 757–300 series airplanes.

Docket No.: 29383.

Petitioner: Ilyushin Aviation Complex, Russia.

Sections of the FAR Affected: 14 CFR 25.52(b)(2).

Description of Relief Sought/ Disposition: To allow Ilyushin Aviation Complex to exempt from the floor warpage test requirements of 14 CFR 25.562(b)(2) for all seats on the Ilyushin IL–96T airplane.

Dispositions of Petitions

Docket No.: 18324.

Petitioner: American Airlines, Inc.

Sections of the FAR Affected: 14 CFR 43.3(a) and 121.709(b)(3).

Description of Relief Sought/ Disposition: To permit American to allow its properly trained and certificated flight engineers to stow passenger supplemental oxygen masks during flight and to make the appropriate entry in the aircraft maintenance logbook.

Grant, November 16, 1998, Exemption No. 2678K.

Docket No.: 27309.

Petitioner: Mr. David Abshire 14 CFR 65.71 (a) and (b).

Description of Relief Sought/ Disposition: To permit Mr. Abshire to become eligible for a mechanic certificate and associated rating although he cannot speak the English language.

Grant, November 16, 1998, Exemption No. 6840.

Docket No.: 26914.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To permit Air Transport Association member airlines and other similarly situated part 121 certificate holders to allow FAA air traffic controllers and certain technical representatives to ride in the cockpit observer's seat of all-cargo aircraft when those aircraft do not meet the passenger-carrying requirements.

Grant, November 12, 1998, Exemption No. 5562C.

Docket No.: 28905.

Petitioner: Petroleum Helicopters, Inc.

Sections of the FAR Affected: 14 CFR 135.152(a).

Description of Relief Sought/ Disposition: To permit Petroleum Helicopters to operate three Bell 212 helicopters, two Bell 214ST helicopters, three Bell 412 helicopters and one Bell 412SP helicopter without FAA-approved digital flight data recorders installed.

Grant, November 9, 1998, Exemption No. 6713C.

[FR Doc. 98–31783 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically very complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on November 20, 1998.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reasons for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	12/31/1998
11761–N	Vulcan Chemicals, Birmingham, AL	4	12/31/1998
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	12/31/1998
11815–N	Union Pacific Railroad Co. et al, Omaha, NE	4	12/31/1998
11817–N	FIBA Techologies, Inc., Westboro, MA	1, 4	12/31/1998
11862–N	The BOC Group, Murray Hill, NJ	4	12/31/1998
11883–N	Brownie Tank Mfg., Co., Minneapolis, MN	4	12/31/1998
11884–N	Degussa Corporation, Ridgefield Park, NJ	4	12/31/1998
11894–N	Quicksilver Fiberglass Manufacturing Ltd., Strome, Alberta, CN	4	12/31/1998

NEW EXEMPTION APPLICATIONS—Continued

Application No.	Applicant	Reasons for delay	Estimated date of completion
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	12/31/1998
11934–N	UtiliiCorp United, Inc., Omaha, NE	4	12/31/1998
11938–N	Steel Shipping Container Institute, Washington, DC	4	12/31/1998
11947–N	Patts Fabrication & Services, Odessa, TX	4	01/29/1999
11954–N	Republic Environmental System (PA), Inc., Hatfield, PA	4	12/31/1998
11983–N	Degussa Corporation, Ridgefield Park, NJ	4	01/29/1999
12001–N	Albemarle Corporation, Baton Rouge, LA	4	01/29/1999
12003–N	Degussa Corporation, Ridgefield Park, NJ	4	01/29/1999
12020–N	Rhone-Poulenc, Inc., Shelton, CT	4	01/29/1999
12029–N	NACO Technologies, Lombard, IL	4	01/29/1999
12032–N	Physical Acoustics Quality Services Lawrenceville, NJ	4	01/29/1999
12033–N	PPG Industries, Inc., Pittsburgh, PA	4	01/29/1999
12051–N	General Ameircan Transporation Corporation, Chicago, IL	4	01/29/1999
12052–N	Engineered Carbons, Inc., Borger, TX	4	01/29/1999
12063–N	The Hydrocarbon Flow Specialist, Inc., Morgan City, LA	4	12/31/1999
12064–N	Occident Chemical Corp., Webster, TX	4	01/29/1999
12071–N	Pennwalt India Limited, Worli, Mumbai, IN	4	01/29/1999
12072–N	Consani Engineering (PTY) Limited, Cape Province, RA	4	01/29/1999
12073–N	Patriotic Fireworks, North East, MD	4	12/15/1998

MODIFICATION TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4354–M	PPG Industries, Inc., Pittsburgh, PA	1	12/31/1998
7887–M	Kosdon Enterprises Ventura, CA	4	12/31/1998
9266–M	ERMEWA, Inc., Houston, TX	4	12/31/1998
9419–M	FIBA Technologies, Inc., Westboro, MA	4	12/31/1998
9421–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
9706–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
9819–M	Halliburton Energy Services, Inc., Duncan, OK	4	12/31/1998
10047–M	Taylor-Wharton Co., Harrisburgh, PA	4	12/31/1998
10138–M	Betz Dearborn, Inc., Trevose, PA	4	12/31/1998
10458–M	Marsulex, Inc., Sudbury, Ontario, CN	4	12/31/1998
10996–M	Kosdon Enterprises, Ventura, CA	4	12/31/1998
11270–M	The Specialty Chemicals Div. of B.F. Goodrich Co., Cleveland, OH	4	12/31/1998
11483–M	Autoliv, Autoflator AB, Vargarda, SW	4	12/31/1998

[FR Doc. 98–31747 Filed 11–27–98; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Advisory Bulletin

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: We are issuing this advisory bulletin to owners and operators of Hazardous Liquid and Natural Gas Pipelines located on the Outer Continental Shelf (OCS). The bulletin reminds operators of the September 15th, 1998, deadline to mark the point on their OCS pipeline facilities where operating responsibility transfers from a production operator to a transportation operator.

ADDRESSES: This document can be viewed on our home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Linda Daugherty, (202) 366–4577.

SUPPLEMENTARY INFORMATION:

I. Background

We published a direct final rule amending the DOT pipeline safety regulations in 49 CFR parts 191, 192, and 195 consistent with an MOU (62 FR 61692; November 19, 1997) establishing the boundaries that will be used to delineate the locations over which the Department of Transportation and the Department of the Interior will exercise their respective regulatory authority over pipelines located on the OCS. The direct final rule excluded from DOT regulations OCS pipelines upstream from the point where operating responsibility transfers from a producing operator to a transporting operator. Also, the rule required operators to durably mark the specific points at which operating responsibility transfers or, if it is not practicable to durably mark a transfer point, to depict the transfer point on a schematic maintained near the transfer point. The requirement applies only to OCS pipelines on which there is a transfer of operating responsibility from a producing operator to a transporting operator. Producer-operated OCS pipelines on which there is no transfer of operating responsibility on the OCS have not been affected.

II. Advisory Bulletin (ADB–98–4)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines.

Subject: September 15, 1998, deadline to mark OCS pipeline facilities where operating responsibility transfers from a

production operator to a transportation operator.

Purpose: We remind all operators of natural gas and hazardous liquid pipelines located on the Outer Continental Shelf of the September 15, 1998, deadline to durably mark the specific points at which operating responsibility transfers from a producing operator to a transporting operator, or, if it is not practicable to durably mark this transfer point, to depict the transfer point on a schematic maintained near the transfer point.

Operators must meet all of the following criteria to be affected by this rule:

(1) Operating responsibility must transfer from a producer to a transporter;
(2) The transfer must take place on the Outer Continental Shelf; and
(3) The producer must be upstream from the transporter.

Pipelines that do not meet these criteria continue to be subject to the provisions of 49 CFR Parts 192.1(b)(1) and 195.1(b)(5) that state these Parts do not apply upstream from the outlet flange of each facility where hydrocarbons are produced or where produced hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. Any proposed amendments to these regulations will be initially announced through publication of the Department of Transportation Semi-Annual Regulatory Agenda in the **Federal Register** and afforded full public participation through subsequent publication in the **Federal Register** of a notice of proposed rulemaking and request for comments.

Issued in Washington, D.C. on November 24, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31780 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket RSPA–98–4799]

Pipeline Safety User Fees

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice.

SUMMARY: This notice announces the fiscal year 1999 user fee assessments for pipeline facilities. The assessments will be mailed to pipeline operators on or about December 15, 1997.

FOR FURTHER INFORMATION CONTACT: Lisa Kokoszka, OPS, (202) 366–4554, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The fees to be assessed for natural gas transmission, hazardous liquid and liquefied natural gas (LNG) are as indicated below:

Natural gas transmission pipelines: $70.47 per mile (based on 288,205 miles of pipeline).

Hazardous liquid pipelines: $57.88 per mile (based on 156,828 miles of pipeline).

LNG is based on the number of plants and total storage capacity:

Total Storage Capacity BBLS	Assessment/ Plant
<10,000	$1,250
10,000–100,000	2,500
100,000–250,000	3,750
250,000–500,000	5,000
>500,000	7,500

Section 60301 of Title 49, United States Code, authorizes the assessment and collection of pipeline user fees to fund the pipeline safety activities conducted under 49 U.S.C. 60101 *et seq.* RSPA assesses each operator of regulated interstate and intrastate natural gas transmission pipelines (as defined in 49 CFR part 192), and hazardous liquid pipelines carrying petroleum, petroleum products, anhydrous ammonia and carbon dioxide (as defined in 49 CFR part 195) a share of the total Federal pipeline safety program costs in proportion to the number of miles of pipeline each operator has. Onshore pipelines excluded from regulation by 49 CFR part 195, are not included. Operators of LNG facilities are assessed based on total storage capacity (as defined in 49 CFR part 193).

In accordance with the provisions of 49 U.S.C. 60301, Departmental resources were taken into consideration for determining total program costs. The apportionment ratio between gas and liquid, as shown below, increased in recent years with our environmental protection activities in the hazardous liquid program area:

Year(s)	General program costs (gas)	General program costs (liquid)
1986–1990 (percent)	80	20
1991–1992 (percent)	75	25
1993 (percent)	[1] 75	[1] 25
Do	[2] 60	[2] 40
1994 (percent)	60	40
1995 (percent)	75	25
1996 (percent)	65	35
1997–1999 (percent)	55	45

[1] 3/4 yr. [2] 1/4 yr.

In accordance with the regulations of the Department of the Treasury, user fees will be due 30 days after the date of the assessment. Interest, penalties, and administrative charges will be assessed on delinquent debts in accordance with 31 U.S.C. 3717.

Authority: 49 U.S.C. 60301.

Issued in Washington, DC, on November 24, 1998.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 98–31781 Filed 11–27–98; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33681]

Fort Worth & Western Railroad Company—Acquisition Exemption—South Orient Railroad Company, Ltd.

Fort Worth & Western Railroad Company (FWWR), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire by lease and to operate approximately 176 miles of rail line of the South Orient Railroad Company, Ltd. (SORC).[1]

The lines to be leased are: (1) Centex Rural Rail Transportation District's (a) Fort Worth-Ricker Line, between approximately milepost 1 + 1,541 feet near Fort Worth, TX, and approximately milepost 134 + 2,171 feet near Ricker, TX, and (b) Cresson-Cleburne Line, between approximately milepost 18 + 133 feet near Cresson, TX, and approximately milepost 0 + 1,167.1 feet near Cleburne, TX; and (2) Texas Central Railroad Company's line of railroad between approximately milepost 104.6 at Dublin, TX, and approximately milepost 129.5 at Gorman, TX.[2] In addition, FWWR will acquire from SORC by assignment incidental overhead trackage rights over the following lines: (1) The Burlington

[1] *See Cen-Tex Rail Link, Ltd.—Merger Exemption—South Orient Railroad Company, Ltd.,* STB Finance Docket No. 32951 (STB served Aug. 2, 1996).

[2] *See Cen-Tex Rail Link, Ltd.—Trackage Rights Exemption—Texas Central Railroad Company,* Finance Docket No. 32521 (ICC served Aug. 18, 1994) and *Cen-Tex Rail Link, Ltd.—Lease and Operation Exemption—Texas Central Railroad Company,* Finance Docket No. 32596 (ICC served June 18, 1995).

Northern and Santa Fe Railway Company (BNSF) line between Ricker (approximately milepost 134 + 2,171 feet on the former Atchison, Topeka and Santa Fe Railway Company (ATSF) Dublin Subdivision) and San Angelo Junction (approximately milepost 0 + 330 feet on the former ATSF San Angelo Subdivision), (2) the line segment formerly part of the ATSF Dublin Subdivision between approximately milepost 1 + 1,541 feet near Fort Worth and approximately milepost 0 + 4,752 feet near Belt Junction, and (3) the BNSF line between approximately milepost 1 + 1,541 feet (former ATSF Dublin Subdivision) and approximately milepost 368.5 (former ATSF Fort Worth Subdivision) for certain intermodal produce shipments.[3]

Finally, FWWR will acquire overhead trackage rights on BNSF's former BN Wichita Falls Subdivision between approximately milepost 0.0 near Tower 55 in Fort Worth and approximately milepost 5.1 near Tower 60 in Fort Worth (including BNSF's Race Track from approximately milepost 2.2 on the preceding segment to the end of track at the connection point with the Missouri Pacific Railroad Company, a further distance of approximately 0.2 miles) and on BNSF's line between approximately milepost 1.29 on the former ATSF Dublin Subdivision and approximately milepost 349.97 on the former ATSF Fort Worth Subdivision near Tower 60 in Fort Worth.[4]

The earliest the transaction could be consummated was November 13, 1998, the effective date of the exemption (7 days after the exemption was filed).

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. 33681, 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, one copy of each pleading must be served on Kevin M. Sheys, 1350 Eye Street, NW, Suite 200, Washington, DC 20005–3324.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: November 20, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31644 Filed 11–27–98; 8:45 am]

BILLING CODE 4915–00–P

[3] *See Cen-Tex Rail Link, Ltd.—Acquisition and Operation Exemption—Certain Lines of The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32507 (ICC served June 10, 1994), *Centex Rural Rail Transportation District—Acquisition Exemption—Certain Assets of Cen-Tex Rail Link, Ltd.*, Finance Docket No. 32496 (ICC served Aug. 1, 1994), and *Fort Worth and Western Railroad Company—Acquisition Exemption—Line of The Atchison, Topeka and Santa Fe Railway Company*, STB Finance Docket No. 33001 (STB served Aug. 13, 1996).

[4] *See Fort Worth & Western Railroad Company—Trackage Rights Exemption—The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32524 (ICC served June 24, 1994), and *Cen-Tex Rail Link, Ltd.—Trackage Rights Exemption—Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company*, Finance Docket No. 32715 (ICC served June 22 , 1995).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub-No. 381X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Hennepin and Ramsey Counties, MN

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon 2.43 miles of rail line between milepost 0.00 near East Minneapolis and milepost 2.43 near Rollins Oil, in Hennepin and Ramsey Counties, MN. The line traverses United States Postal Service Zip Codes 55113, 55413, 55414, and 55418.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 30, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 10, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 21, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, Fort Worth, TX 76131–02830.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 4, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

BNSF's filing of a notice of consummation by November 30, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: November 23, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–31822 Filed 11–27–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

November 16, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1998 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0027.

Form Number: POD 1681.

Type of Review: Extension.

Title: Application for Payment of a Deceased Depositor's Postal Savings.

Description: This form is required in cases of deceased postal Savings Depositors with account of $50 or less. The form is used by relatives of the deceased depositor showing the relationship to the depositor and the date of the depositor's death. The information helps to determine whether the applicant is entitled to the proceeds of the account. If entitled, payment is made.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25 hours.

OMB Number: 1510–0035.

Form Number: None.

Type of Review: Extension.

Title: Assignment Form.

Description: This form is used when awardholders wish to assign or transfer all or portion of their award to another person. In doing so, awardholder forfeits all future rights to the portion assigned.

Respondents: Individuals or households.

Estimated Number of Respondents: 150.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 75 hours.

Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 98–31717 Filed 11–27–98; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 20, 1998.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 30, 1998 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1467.

Form Number: IRS Forms 9779, 9779(SP), 9783, 9783(SP), 9787, 9787(SP), 9789, and 9789(SP).

Type of Review: Extension.

Title: Electronic Federal Tax Payment System (EFTPS).

Description: Enrollment is vital to the implementation of the Electronic Federal Tax Payment System (EFTPS). EFTPS is an electronic remittance processing system that the Service will use to accept electronically transmitted federal tax payments. This system is a necessary outgrowth of advanced information and communication technologies.

Respondents: Business and other for-profit, Individuals or households.

Estimated Number of Respondents: 4,470,000.

Estimated Burden Hours Per Respondent:

Form	Response time
9779	20
9779(SP)	20
9783	20
9783(SP)	20
9787	20
9787(SP)	20
9789	20
9789(SP)	20

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 1,489, 852 hours.

OMB Number: 1545–1476.

Regulation Project Number: INTL–3–95 Final.

Type of Review: Extension.

Title: Source of Income From Sales of Inventory and Natural Resources Produced in One Jurisdiction and Sold in Another Jurisdiction.

Description: The information requested is necessary for the Service to Audit taxpayers' returns to ensure taxpayers have properly determined the source of income from sales of inventory produced in one country and sold in another.

Respondents: Business and other for-profit.

Estimated Number of Respondents: 425.

Estimated Burden Hours Per Respondent: 2 hours, 36 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,125 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

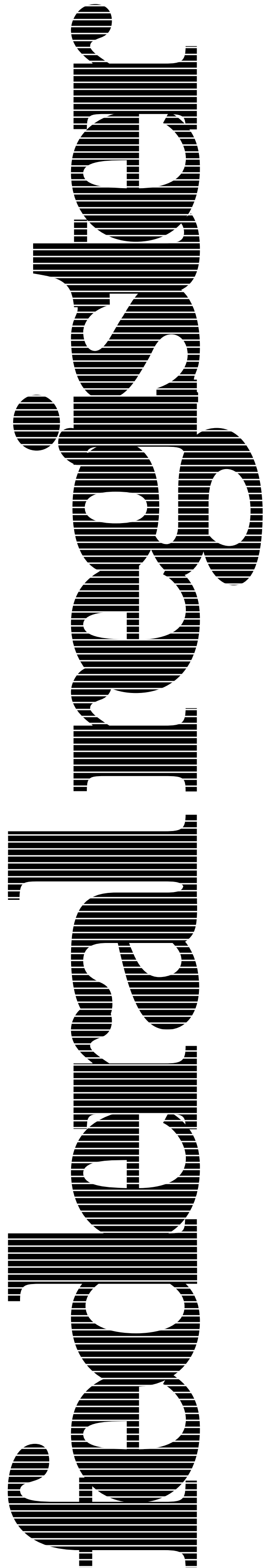
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 98–31718 Filed 11–27–98; 8:45 am]

BILLING CODE 4830–01–P



Monday
November 30, 1998

Part II

Reader Aids

Cumulative List of Public Laws
105th Congress, Second Session

CUMULATIVE LIST OF PUBLIC LAWS

This is a Cumulative List of Public Laws for the 105th Congress, Second Session. Other cumulative lists (1993–1997) are available online at http://www.nara.gov/fedreg. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send E-mail to info@fedreg.nara.gov.

The List of Public Laws will resume when bills are enacted into public law during the first session of the One Hundred Sixth Congress, which convenes January 6, 1999. The text of laws may be ordered in individual pamphlet form (referred to as ''slip laws'') 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/nara/index.html. Some laws are not yet available online or for purchase.

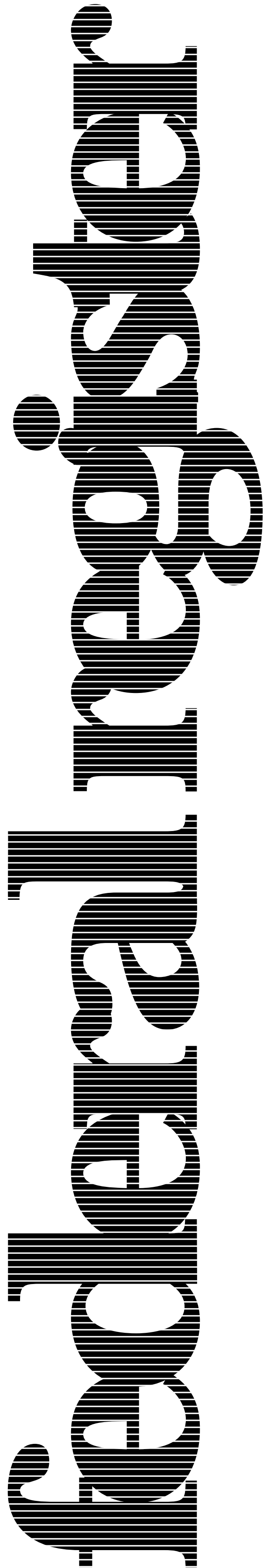
Public Law	Title	Approved	112 Stat.
105–154	To rename the Washington National Airport located in the District of Columbia and Virginia as the ''Ronald Reagan Washington National Airport''.	Feb. 6, 1998	3
105–155	FAA Research, Engineering, and Development Authorization Act of 1998	Feb. 11, 1998	5
105–156	Environmental Policy and Conflict Resolution Act of 1998	Feb. 11, 1998	8
105–157	To authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel PRINCE NOVA, and for other purposes.	Feb. 11, 1998	13
105–158	Holocaust Victims Redress Act	Feb. 13, 1998	15
105–159	Disapproving the cancellations transmitted by the President on October 6, 1997, regarding Public Law 105–45.	Feb. 25, 1998	19
105–160	National Sea Grant College Program Reauthorization Act of 1998	Mar. 6, 1998	21
105–161	To designate the United States Post Office building located at 750 Highway 28 East in Taylorsville, Mississippi, as the ''Blaine H. Eaton Post Office Building''.	Mar. 9, 1998	28
105–162	To designate the post office located at 194 Ward Street in Paterson, New Jersey, as the ''Larry Doby Post Office''.	Mar. 9, 1998	29
105–163	To designate the Federal building and United States courthouse located at 475 Mulberry Street in Macon, Georgia, as the ''William Augustus Bootle Federal Building and United States Courthouse''.	Mar. 20, 1998	31
105–164	Examination Parity and Year 2000 Readiness for Financial Institutions Act	Mar. 20, 1998	32
105–165	To designate the Federal building located at 61 Forsyth Street SW., in Atlanta, Georgia, as the ''Sam Nunn Atlanta Federal Center''.	Mar. 20, 1998	37
105–166	Lobbying Disclosure Technical Amendments Act of 1998	Apr. 6, 1998	38
105–167	To consolidate certain mineral interests in the National Grasslands in Billings County, North Dakota, through the exchange of Federal and private mineral interests to enhance land management capabilities and environmental and wildlife protection, and for other purposes.	Apr. 13, 1998	40
105–168	Birth Defects Prevention Act of 1998	Apr. 21, 1998	43
105–169	To provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District and the Fabens Independent School District.	Apr. 24, 1998	46
105–170	Aviation Medical Assistance Act of 1998	Apr. 24, 1998	47
105–171	To authorize the Secretary of Agriculture to convey certain lands and improvements in the State of Virginia, and for other purposes.	Apr. 24, 1998	50
105–172	Wireless Telephone Protection Act	Apr. 24, 1998	53
105–173	To amend the Immigration and Nationality Act to modify and extend the visa waiver pilot program, and to provide for the collection of data with respect to the number of nonimmigrants who remain in the United States after the expiration of the period of stay authorized by the Attorney General.	Apr. 27, 1998	56
105–174	1998 Supplemental Appropriations and Rescissions Act	May 1, 1998	58
105–175	Expressing the sense of the Congress on the occasion of the 50th anniversary of the founding of the modern State of Israel and reaffirming the bonds of friendship and cooperation between the United States and Israel.	May 11, 1998	102
105–176	To amend chapter 51 of title 31, United States Code, to allow the Secretary of the Treasury greater discretion with regard to the placement of the required inscriptions on quarter dollars issued under the 50 States Commemorative Coin Program.	May 29, 1998	104
105–177	To extend certain programs under the Energy Policy and Conservation Act	June 1, 1998	105
105–178	Transportation Equity Act for the 21st Century	June 9, 1998	107
105–179	To redesignate the Federal building located at 717 Madison Place, NW., in the District of Columbia, as the ''Howard T. Markey National Courts Building''.	June 16, 1998	510
105–180	Care for Police Survivors Act of 1998	June 16, 1998	511
105–181	Bulletproof Vest Partnership Grant Act of 1998	June 16, 1998	512
105–182	To extend the legislative authority for the Board of Regents of Gunston Hall to establish a memorial to honor George Mason.	June 19, 1998	516
105–183	Religious Liberty and Charitable Donation Protection Act of 1998	June 19, 1998	517
105–184	Telemarketing Fraud Prevention Act of 1998	June 23, 1998	520
105–185	Agricultural Research, Extension, and Education Reform Act of 1998	June 23, 1998	523
105–186	U.S. Holocaust Assets Commission Act of 1998	June 23, 1998	611
105–187	Deadbeat Parents Punishment Act of 1998	June 24, 1998	618
105–188	To permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease.	July 7, 1998	620
105–189	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	622
105–190	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	623
105–191	To extend the deadline under the Federal Power Act applicable to the construction of the AuSable Hydroelectric Project in New York, and for other purposes.	July 14, 1998	624
105–192	To extend the deadline under the Federal Power Act for the construction of the Bear Creek Hydroelectric Project in the State of Washington, and for other purposes.	July 14, 1998	625
105–193	To extend the deadline under the Federal Power Act for the construction of a hydroelectric project located in the State of Washington, and for other purposes.	July 14, 1998	626

Public Law	Title	Approved	112 Stat.
105–194	Agriculture Export Relief Act of 1998	July 14, 1998	627
105–195	To validate certain conveyances in the City of Tulare, Tulare County, California, and for other purposes.	July 16, 1998	629
105–196	National Bone Marrow Registry Reauthorization Act of 1998	July 16, 1998	631
105–197	Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998.	July 16, 1998	638
105–198	To amend the Occupational Safety and Health Act of 1970	July 16, 1998	640
105–199	National Drought Policy Act of 1998	July 16, 1998	641
105–200	Child Support Performance and Incentive Act of 1998	July 16, 1998	645
105–201	Approving the location of a Martin Luther King, Jr., Memorial in the Nation's Capital	July 16, 1998	675
105–202	To extend the legislative authority for construction of the National Peace Garden memorial, and for other purposes.	July 16, 1998	676
105–203	National Underground Railroad Network to Freedom Act of 1998	July 21, 1998	678
105–204	To require the Secretary of Energy to submit to Congress a plan to ensure that all amounts accrued on the books of the United States Enrichment Corporation for the disposition of depleted uranium hexafluoride will be used to treat and recycle depleted uranium hexafluoride.	July 21, 1998	681
105–205	To amend chapter 87 of title 5, United States Code, with respect to the order of precedence to be applied in the payment of life insurance benefits.	July 22, 1998	683
105–206	Internal Revenue Service Restructuring and Reform Act of 1998	July 22, 1998	685
105–207	National Science Foundation Authorization Act of 1998	July 29, 1998	869
105–208	To facilitate the sale of certain land in Tahoe National Forest in the State of California to Placer County, California.	July 29, 1998	879
105–209	To allow for election of the Delegate from Guam by other than separate ballot, and for other purposes.	July 29, 1998	880
105–210	To make a minor adjustment in the exterior boundary of the Devils Backbone Wilderness in the Mark Twain National Forest, Missouri, to exclude a small parcel of land containing improvements.	July 29, 1998	881
105–211	To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 3862 in the State of Iowa, and for other purposes.	July 29, 1998	882
105–212	To extend the deadline under the Federal Power Act applicable to the construction of FERC Project Number 9248 in the State of Colorado, and for other purposes.	July 29, 1998	883
105–213	To extend the time required for the construction of a hydroelectric project	July 29, 1998	884
105–214	To amend the Foreign Assistance Act of 1961 to facilitate protection of tropical forests through debt reduction with developing countries with tropical forests.	July 29, 1998	885
105–215	To present a congressional gold medal to Nelson Rolihlahla Mandela	July 29, 1998	895
105–216	Homeowners Protection Act of 1998	July 29, 1998	897
105–217	African Elephant Conservation Reauthorization Act of 1998	Aug. 5, 1998	911
105–218	To designate the United States courthouse to be constructed at the corner of Superior and Huron Roads, in Cleveland, Ohio, as the "Carl B. Stokes United States Courthouse".	Aug. 7, 1998	912
105–219	Credit Union Membership Access Act	Aug. 7, 1998	913
105–220	Workforce Investment Act of 1998	Aug. 7, 1998	936
105–221	Amy Somers Volunteers at Food Banks Act	Aug. 7, 1998	1248
105–222	To designate the auditorium located within the Sandia Technology Transfer Center in Albuquerque, New Mexico, as the "Steve Schiff Auditorium".	Aug. 7, 1998	1249
105–223	To establish the United States Capitol Police Memorial Fund on behalf of the families of Detective John Michael Gibson and Private First Class Jacob Joseph Chestnut of the United States Capitol Police.	Aug. 7, 1998	1250
105–224	To provide for the conveyance of small parcels of land in the Carson National Forest and the Santa Fe National Forest, New Mexico, to the village of El Rito and the town of Jemez Springs, New Mexico.	Aug. 12, 1998	1252
105–225	To revise, codify, and enact without substantive change certain general and permanent laws, related to patriotic and national observances, ceremonies, and organizations, as title 36, United States Code, "Patriotic and National Observances, Ceremonies, and Organizations".	Aug. 12, 1998	1253
105–226	John F. Kennedy Center for the Performing Arts Authorization Act of 1998	Aug. 12, 1998	1513
105–227	To amend the District of Columbia Convention Center and Sports Arena Authorization Act of 1995 to revise the revenues and activities covered under such Act, and for other purposes.	Aug. 12, 1998	1515
105–228	Emergency Farm Financial Relief Act	Aug. 12, 1998	1516
105–229	To ensure maintenance of a herd of wild horses in Cape Lookout National Seashore	Aug. 13, 1998	1517
105–230	Biomaterials Access Assurance Act of 1998	Aug. 13, 1998	1519
105–231	To grant a Federal charter to the American GI Forum of the United States	Aug. 13, 1998	1530
105–232	To designate the Federal building and United States courthouse located at 85 Marconi Boulevard in Columbus, Ohio, as the "Joseph P. Kinneary United States Courthouse".	Aug. 13, 1998	1534
105–233	To amend chapter 45 of title 28, United States Code, to authorize the Administrative Assistant to the Chief Justice to accept voluntary services, and for other purposes.	Aug. 13, 1998	1535
105–234	Amending the Fastener Quality Act to exempt from its coverage certain fasteners approved by the Federal Aviation Administration for use in aircraft.	Aug. 14, 1998	1536
105–235	Finding the Government of Iraq in unacceptable and material breach of its international obligations.	Aug. 14, 1998	1538
105–236	Texas Low-Level Radioactive Waste Disposal Compact Consent Act	Sept. 20, 1998	1542
105–237	Military Construction Appropriations Act, 1999	Sept. 20, 1998	1553
105–238	To transfer administrative jurisdiction over part of the Lake Chelan National Recreation Area from the Secretary of the Interior to the Secretary of Agriculture for inclusion in the Wenatchee National Forest.	Sept. 23, 1998	1562
105–239	Marion National Fish Hatchery and Claude Harris National Aquacultural Research Center Conveyance Act.	Sept. 23, 1998	1564
105–240	Making continuing appropriations for the fiscal year 1999, and for other purposes	Sept. 25, 1998	1566
105–241	Postal Employees Safety Enhancement Act	Sept. 28, 1998	1572
105–242	National Wildlife Refuge System Volunteer and Community Partnership Enhancement Act of 1998.	Oct. 5, 1998	1574
105–243	Sand Creek Massacre National Historic Site Study Act of 1998	Oct. 6, 1998	1579
105–244	Higher Education Amendments of 1998	Oct. 7, 1998	1581

Public Law	Title	Approved	112 Stat.
105–245	Energy and Water Development Appropriations Act, 1999	Oct. 7, 1998	1838
105–246	Nazi War Crimes Disclosure Act	Oct. 8, 1998	1859
105–247	To correct a provision relating to termination of benefits for convicted persons	Oct. 9, 1998	1863
105–248	Mammography Quality Standards Reauthorization Act of 1998	Oct. 9, 1998	1864
105–249	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 9, 1998	1868
105–250	To designate the United States courthouse located at 141 Church Street in New Haven, Connecticut, as the ''Richard C. Lee United States Courthouse''.	Oct. 9, 1998	1869
105–251	To provide for the improvement of interstate criminal justice identification, information, communications, and forensics.	Oct. 9, 1998	1870
105–252	To extend a quarterly financial report program administered by the Secretary of Commerce	Oct. 9, 1998	1886
105–253	Waiving certain enrollment requirements for the remainder of the One Hundred Fifth Congress with respect to any bill or joint resolution making general or continuing appropriations for fiscal year 1999.	Oct. 12, 1998	1887
105–254	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 12, 1998	1888
105–255	Commission on the Advancement of Women and Minorities in Science, Engineering, and Technology Development Act.	Oct. 14, 1998	1889
105–256	To make certain technical corrections in laws relating to Native Americans, and for other purposes.	Oct. 14, 1998	1896
105–257	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 14, 1998	1901
105–258	Ocean Shipping Reform Act of 1998	Oct. 14, 1998	1902
105–259	To extend the date by which an automated entry-exit control system must be developed	Oct. 15, 1998	1918
105–260	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 16, 1998	1919
105–261	Strom Thurmond National Defense Authorization Act for Fiscal Year 1999	Oct. 17, 1998	1920
105–262	Department of Defense Appropriations Act, 1999	Oct. 17, 1998	2279
105–263	Southern Nevada Public Land Management Act of 1998	Oct. 19, 1998	2343
105–264	Travel and Transportation Reform Act of 1998	Oct. 19, 1998	2350
105–265	Great Lakes Fish and Wildlife Restoration Act of 1998	Oct. 19, 1998	2358
105–266	Federal Employees Health Care Protection Act of 1998	Oct. 19, 1998	2363
105–267	Gallatin Land Consolidation Act of 1998	Oct. 19, 1998	2371
105–268	Library of Congress Bicentennial Commemorative Coin Act of 1998	Oct. 19, 1998	2378
105–269	Migratory Bird Hunting and Conservation Stamp Promotion Act	Oct. 19, 1998	2381
105–270	Federal Activities Inventory Reform Act of 1998	Oct. 19, 1998	2382
105–271	Year 2000 Information and Readiness Disclosure Act	Oct. 19, 1998	2386
105–272	Intelligence Authorization Act for Fiscal Year 1999	Oct. 20, 1998	2396
105–273	Making further continuing appropriations for the fiscal year 1999, and for other purposes	Oct. 20, 1998	2418
105–274	District of Columbia Courts and Justice Technical Corrections Act of 1998	Oct. 21, 1998	2419
105–275	Legislative Branch Appropriations Act, 1999	Oct. 21, 1998	2430
105–276	Making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 1999, and for other purposes.	Oct. 21, 1998	2461
105–277	Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999	Oct. 21, 1998	2681
105–278	Charter School Expansion Act of 1998	Oct. 22, 1998	2682
105–279	Mount St. Helens National Volcanic Monument Completion Act	Oct. 23, 1998	2690
105–280	To provide for a land exchange involving the Cape Cod National Seashore and to extend the authority for the Cape Cod National Seashore Advisory Commission.	Oct. 26, 1998	2694
105–281	Granite Watershed Enhancement and Protection Act of 1998	Oct. 26, 1998	2695
105–282	To authorize the Secretary of Agriculture to convey the administrative site for the Rogue River National Forest and use the proceeds for the construction or improvement of offices and support buildings for the Rogue River National Forest and the Bureau of Land Management.	Oct. 26, 1998	2698
105–283	To extend the deadline under the Federal Power Act applicable to the construction of a hydroelectric project in the State of Arkansas.	Oct. 26, 1998	2700
105–284	To authorize the Government of India to establish a memorial to honor Mahatma Gandhi in the District of Columbia.	Oct. 26, 1998	2701
105–285	Community Opportunities, Accountability, and Training and Educational Services Act of 1998	Oct. 27, 1998	2702
105–286	Border Smog Reduction Act of 1998	Oct. 27, 1998	2773
105–287	Armored Car Reciprocity Amendments of 1998	Oct. 27, 1998	2776
105–288	Miles Land Exchange Act of 1998	Oct. 27, 1998	2778
105–289	Plant Patent Amendments Act of 1998	Oct. 27, 1998	2780
105–290	To authorize the Secretary of the Interior to provide assistance to the National Historic Trails Interpretive Center in Casper, Wyoming.	Oct. 27, 1998	2782
105–291	Guam Organic Act Amendments of 1998	Oct. 27, 1998	2785
105–292	International Religious Freedom Act of 1998	Oct. 27, 1998	2787
105–293	Irrigation Project Contract Extension Act of 1998	Oct. 27, 1998	2816
105–294	Advisory Council on California Indian Policy Extension Act of 1998	Oct. 27, 1998	2818
105–295	To authorize the construction of temperature control devices at Folsom Dam in California	Oct. 27, 1998	2820
105–296	To amend the Idaho Admission Act regarding the sale or lease of school land	Oct. 27, 1998	2822
105–297	Curt Flood Act of 1998	Oct. 27, 1998	2824
105–298	To amend the provisions of title 17, United States Code, with respect to the duration of copyright, and for other purposes.	Oct. 27, 1998	2827
105–299	To designate a Federal building located in Florence, Alabama, as the ''Justice John McKinley Federal Building''.	Oct. 27, 1998	2835
105–300	To provide that a person closely related to a judge of a court exercising judicial power under article III of the United States Constitution (other than the Supreme Court) may not be appointed as a judge of the same court, and for other purposes.	Oct. 27, 1998	2836
105–301	Crime Victims With Disabilities Awareness Act	Oct. 27, 1998	2838
105–302	To amend part Q of the Omnibus Crime Control and Safe Streets Act of 1968 to encourage the use of school resource officers.	Oct. 27, 1998	2841
105–303	Commercial Space Act of 1998	Oct. 28, 1998	2843
105–304	Digital Millennium Copyright Act	Oct. 28, 1998	2860
105–305	Next Generation Internet Research Act of 1998	Oct. 28, 1998	2919
105–306	Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998	Oct. 28, 1998	2926
105–307	Dante Fascell Biscayne National Park Visitor Center Designation Act	Oct. 29, 1998	2931

Public Law	Title	Approved	112 Stat.
105–308	To remove the restriction on the distribution of certain revenues from the Mineral Springs parcel to certain members of the Agua Caliente Band of Cahuilla Indians.	Oct. 30, 1998	2932
105–309	Technology Administration Act of 1998	Oct. 30, 1998	2935
105–310	Money Laundering and Financial Crimes Strategy Act of 1998	Oct. 30, 1998	2941
105–311	Federal Employees Life Insurance Improvement Act	Oct. 30, 1998	2950
105–312	To clarify restrictions under the Migratory Bird Treaty Act on baiting and to facilitate acquisition of migratory bird habitat, and for other purposes.	Oct. 30, 1998	2956
105–313	Miccosukee Reserved Area Act	Oct. 30, 1998	2964
105–314	Protection of Children From Sexual Predators Act of 1998	Oct. 30, 1998	2974
105–315	Alternative Dispute Resolution Act of 1998	Oct. 30, 1998	2993
105–316	Canadian River Project Prepayment Act	Oct. 30, 1998	2999
105–317	Glacier Bay National Park Boundary Adjustment Act of 1998	Oct. 30, 1998	3002
105–318	Identity Theft and Assumption Deterrence Act of 1998	Oct. 30, 1998	3007
105–319	Irish Peace Process Cultural and Training Program Act of 1998	Oct. 30, 1998	3013
105–320	Torture Victims Relief Act of 1998	Oct. 30, 1998	3016
105–321	Oregon Public Lands Transfer and Protection Act of 1998	Oct. 30, 1998	3020
105–322	To authorize the Secretary of the Interior to provide financial assistance to the State of Maryland for a pilot program to develop measures to eradicate or control nutria and restore marshland damaged by nutria.	Oct. 30, 1998	3027
105–323	To amend the State Department Basic Authorities Act of 1956 to provide rewards for information leading to the arrest or conviction of any individual for the commission of an act, or conspiracy to act, of international terrorism, narcotics related offenses, or for serious violations of international humanitarian law relating to the Former Yugoslavia, and for other purposes.	Oct. 30, 1998	3029
105–324	Antimicrobial Regulation Technical Corrections Act of 1998	Oct. 30, 1998	3035
105–325	National Cave and Karst Research Institute Act of 1998	Oct. 30, 1998	3038
105–326	Dutch John Federal Property Disposition and Assistance Act of 1998	Oct. 30, 1998	3040
105–327	To amend the Land and Water Conservation Fund Act of 1965 to allow national park units that cannot charge an entrance or admission fee to retain other fees and charges.	Oct. 30, 1998	3055
105–328	Fish and Wildlife Revenue Enhancement Act of 1998	Oct. 30, 1998	3057
105–329	Arches National Park Expansion Act of 1998	Oct. 30, 1998	3060
105–330	Trademark Law Treaty Implementation Act	Oct. 30, 1998	3064
105–331	Thomas Alva Edison Commemorative Coin Act	Oct. 31, 1998	3073
105–332	Carl D. Perkins Vocational and Applied Technology Education Amendments of 1998	Oct. 31, 1998	3076
105–333	ANCSA Land Bank Protection Act of 1998	Oct. 31, 1998	3129
105–334	Drive for Teen Employment Act	Oct. 31, 1998	3137
105–335	Utah Schools and Lands Exchange Act of 1998	Oct. 31, 1998	3139
105–336	William F. Goodling Child Nutrition Reauthorization Act of 1998	Oct. 31, 1998	3143
105–337	Haskell Indian Nations University and Southwestern Indian Polytechnic Institute Administrative Systems Act of 1998.	Oct. 31, 1998	3171
105–338	Iraq Liberation Act of 1998	Oct. 31, 1998	3178
105–339	Veterans Employment Opportunities Act of 1998	Oct. 31, 1998	3182
105–340	Women's Health Research and Prevention Amendments of 1998	Oct. 31, 1998	3191
105–341	Women's Progress Commemoration Act	Oct. 31, 1998	3196
105–342	Adams National Historical Park Act of 1998	Nov. 2, 1998	3200
105–343	To amend the Act which established the Frederick Law Olmsted National Historic Site, in the Commonwealth of Massachusetts, by modifying the boundary, and for other purposes.	Nov. 2, 1998	3203
105–344	Prohibiting the conveyance of Woodland Lake Park tract in Apache-Sitgreaves National Forest in the State of Arizona unless the conveyance is made to the town of Pinetop-Lakeside or is authorized by Act of Congress.	Nov. 2, 1998	3204
105–345	To amend the Omnibus Parks and Public Lands Management Act of 1996 to extend the legislative authority for the Black Patriots Foundation to establish a commemorative work.	Nov. 2, 1998	3205
105–346	To direct the Secretary of the Interior to convey title to the Tunnison Lab Hagerman Field Station in Gooding County, Idaho, to the University of Idaho.	Nov. 2, 1998	3206
105–347	Consumer Reporting Employment Clarification Act of 1998	Nov. 2, 1998	3208
105–348	Granting the consent of Congress to the Potomac Highlands Airport Authority Compact entered into between the States of Maryland and West Virginia.	Nov. 2, 1998	3212
105–349	Recognizing the accomplishments of Inspectors General since their creation in 1978 in preventing and detecting waste, fraud, abuse, and mismanagement, and in promoting economy, efficiency, and effectiveness in the Federal Government.	Nov. 2, 1998	3216
105–350	Appointing the day for the convening of the first session of the One Hundred Sixth Congress	Nov. 3, 1998	3218
105–351	To authorize the Secretary of the Interior to convey certain facilities of the Minidoka project to the Burley Irrigation District, and for other purposes.	Nov. 3, 1998	3219
105–352	Fall River Water Users District Rural Water System Act of 1998	Nov. 3, 1998	3222
105–353	Securities Litigation Uniform Standards Act of 1998	Nov. 3, 1998	3227
105–354	To codify without substantive change laws related to Patriotic and National Observances, Ceremonies, and Organizations and to improve the United States Code.	Nov. 3, 1998	3238
105–355	To authorize the Automobile National Heritage Area in the State of Michigan, and for other purposes.	Nov. 6, 1998	3247
105–356	To establish the Little Rock Central High School National Historic Site in the State of Arkansas, and for other purposes.	Nov. 6, 1998	3268
105–357	Controlled Substances Trafficking Prohibition Act	Nov. 10, 1998	3271
105–358	United States Patent and Trademark Office Reauthorization Act, Fiscal Year 1999	Nov. 10, 1998	3272
105–359	To require the Secretary of Agriculture and the Secretary of the Interior to conduct a study to improve the access for persons with disabilities to outdoor recreational opportunities made available to the public.	Nov. 10, 1998	3275
105–360	To extend into fiscal year 1999 the visa processing period for diversity applicants whose visa processing was suspended during fiscal year 1998 due to embassy bombings.	Nov. 10, 1998	3276
105–361	Native American Programs Act Amendments of 1998	Nov. 10, 1998	3278
105–362	Federal Reports Elimination Act of 1998	Nov. 10, 1998	3280

Public Law	Title	Approved	112 Stat.
105–363	To amend the Weir Farm National Historic Site Establishment Act of 1990 to authorize the acquisition of additional acreage for the historic site to permit the development of visitor and administrative facilities and to authorize the appropriation of additional amounts for the acquisition of real and personal property, and for other purposes.	Nov. 10, 1998	3296
105–364	To provide for the acquisition of lands formerly occupied by the Franklin D. Roosevelt family at Hyde Park, New York, and for other purposes.	Nov. 10, 1998	3300
105–365	Grant-Kohrs Ranch National Historic Site Boundary Adjustment Act of 1998	Nov. 10, 1998	3301
105–366	International Anti-Bribery and Fair Competition Act of 1998	Nov. 10, 1998	3302
105–367	To protect the sanctity of contracts and leases entered into by surface patent holders with respect to coalbed methane gas.	Nov. 10, 1998	3313
105–368	Veterans Programs Enhancement Act of 1998	Nov. 11, 1998	3315
105–369	Ricky Ray Hemophilia Relief Fund Act of 1998	Nov. 12, 1998	3368
105–370	Correction Officers Health and Safety Act of 1998	Nov. 12, 1998	3374
105–371	To authorize and request the President to award the congressional Medal of Honor posthumously to Theodore Roosevelt for his gallant and heroic actions in the attack on San Juan Heights, Cuba, during the Spanish-American War.	Nov. 12, 1998	3376
105–372	Salton Sea Reclamation Act of 1998	Nov. 12, 1998	3377
105–373	To make available to the Ukrainian Museum and Archives the USIA television program ''Window on America''.	Nov. 12, 1998	3382
105–374	To amend title 28, United States Code, with respect to the enforcement of child custody and visitation orders.	Nov. 12, 1998	3383
105–375	To amend the State Department Basic Authorities Act of 1956 to require the Secretary of State to submit an annual report to Congress concerning diplomatic immunity.	Nov. 12, 1998	3385
105–376	Bandelier National Monument Administrative Improvement and Watershed Protection Act of 1998.	Nov. 12, 1998	3388
105–377	Granting the consent and approval of Congress to an interstate forest fire protection compact	Nov. 12, 1998	3391
105–378	To establish the Lower East Side Tenement National Historic Site, and for other purposes	Nov. 12, 1998	3395
105–379	To amend the Food Stamp Act of 1977 to require food stamp State agencies to take certain actions to ensure that food stamp coupons are not issued for deceased individuals, to require the Secretary of Agriculture to conduct a study of options for the design, development, implementation, and operation of a national database to track participation in Federal means-tested public assistance programs, and for other purposes.	Nov. 12, 1998	3399
105–380	Hawaii Volcanoes National Park Adjustment Act of 1998	Nov. 12, 1998	3401
105–381	Granting the consent of Congress to the Pacific Northwest Emergency Management Arrangement.	Nov. 12, 1998	3402
105–382	Department of State Special Agents Retirement Act of 1998	Nov. 13, 1998	3406
105–383	Coast Guard Authorization Act of 1998	Nov. 13, 1998	3411
105–384	To approve a governing international fishery agreement between the United States and the Republic of Poland, and for other purposes.	Nov. 13, 1998	3451
105–385	Africa: Seeds of Hope Act of 1998	Nov. 13, 1998	3460
105–386	To throttle criminal use of guns	Nov. 13, 1998	3469
105–387	Mississippi Sioux Tribes Judgment Fund Distribution Act of 1998	Nov. 13, 1998	3471
105–388	Energy Conservation Reauthorization Act of 1998	Nov. 13, 1998	3477
105–389	Centennial of Flight Commemoration Act	Nov. 13, 1998	3486
105–390	Police, Fire, and Emergency Officers Educational Assistance Act of 1998	Nov. 13, 1998	3495
105–391	National Parks Omnibus Management Act of 1998	Nov. 13, 1998	3497
105–392	Health Professions Education Partnerships Act of 1998	Nov. 13, 1998	3524
105–393	Economic Development Administration and Appalachian Regional Development Reform Act of 1998.	Nov. 13, 1998	3596
105–394	Assistive Technology Act of 1998	Nov. 13, 1998	3627



Monday
November 30, 1998

Part III

Environmental Protection Agency

40 CFR Part 260, et al.

Hazardous Remediation Waste Management Requirements (HWIR-Media); Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 268, 270 and 271

[FRL–6186–6]

RIN 2050–AE22

Hazardous Remediation Waste Management Requirements (HWIR-media)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: As part of President Clinton's March 1994 environmental regulatory reform initiative, the United States Environmental Protection Agency (EPA) is issuing new requirements for Resource Conservation and Recovery Act (RCRA) hazardous remediation wastes treated, stored or disposed of during cleanup actions. These new requirements make five major changes: First, they make permits for treating, storing and disposing of remediation wastes faster and easier to obtain; second, they provide that obtaining these permits will not subject the owner and/or operator to facility-wide corrective action; third, they create a new kind of unit called a ''staging pile'' that allows more flexibility in storing remediation waste during cleanup; fourth, they exclude dredged materials from RCRA Subtitle C if they are managed under an appropriate permit under the Marine Protection, Research and Sanctuaries Act or the Clean Water Act; and fifth, they make it faster and easier for States to receive authorization when they update their RCRA programs to incorporate revisions to the Federal RCRA regulations.

DATES: These final regulations are effective on June 1, 1999.

ADDRESSES: Supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–98-MHWF-FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory 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 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

For more detailed information on specific aspects of this rulemaking, contact Michael Fitzpatrick, Office of Solid Waste 5303W, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, (703) 308–8411, fitzpatrick.mike@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The index and supporting materials are available on the Internet. Follow these instructions to access the information electronically:

WWW: http://www.epa.gov/epaoswer/hazwaste/id/hwirmdia.htm

Outline

The information presented in this preamble is organized as follows:

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1. Response-oriented Programs Have Different Objectives and Incentives Than Prevention-oriented Programs
2. LDRs, MTRs, and Permitting Raise Problems When Applied to Remediation Wastes
B. How has EPA Tried to Solve These Problems in the Past?
C. How did the Proposed Rule Attempt to Solve These Problems?
1. The ''Bright Line'' Approach for Contaminated Media
2. Other Options Within the ''Bright Line'' Approach
3. The ''Unitary'' Approach—An Alternative to the ''Bright Line'
D. What General Comments did EPA Receive About the Two Major Proposed Options?
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2. §§ 264.552 and 264.553
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2. EPA has Created Different Requirements for Remediation Waste Management Sites than for Facilities Managing ''As-generated'' Hazardous Wastes
3. Differences Between the Proposed Definition of Media Remediation Site and the Final Definition of Remediation Waste Management Site
4. Remediation Waste Management Sites are Not Subject to Facility-wide Corrective Action
5. Remediation Waste Management Sites are Excluded From Only the Second Part of the Definition of Facility
6. Facility
D. Staging Pile—A New Kind of Unit
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2. Differences Between the Proposed Definition of Remediation Pile and the Final Definition of Staging Pile
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Applying for a RAP

E. How do I Apply for a RAP? (§ 270.95)
F. Who Must Obtain a RAP? (§ 270.100)
G. Who Must Sign an Application for a RAP? (§ 270.105)
H. What Must I Include in my Application for a RAP? (§ 270.110)
1. Description of the Specific Content Requirements
2. Comments on the Contents of RAPs
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I. Overview Information

A. Why do This Rule and Preamble Read so Differently From Other Regulations?

Today's regulatory language and accompanying preamble are written in a "readable regulations" format. The authors tried to use active rather than passive voice, plain language, a question-and-answer format, the pronouns "we" for EPA and "you" for the owner/operator (in the regulatory text), and other techniques to make it easier for readers to find and understand the information in today's rule and preamble.

This new format is part of the Agency's ongoing efforts at regulatory reinvention, and may be unfamiliar to readers as it looks very different from the existing regulatory text of the Parts affected by today's rule. However, the Agency believes that this new format will increase readers' abilities to understand the regulations, which should then increase compliance, make enforcement easier, and foster better relationships between EPA and the regulated community.

All of the requirements found in today's final regulations, including those set forth in table format, constitute binding, enforceable legal requirements. The plain language format used in today's final regulations may appear different from other rules, but it establishes binding, enforceable legal requirements just as those in the existing regulations.

B. What Law Authorizes This Rule?

These regulations are finalized under the authority of sections 2002(a), 3001, 3004, 3005, 3006, 3007 and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6912(a), 6921, 6924, 6925, 6926, 6927 and 6974.

II. Background Information

A. What Problems Does Today's Rule Address?

Currently, hazardous wastes managed during cleanup are generally subject to the same RCRA Subtitle C requirements as newly generated hazardous wastes. Often those Subtitle C requirements are not appropriate for the cleanup scenario, as described below.

1. Response-oriented Programs Have Different Objectives and Incentives Than Prevention-oriented Programs

Since 1980, EPA has developed a comprehensive regulatory framework under Subtitle C of RCRA for identifying, generating, transporting, treating, storing and disposing of hazardous wastes. The RCRA program is generally considered prevention-rather than response-oriented. The regulations center around two broad objectives: to *prevent* releases of hazardous wastes and constituents through a comprehensive and conservative set of management requirements (commonly referred to as "cradle-to-grave management"); and to *minimize* the generation and *maximize* the legitimate reuse and recycling of hazardous wastes. However, in the remediation programs, EPA wants to develop a regulatory regime that encourages people to cleanup contaminated areas thereby generating potentially large volumes of hazardous waste.

The RCRA regulations constitute minimum national standards for managing hazardous wastes. With limited exceptions, they apply equally to all hazardous wastes, regardless of where or how generated, and to all hazardous waste management facilities, regardless of how much government oversight any given facility receives. To ensure an adequate level of protection nationally, the RCRA regulations have been conservatively designed to ensure proper management of hazardous wastes over a range of waste types, environmental conditions, management scenarios, and operational contingencies. This causes remediation activities to be subject to conservative, and often inappropriate requirements. For example, all waste piles must have a leachate collection and removal system under § 264.251(a)(2). This is appropriate when highly concentrated wastes will be stored in a pile for an extended time, but may not be necessary for less-concentrated wastes, or shorter-term activities, or cleanup actions when the level of oversight is high. However, to account for any activities that may take place nationally, EPA wrote the regulations conservatively to require all waste piles to comply with these requirements, even when they will contain less-concentrated waste for a short time. Nationally applicable requirements must be written in this manner to provide protective requirements for the highest risk activities that the regulations allow.

As opposed to requirements designed for on-going waste management, remediation activities often involve less-concentrated wastes, one-time activities, and shorter-term activities. Remediation activities are also conducted under close EPA or State oversight. However, the current regulations do not allow EPA or the State to modify the requirements for piles, or many other Subtitle C requirements, to make them more appropriate for the specific circumstances of the remediation taking place.

In administering current RCRA regulations for hazardous waste generated during cleanup, EPA and States have recognized fundamental differences in both incentives and objectives for prevention- and response-oriented programs. In prevention-oriented programs, the regulations require taking appropriate precautions against causing contamination before an activity takes place, such as the regulations that require liners and leachate collection systems. Also, because the regulations provide an incentive to minimize waste production, from the beginning, the activity is planned and managed to carefully control the appropriate factors such as amount of waste produced, concentrations, and handling practices to prevent unacceptable situations such as releases. However, in administering remedial programs such as Superfund and the RCRA Corrective Action program, EPA and the States already face an unacceptable situation (contaminated sites) that must be remedied. Response-oriented programs must address already existing problems. Response-oriented programs cannot pre-determine the location of the contamination, but must respond where contamination has already occurred, which may be close to sensitive ecosystems or populated areas. Response-oriented programs cannot control the volumes or concentrations of remediation wastes, but must manage what wastes have already been released into the environment in varying volumes, concentrations and matrices. Often the site-specific situations facing response-oriented programs make waste management difficult, such as complex matrices and combinations of constituents of concern, or concerns over on-site treatment or disposal units to manage the wastes that must be cleaned up.

In a prevention-oriented system, if the community objected to building new on-site units, the facility could decide not to engage in business practices that would generate the waste that would need to be managed. In the response-oriented situation, however, the facility (or the regulatory agency) must deal with existing contamination, and must find an acceptable response.

Also, remedial actions generally receive intensive government oversight, and remedial decisions are made by a State or Federal Agency only after they thoroughly investigate site-specific

conditions. In contrast, prevention-oriented hazardous waste regulations are generally implemented independently by facility owner/operators through complying with national regulatory requirements.

2. LDRs, MTRs, and Permitting Raise Problems When Applied to Remediation Wastes

In the HWIR-media proposed rule, EPA identified the application of three RCRA requirements to remediation wastes as the biggest problems to address; Land Disposal Restrictions (LDRs), Minimum Technological Requirements (MTRs), and permitting.

The LDRs (which appear in 40 CFR part 268) generally prohibit land disposal (or ''placement'' in land-based units) of hazardous wastes until the wastes have met the applicable treatment standards. Often this placement is appropriate and desirable when managing remediation wastes to excavate them from their current locations, and temporarily store the wastes before on-site treatment, or to excavate the wastes and accumulate enough volume to ship off-site cost effectively. By not allowing temporary storage and accumulation in land-based units, the LDRs can be a strong disincentive to excavating and managing remediation waste. The staging pile provisions of today's final rule address this issue by allowing temporary storage and accumulation of remediation wastes in a staging pile without being subject to LDR.

Another example of the problems with LDRs in the cleanup scenario is that contaminated media are often physically quite different from as-generated process wastes. Contaminated soils often contain complex mixtures of multiple contaminants and are highly variable in their composition, handling, and treatability characteristics. For this reason, treating contaminated soils can be particularly complex, involving one or sometimes a series of custom-designed treatment systems. It can be very difficult to treat contaminated soils to the LDR treatment levels. The parts of the HWIR-media proposal that addressed this issue have been finalized in the LDR Phase IV rule (63 FR 28556 (May 26, 1998)).

The MTR requirements were designed as preventative standards for wastes generated through industrial processes. They were not designed for the remedial context. For example, under 40 CFR Subpart F, surface impoundments, waste piles, and land treatment units or landfills must have specific detection, compliance monitoring programs, and corrective action programs for potential groundwater contamination from the unit. These are appropriate preventative requirements for units managing process wastes. However, many cleanup actions involve short-term placement of remediation wastes into a waste pile, and all of these requirements may not be necessary. The staging piles provisions of today's rule address this issue by allowing the Director to determine appropriate design criteria for the staging pile based on the site-specific circumstances such as the concentration of the wastes to be placed in the unit and the length of time the unit will operate. EPA also explained in the preamble to the CAMU rule additional reasons why LDR and MTR requirements can be counterproductive when managing remediation waste as opposed to as-generated process wastes. To read about these additional reasons, see 58 FR 8658 (8659–8661)(February 16, 1993).

Finally, another area creating roadblocks is permitting. The time-consuming process for obtaining a RCRA permit can delay cleanups, thereby delaying the environmental and public health benefits of cleaning up a contaminated site. For example, the traditional RCRA permitting process requires the facility owner/operator to submit a great deal of information on activities at the facility to EPA or the State, and the permit must include terms and conditions to protect against any improper waste management practices over the long-term active life of an operating facility. Because of the large volume of information submitted, these permits are huge documents and approval often takes several years. However, in the remedial scenario, cleanup activities are generally a one-time project; once the cleanup is completed and the remediation waste is properly treated and disposed, then the activities are completed. Also, these activities are limited to addressing the contamination at the site, and therefore are often more limited in scope than the operating practices of a facility that is engaged in on-going waste treatment, storage and disposal. To overcome the limitations discussed above from traditional RCRA permits, the new Remedial Action Plans (RAPs) requirements in today's rule streamline the process for receiving a permit for treating, storing and disposing of remediation wastes, and require the facility owner/operator to submit significantly less information than for a traditional RCRA permit. However, the information submitted for a RAP application and RAP terms and conditions must be sufficient to ensure proper waste management of the remediation wastes involved during the life of the cleanup activities.

Furthermore, a facility seeking a traditional RCRA permit to manage remediation wastes on-site must investigate and cleanup their entire facility (facility-wide corrective action). This requirement can deter potential cleanups from happening at all. For instance, facility owners and operators may wish to clean up a small portion of their facility for any number of reasons, such as to avoid future liability, to free the property for sale or other uses, or because they simply wish to restore the environmental health of their property. However, they may not be willing to take on the burden of investigating and cleaning up their entire facility, when it is only a small portion they wish to voluntarily clean up, and they may be reluctant to conduct the cleanup under the RCRA corrective action program. Therefore, to encourage cleanups, under today's final rule, facilities that need a RCRA permit only to treat, store, or dispose of remediation wastes (remediation-only facilities) are not subject to the facility-wide corrective action requirement.

B. How Has EPA Tried to Solve These Problems in the Past?

EPA has tried to solve these problems in the past through a series of regulations and policies; for example;

- The ''Area of Contamination'' (AOC) policy;
- The ''contained-in'' policy; and
- The regulations for Corrective Action Management Units (CAMUs), and temporary units.[1]

All of these regulations and policies help alleviate some of the problems facing cleanups, but none have completely solved these problems. (See the October 1997 report by the United States General Accounting Office, ''Remediation Waste Requirements Can Increase the Time and Cost of Cleanups.''[2])

The AOC policy allows important flexibility for activities done within a contiguous contaminated area. For example, hazardous remediation wastes may be consolidated or treated *in situ*

[1] 61 FR 18780, 18782 (April 29, 1996), memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers, (March 13, 1996); 55 FR 8666, 8758–8760 (March 8, 1990); and 58 FR 8658 (February 16, 1993).

[2] Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups, U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

within an AOC without triggering the LDRs or MTRs. However, the AOC policy does not address the permitting issues today's rule is addressing, nor does it address LDR and MTR for wastes removed from an AOC, or treated *ex situ.*

The contained-in policy defines when some contaminated media can be considered to no longer ''contain'' hazardous waste. When EPA or an authorized State determines that media do not ''contain'' hazardous waste, RCRA does not generally pose a barrier to remediation because permitting requirements, LDRs (generally), and MTRs do not apply to media that do not contain hazardous waste. However, the contained-in policy is limited to media only, and does not provide any flexibility for other remediation wastes, nor does it provide needed flexibility for highly concentrated media.

The CAMU and temporary unit rules provide much-needed flexibility for unit-specific standards at cleanup sites. CAMUs and temporary units are not subject to LDRs or MTRs. The requirements for these units are set on a site-specific basis, depending on site-specific factors such as the types of wastes being managed (for example, concentrations, volumes, other characteristics) and the period of time the unit will operate. However, CAMUs and temporary units do not address any of the permitting issues that cause problems for remediation wastes.

Because each of these regulations or policies is limited in solving the problems inherent to managing hazardous remediation waste under the RCRA Subtitle C system, EPA felt it was necessary to propose additional solutions.

C. How Did the Proposed Rule Attempt to Solve These Problems?

EPA recognized a continuing need for further reforms than the regulations and policies discussed above had provided, and yet knew that these reforms would be controversial. In 1993, EPA convened a committee under the Federal Advisory Committee Act (FACA) to provide recommendations to EPA on how to make these reforms. The FACA Committee included representatives from environmental groups, regulated industry, the waste management industry, States, and EPA. The FACA Committee met numerous times between January 1993 and September 1994. EPA based the options in the April 29, 1996 HWIR-media proposal on the recommendations and discussions of the FACA Committee.

EPA presented several options for reforms in the HWIR-media proposal. EPA presented two comprehensive options (the Bright Line and the Unitary Approach), and requested comment on sub-options and issues within those comprehensive options.

1. The ''Bright Line'' Approach for Contaminated Media

The first comprehensive option, which formed the basis for the proposed rule, was the ''Bright Line'' option. The Bright Line option would have been limited to ''contaminated media'' only. Contaminated media was defined to include soils, groundwater, and sediments, but not debris, nor other remediation wastes such as sludges. The Bright Line option got its name from a ''line'' dividing more highly contaminated media from less contaminated media. That Bright Line was a set of constituent-specific concentrations based on the risks from those constituents. Media found to contain constituents above these concentrations would have remained subject to Subtitle C management requirements (however, the proposal requested comment on some potential modifications to those requirements), and media containing constituents below the concentrations would have been eligible for a determination that it no longer ''contained'' hazardous waste, thereby generally removing it from Subtitle C jurisdiction.

The determinations of which media were and were not subject to Subtitle C requirements were to be documented in a Remediation Management Plan (RMP) approved by EPA or an authorized State. The RMP would have been an enforceable document that would also have included any requirements for managing media below the Bright Line, and would have served as a RCRA Subtitle C permit for treatment, storage or disposal of media above the Bright Line. The RMP process would have been more streamlined than that required for RCRA permits obtained under the current regulations, and also, at remediation-only facilities, would not have required 3004(u) and (v) facility-wide corrective action, as is required for all RCRA permits before today's rule.

2. Other Options Within the ''Bright Line'' Approach

Other requirements that EPA proposed to modify were LDR treatment standards for soils that remained subject to Subtitle C requirements, standards applicable to on-site storage and/or treatment of cleanup wastes during the life of the cleanup, and State authorization requirements. New treatment standards would have applied to soils that remained subject to LDRs under the Bright Line approach. EPA also proposed a new unit called a ''remediation pile.'' Remediation piles could have been used temporarily without triggering LDRs and MTRs, for the on-site treatment or storage of remediation wastes subject to Subtitle C. States picking up any revisions to their RCRA programs (the proposal was not limited to the revisions to remediation waste management programs) could have followed new streamlined authorization procedures. Also, EPA proposed to withdraw the CAMU regulations if the final HWIR-media rule would sufficiently replace the flexibility currently available under the CAMU rule.

Finally, EPA proposed excluding dredged materials from Subtitle C if they were managed under permits issued under the Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA).

3. The ''Unitary'' Approach—An Alternative to the ''Bright Line''

As an alternative to the Bright Line approach, EPA requested comment on the ''Unitary Approach.'' The Unitary Approach excluded all remediation wastes (irrespective of the concentration of hazardous constituents in the waste and including non-media remediation wastes) managed under a Remedial Action Plan (RAP) (which was very similar to a RMP) from Subtitle C management requirements and made them subject to site-specific requirements in the RAP.

Again, EPA requested comment on the two main comprehensive options, the Bright Line and the Unitary Approach, and on all the sub-issues, such as the proposed elimination of CAMUs, and the new requirements for remediation piles, LDR, RMPs and RAPs, dredged materials, and State authorization.

D. What General Comments did EPA Receive About the Two Major Proposed Options?

Some commenters supported the Bright Line option and thought it was appropriate to distinguish between highly contaminated media and media that were less contaminated, and to regulate them differently.

However, most commenters on the Bright Line option believed that the Bright Line would be too difficult to implement, and therefore should not be finalized. There were several elements of the Bright Line option that commenters were concerned about implementing. One concern was sampling to determine whether media was above or below the Bright Line.

Concentrations of contaminants in environmental media typically are not heterogeneous, and it is difficult to make assumptions about the concentrations of large areas of contamination without taking many samples.

Another concern was how to differentiate between media, debris, and other remediation wastes, such as sludges. Commenters stated that often these different types of remediation waste are all found at the same site and they will all need to be managed, and it would be unduly complicated to have to separate the different types of remediation wastes and manage them separately under separate regulatory requirements.

Also, commenters were concerned about the methodology that EPA used to determine the Bright Line levels themselves. EPA received many specific comments on the proposed Bright Line constituent specific numbers, as well as the choice of which constituents were assigned Bright Line numbers.

With regard to the Unitary Approach, many industry and State commenters supported the Unitary Approach, saying that the flexibility would greatly streamline cleanups and allow more appropriate decisions for managing remediation waste. These commenters emphasized that flexibility was needed so that States could develop cleanup programs with oversight and public participation requirements specific to the concerns, needs, and resources of individual States, and felt that the Unitary Approach most closely addressed those concerns. However, some commenters were concerned that the lack of any national requirements was too open-ended and would not guarantee protectiveness. Commenters were also concerned about the resources required for States and Regions to make site-specific determinations of the appropriate management requirements for remediation wastes at each different site.

Finally, commenters had many specific comments on the elements of these options such as RAPs and RMPs, remediation piles, LDRs, etc. Major comments and EPA's responses are summarized under those more specific sections of this preamble, and all comments are answered specifically in the ''response to comments'' document for today's rule.

E. What did EPA Decide to do After Considering Those Comments?

EPA has decided to promulgate only selected elements of the HWIR-media proposal in today's rule, rather than go forward with a more comprehensive approach as proposed. EPA plans to complement the elements finalized today by leaving the CAMU regulations in place, rather than withdrawing these regulations as proposed.

Although EPA conducted a lengthy outreach process before developing the HWIR-media proposal and made every effort to balance the concerns and interests of various stakeholder groups, public comment on the proposal makes it clear that stakeholders fundamentally disagree on many remediation waste management issues.

EPA agreed with commenters' concerns that the Bright Line approach would be too difficult to implement, and that a Bright Line that would satisfy commenters who wanted the Bright Line levels to consist of very conservative levels would not sufficiently reform the system to remove the existing barriers to efficient, protective remediation waste management. EPA has concluded that pursuing broader regulatory reform would be a time- and resource-intensive process that would most likely result in a rule that would provoke additional years of litigation and associated uncertainty. This uncertainty would be detrimental to the program and have a negative effect on ongoing and future cleanups. Based on these conclusions, the Agency has decided not to finalize either the Bright Line or the Unitary Approach, and recognizes that a purely regulatory response will not solve all of the remediation waste management issues that HWIR-media was designed to solve.

While EPA believes the elements finalized today along with the retention of the CAMU rule, will improve remediation waste management and expedite cleanups, the Agency is also convinced that additional reform is needed to expedite the cleanup program, especially to provide greater flexibility for non-media remediation wastes like remedial sludges, address certain statutory permitting provisions, and more appropriate treatment requirements for remediation wastes (for example, treatment that focuses on ''principal threats'' rather than all underlying hazardous constituents). Therefore, the Agency continues to support appropriate, targeted legislation to address application of RCRA Subtitle C land disposal restrictions, minimum technological and permitting requirements to remediation waste and will continue to participate in discussions on potential legislation. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste regulation and may take additional administrative action.

The elements finalized in today's rule are:

- Streamlined permitting for treating, storing and disposing of remediation wastes generated at cleanup sites that, among other things, eliminates the requirement for facility-wide corrective action at remediation-only facilities;
- A variation on the proposed remediation piles, called staging piles, modified in response to public comments;
- A RCRA exclusion for dredged materials managed under Clean Water Act (CWA) or Marine Protection Research and Sanctuaries Act (MPRSA) permits; and
- Streamlined procedures for State authorization.

EPA also finalized, in a separate document (63 FR 28604 (May 26, 1998)), the LDR treatment standards specific to hazardous contaminated soil that were proposed in the HWIR-media proposal. EPA is deferring action on the Treatability Sample Exclusion Rule, that EPA requested comments on expanding in the HWIR-media proposal at 61 FR 18817.

EPA will withdraw all other portions of the proposal, such as the proposal under the Bright Line option to distinguish between lower- and higher-risk contaminated media and give regulatory agencies the flexibility to exempt lower-risk contaminated media from RCRA requirements, and the portion of the proposal that proposed to withdraw the CAMU rule.

Existing areas of flexibility for managing remediation waste, such as the contained-in and AOC policies, and site-specific land disposal restrictions treatability variances, continue to be available.

III. Definitions Used in this Rule (§ 260.10)

Some terms defined in today's rule may be difficult to understand when discussed out of context of the rest of the rule; therefore, readers may wish to read the preamble sections on RAPs and staging piles before reading this section on definitions. To discuss related terms together in this preamble, discussion of the definitions is not in alphabetical order (which is how the terms appear in the rule language). The section discusses:

- First the revised definition of ''corrective action management unit'' or ''CAMU,'' then
- The definition of ''remediation waste,'' then
- ''Remediation waste management site'' and ''facility,'' then
- ''Staging pile,'' then finally,
- ''Miscellaneous unit.''

A. Corrective Action Management Unit (CAMU)—Changes to the Existing Definition, and Changes to the CAMU and Temporary Unit Regulations at §§ 264.552(a) and 264.553(a)

1. Definition of CAMU

In today's final rule, the Agency has revised the definition of CAMU, as well as the CAMU and temporary unit regulations themselves. This revision clarifies the Agency's interpretation of these provisions and accommodates EPA's new interpretation, promulgated today, that remediation-only facilities are not subject to the facility-wide corrective action requirement under RCRA section 3004(u). (See discussion under the definition of remediation waste management site below.) Specifically, the Agency has added to both the CAMU definition (§ 260.10) and §§ 264.552 and 264.553 language providing that CAMUs and temporary units are not limited to facilities subject to RCRA sections 3004(u) or 3008(h), but may also be approved at other cleanup facilities, as well.[3]

The revised definition in today's rule reads as follows:

Corrective action management unit (CAMU) means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

EPA is amending the definition of CAMU by deleting the parts of the definition that referred to corrective action authorities under § 264.101 and RCRA section 3008(h). This change will accommodate RAPs and permits for the management of remediation waste as defined in today's rule that are not subject to § 264.101 or RCRA section 3008(h). Also, the reference in this definition (as well as in the definition of remediation waste) to actions taken ''for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h)'' implied that EPA intended to restrict CAMU to these authorities. In fact, EPA did not intend to restrict the CAMU (or the temporary unit) to wastes generated solely through specific RCRA regulatory mechanisms, or to cleanup wastes generated solely at RCRA treatment, storage or disposal facilities.

For example, EPA anticipated that CAMUs or temporary units might be used as applicable or relevant and appropriate requirements (ARARs) for the remediation of many CERCLA sites, especially where CERCLA remediation involves management of RCRA hazardous wastes. EPA tied its definition of CAMUs and remediation waste to RCRA Federal authorities applicable to TSD's (that is, 40 CFR 264.101 and RCRA section 3008(h)) because the Agency developed the CAMU and temporary unit rules within that context—that is, they were developed as Federal rules to implement corrective action at facilities subject to RCRA sections 3004(u) or 3008(h). Yet, EPA also expected that the CAMU would be appropriate as ARARs at Superfund sites; at the Regional Administrator's discretion for purposes of remediation under RCRA section 7003 (even if not at a Subtitle C facility); and under State authorities analogous to section 7003 or CERCLA (which provide a waiver from otherwise applicable State RCRA requirements).[4]

The revised definition of CAMU makes it clear that the CAMU is also available under RAPs and other permits for remediation-only facilities that under the new interpretation in today's rule are not subject to 40 CFR 264.101 or RCRA section 3008(h).

Without this change, the current definitions of CAMU and remediation waste might be interpreted to preclude the use of CAMUs and temporary units at remediation-only facilities operating under RAPs. Yet these facilities are clearly among the type of facilities for which CAMUs and temporary units would be beneficial—that is, facilities at which remediation should be expedited and encouraged.

For this reason, EPA has removed the section of the CAMU definition (and also parallel provisions in the definition of remediation waste) that appeared to limit CAMUs (and temporary units) to facilities subject to § 264.101 or section 3008(h). This change should eliminate any confusion over the scope of CAMUs and remediation waste, and it is consistent with the central purpose of today's rule—expediting cleanup at sites overseen by Federal and State cleanup authorities, whether these sites are within the corrective action universe, or whether they are ''remediation-only'' or ''remediation waste management sites'' where RCRA hazardous waste is being managed.

Without this change, the Agency's new interpretation that remediation waste management sites are not subject to section 3004(u) corrective action requirements, which is intended to stimulate cleanups, would have had the unintended effect of eliminating the availability of two of the waste management options, CAMUs and temporary units, that were designed for the same purposes.

2. §§ 264.552 and 264.553

The removal of the language referencing activities performed under § 264.101 or RCRA 3008(h) from the definition of CAMU does not change the scope of CAMUs. EPA simply removed the language discussing authorities from the definition, and added it to the regulatory language for CAMUs and temporary units at §§ 264.552 and 264.553. EPA also added specific language clarifying that CAMUs and temporary units may be approved at permitted facilities that, under today's rule, are not subject to § 264.101. EPA believes these provisions are more appropriate in the regulatory text of the CAMU and temporary unit requirements instead of in the definitions because they identify the mechanisms by which CAMUs and temporary units are approved, rather than define the scope of the unit itself. By including these authorities in the text of §§ 264.552 and 264.553, EPA is clarifying that CAMUs and temporary units are intended to implement corrective action consistent with the requirements in § 264.101 and 3008(h) requirements, as well as cleanup under today's RAPs, which do not require compliance with § 264.101. The mechanisms for approval of CAMUs and temporary units will be the permit and order procedures, and the RAP procedures. Of course, Federal and State authorities with permit waiver provisions may also use CAMUs, as discussed above and in the preamble to the CAMU rule at 58 FR 8658 (p. 8679) (February 16, 1993).

EPA is also adding language to §§ 264.552 and 264.553, and has included language in the new § 264.554 created in today's rule, to specify that CAMUs, temporary units, and staging piles may only be used within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. EPA added this language because the Agency removed that limitation from the definition of remediation waste, as discussed below. EPA believes these restrictions are more appropriate in the regulatory text of the CAMU, temporary unit, and staging pile requirements instead of in the definitions.

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[3] When using the term ''remediation-only'' facilities, EPA means facilities that require RCRA permits solely for the purposes of treating, storing or disposing of remediation wastes due to cleanup at the facilities. EPA uses this term to distinguish these facilities from operating treatment, storage and disposal facilities that manage as-generated process wastes as part of ongoing facility operations.

[4] For a discussion of State permit waiver authorities, see the memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I–X, EPA (November 16, 1987), available in the docket to today's rule.

EPA is retaining the current limitation that CAMUs and temporary units may only be used within the contiguous property under the control of the owner/operator, and creating the same limitation for staging piles created under today's rule. However, EPA believes that it may be advantageous in some cases to use CAMUs, temporary units, and staging piles at off-site facilities. Today's rule provides some relief for off-site management of remediation wastes, but does not allow off-site CAMUs, temporary units, or staging piles. EPA may reconsider the need for and appropriateness of allowing off-site CAMUs, temporary units and staging piles in the future.

B. Remediation Waste—Changes to the Existing Definition

Under current regulations, the term ''remediation waste'' defines wastes that can be managed in a CAMU or temporary unit. Today's rule amends the definition for the same reason that EPA made the same change to the definition of CAMU—to remove the limitation to wastes managed under § 264.101 and RCRA § 3008(h). The new definition retains the term's current use, and makes the definition conform with the new RAPs and staging piles provisions by not limiting remediation wastes to wastes managed under certain specific corrective action authorities. Wastes managed under the provisions of today's rule will be managed during the course of a wide range of cleanups conducted under many different types of cleanup authorities.

The existing definition of remediation waste (in § 260.10) might be read as limiting the term to wastes managed under the RCRA corrective action cleanup authorities of 40 CFR 264.101 and RCRA section 3008(h). In the preamble to the proposed rule (61 FR 18836), EPA requested comment on a revised definition of remediation waste that eliminated the limitation to wastes ''managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h),'' and added that wastes from a ''media remediation site'' could be considered remediation wastes. Today's definition is based on this definition and reads as follows:

> *Remediation waste* means all solid and hazardous wastes, and all media (including groundwater, surface water, soils and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.

The Agency has made two changes to the existing § 260.10 definition of remediation waste originally promulgated for the CAMU and temporary unit rules. The first change removes references to RCRA corrective action authorities, and the second change eliminates the restriction that remediation wastes may originate only from within the facility boundary.

The first reference that was eliminated defined remediation waste as wastes ''managed for the purpose of implementing corrective action requirements under § 264.101 and RCRA section 3008(h).'' The revised definition refers to wastes ''that are managed for implementing cleanup,'' without specifying the authority under which owner/operators must address these wastes. As mentioned above, the Agency specifically suggested this change in the preamble of the proposed rule (61 FR 18836) in a discussion of the Unitary.

No comments were submitted specifically on the definition of remediation waste, although several commenters expressed their views on the general issue of what materials should be subject to the proposed rule, which is the issue addressed by the definition of ''remediation waste.'' For example, one commenter expressed support for the approach envisioned by the proposal, and finalized in today's clarification to the definition, stating that ''the HWIR-media rule should be applied to any management of hazardous contaminated media (and further, to all remediation waste . . .), regardless of whether this remediation is conducted under RCRA, CERCLA, or other State or Federal authority.''

In view of the statements made by commenters expressing support for allowing the use of different State and Federal authorities, EPA continues to believe that the purpose behind the provisions finalized today—to encourage cleanup by removing unnecessary regulatory barriers—is best served by the broad definition finalized today.[5]

The second change has removed the limitation that waste must originate from ''within the facility boundary.'' This allows remediation waste managed at off-site locations, such as those permitted under § 270.230 to continue to meet the definition of remediation waste even though they are removed from the original site.

The changes made to the definition of remediation waste parallel changes in the definition of CAMU, and changes to the CAMU and temporary units regulations at §§ 264.552 and 264.553.[6]

Commenters were concerned about the status of wastes that have migrated beyond the traditional RCRA ''facility'' boundary, and the need to include those wastes in remediation waste. Some commenters were concerned that, as proposed, owners and operators would be required to obtain a RAP for on-site activities and an RCRA permit for off-site locations where wastes had migrated. Some were concerned that they would not be able to bring wastes that had migrated off-site back to the site for management; still others were concerned that they would be forced to manage wastes on-site even if it was not the most protective option. EPA has retained the inclusion of wastes that have migrated beyond the facility boundary by removing the clause that limited from where remediation waste could originate. EPA expects this to resolve the concerns of these commenters.

Finally, it is important to stress two points. First, it should be noted that remediation waste includes only waste managed because of cleanup, and does not include wastes generated from on-going hazardous waste operations, which are commonly referred to as ''newly generated,'' ''as generated,'' or ''process'' wastes. When managed as part of a legitimate cleanup action, any (non-''as-generated'') hazardous wastes (for example, media, debris, sludges, or other wastes) are all remediation waste. Second, remediation waste includes both hazardous and non-hazardous solid wastes managed as a result of cleanup, including any wastes generated from treating remediation wastes (for example, carbon canisters and sludges generated from groundwater pump-and-treat or soil vapor extraction systems). Third, the changes made to the definition of remediation waste do not, in any way, change the scope of the CAMU and temporary unit regulations. EPA has replaced the limitation on contiguous property removed from this definition with a limitation in the CAMU and temporary unit regulations themselves at §§ 264.552 and 264.553. That same limitation also applies to staging piles created in today's rule.

[5] Many commenters on the proposal addressed the issue of the types of materials that should be eligible for the relief offered by the proposed rule—most notably, whether relief should be provided for both contaminated media and hazardous wastes that are managed during cleanup (for example, sludges that have not commingled with media). Because this issue was addressed differently under the various provisions of the proposed rule, these comments are addressed in the discussion of each specific provision finalized today.

[6] Today, EPA is also modifying §§ 264.552 and 264.553 to allow implementation of CAMUs and temporary units under permits (including RAPs) at facilities that are not subject to § 264.101 and 3008(h) as discussed in today's preamble under the definition of CAMU.

C. Remediation Waste Management Site and Facility—New Requirements for Remediation Waste Management Sites

The final definition for remediation waste management site included in § 260.10 in today's rule is:

Remediation waste management site means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under § 264.101 of this chapter, but is subject to corrective action requirements if the site is located in such a facility.

Traditionally, RCRA has focused on ''facilities'' when applying hazardous waste regulations. These are generally properties where industrial operations manage hazardous wastes that they have generated, or where commercial operations or entities conduct hazardous waste treatment, storage, and/or disposal operations. For corrective action under § 3004(u) and (v) (implemented through § 264.101) and 3008(h), a facility was defined (see § 260.10) as ''all contiguous property under the control of the owner or operator'' where hazardous wastes are managed.

In the proposal, EPA defined ''media remediation site'' as a new term that would apply to a location where certain remediation waste management activities were taking place, and might or might not include all or part of a pre-existing RCRA ''facility.'' EPA felt that it was important to differentiate between existing ''facilities'' and a new kind of site that would be eligible for the streamlined permits (Remedial Action Plans or RAPs) promulgated in today's rule, and would be exempt from § 264.101 and certain other Part 264 requirements that are not necessary or appropriate for areas used solely to manage cleanup wastes.

1. EPA Changed the Term From ''Media Remediation Site'' in the Proposal to ''Remediation Waste Management Site'' in the Final Rule

EPA has replaced the term ''media remediation site'' with the more descriptive term ''remediation waste management site.'' Commenters generally supported the concept of a media remediation site, but the term ''media remediation site'' caused confusion for some, because ''remediation site'' implies an area that is being cleaned up, not, as is meant in this case, an area where hazardous remediation wastes are being managed.

Also, the proposed rule allowed only contaminated media to be exempted from Subtitle C requirements, and the word ''media'' in the title ''media remediation site'' was meant to emphasize that the exemptions were only for contaminated media. In today's final rule, EPA is not exempting any wastes from Subtitle C, and all provisions of this final rule apply to all remediation wastes, so the term ''media'' is no longer needed in the definition of the site.

These are the reasons EPA changed the term from ''media remediation site'' to ''remediation waste management site.'' Changes to the definition of the proposed term are discussed later in this section.

2. EPA has Created Different Requirements for Remediation Waste Management Sites Than for Facilities Managing ''As-generated'' Hazardous Wastes

Throughout today's rule and the proposal, EPA has emphasized that, to stimulate cleanup, it is important to regulate remediation waste management activities differently from as-generated process waste management where appropriate. This definition of remediation waste management site allows EPA to apply requirements to remediation waste management activities that are more appropriate for the remediation scenario than the current requirements that, until today's rule, have applied to both remediation waste management and as-generated process waste management.

In today's rule, to facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA has created three new requirements for remediation waste management sites that are different from those for other facilities:

- A new form of an RCRA permit for treating, storing and disposing of hazardous remediation wastes (a RAP) that streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly (Part 270, Subpart H);
- Performance standards for remediation waste management sites that replace the detailed requirements in Part 264 Subparts B, C, and D (General Facility Standards, Preparedness and Prevention and Contingency Plans and Emergency Procedures) (§ 264.1(j)); and
- A provision excluding remediation waste management sites from RCRA § 3004(u)'s requirement for facility-wide corrective action(§§ 264.1(j) and 264.101(d)).

As noted above, EPA believes it is appropriate to regulate facilities that manage as-generated process wastes and those that manage remediation wastes differently, and the designation of a remediation waste management site defines when the new provisions unique to areas that manage remediation wastes will apply.

3. Differences Between the Proposed Definition of Media Remediation Site and the Final Definition of Remediation Waste Management Site

The definition of media remediation site in the proposal which, like today's definition of remediation waste management site, was used to define where reduced permitting requirements would apply, was:

An area contaminated with hazardous waste that is subject to cleanup under State or Federal authority, and areas in close proximity to the contaminated area at which remediation wastes are being or will be managed pursuant to State or Federal remediation authorities (such as RCRA Corrective Action or CERCLA). A media remediation site is not a facility for the purposes of implementing corrective action under 40 CFR 264.101, but may be subject to such corrective action requirements if the site is located within such a facility (as defined in 40 CFR 260.10).

In response to the limitations to ''contaminated areas'' and ''areas in close proximity,'' several commenters identified specific situations where those limitations might prevent owners and operators from conducting environmentally beneficial activities under a RAP. These comments are addressed in today's rule under new § 270.230, and the preamble discussion of that section instead of in today's definition.

EPA has removed from the proposed definition the requirement that limits media remediation sites to areas subject to cleanup under State or Federal authority, and wastes managed under State or Federal remediation authorities. EPA has always intended that today's rule would promote voluntary initiation of cleanup activities by people not already required to conduct cleanup under other authorities. EPA continues to hope that this will be a result of today's rule.

Therefore, EPA has removed this limitation to make it clear that people voluntarily initiating cleanup can have their properties designated as remediation waste management sites. These activities would still ordinarily require a RCRA permit (for example, a RAP) if owner/operators were to treat, store or dispose of hazardous remediation wastes, so that the proper requirements would be applied, and the public would have the opportunity to participate in the waste management decisions.

Finally, EPA has kept in the final rule the part of the proposed definition of

media remediation site that stated that these were not facilities for implementing facility-wide corrective action. As discussed elsewhere in this preamble, EPA believes that applying 3004(u) and (v) and 3008(h) requirements to facilities not already subject to these requirements is such a disincentive to voluntarily initiated cleanup actions that people often choose options that do not require permitting, rather than face such a responsibility.

4. Remediation Waste Management Sites Are Not Subject to Facility-wide Corrective Action

Today's rule, like the proposal, provides that a remediation waste management site is not subject to the requirements in RCRA section 3004(u) for facility-wide corrective action. EPA believes, as discussed more fully in the proposal, that requiring facility-wide corrective action for facilities that are or will be engaged in ongoing hazardous waste management outside the context of an environmentally beneficial cleanup activity may properly be seen as a quid pro quo for the costs of doing business in, and in some way profiting from, the management of hazardous wastes. In a remedial context, however, there is no profit or advantage gained by owners and operators from managing hazardous wastes; it is simply a necessary part of performing an act that is environmentally beneficial (that is, cleaning up a site). To view remediation-only sites as traditional hazardous waste facilities (which would impose additional cleanup responsibilities) can have the effect of penalizing those who wish to clean up their properties. EPA does not believe that this result is one that Congress intended. (See 61 FR 18792–93).

The large majority of commenters on this issue supported the interpretation, because it is widely recognized that the facility-wide corrective action requirement often acts as disincentive to cleanup of wastes subject to Subtitle C. Some commenters, however, expressed concern over the Agency's legal theory supporting the interpretation. This concern appears to stem from the commenters' perception that the Agency is making a purely semantic argument—that is, that by being renamed ''media remediation sites,'' these sites are no longer the ''facilities'' to which section 3004(u) applies.

The Agency understands the commenters' confusion on this point. The corrective action requirement of section 3004(u) applies to ''a treatment, storage, or disposal facility seeking a permit.'' Today EPA clarifies that the Agency's view is not that remediation-only facilities do not constitute ''facilities'' for RCRA purposes, but simply that they should not be interpreted to be the ''facilities *seeking a permit*'' to which the requirements in section 3004(u) apply. In the Agency's opinion, the reference to ''a treatment, storage, or disposal facility seeking a permit'' clearly refers to facilities that need permits because they are in the business of hazardous waste management. Remediation-only facilities, because they only obtain a permit to engage in remediation, do not fit into that category. EPA believes that it is a reasonable interpretation of section 3004(u) that sites that are or will be conducting hazardous waste management only as part of cleanup activities are not the types of facilities to which Congress intended to apply the section 3004(u) facility-wide corrective action requirements. (See 61 FR 18792–93).

In addition, in light of the disincentive to cleanup created by applying the facility-wide corrective action requirement to remediation-only facilities, to continue to apply the requirement would appear to be contrary to one of Congress' clear goals in enacting section 3004(u)—to ensure that currently unmanaged remediation wastes that pose a risk to human health and the environment are addressed.

Today's rule differs in one significant respect from the proposal: this interpretation is no longer limited to facilities that obtain RAPs, but also applies to remediation-only facilities that obtain traditional RCRA permits. Thus, any facility that meets the definition of a ''remediation waste management site'' (promulgated today), regardless of whether its hazardous waste management activities are authorized by a RAP or traditional RCRA permit, will not be subject to the facility-wide corrective action requirement. The Agency agrees with the one commenter who argued that there was no reason to limit the relief from section 3004(u) to facilities addressed under the RAP framework. After all, because the RAP standards are less stringent than existing requirements, States may choose not to adopt them as part of their authorized programs. There is no reason to prevent these States, however, from nonetheless amending their programs to reflect the section 3004(u) interpretation finalized today. Similarly, if a State not authorized for corrective action issues a RCRA permit for remediation-only sites (remediation waste management sites), Federal corrective action requirements will not attach.

Although the above discussion stresses the use of RAPs as the vehicle for permitting a remediation waste management site and for applying the benefits of RAPs, the new requirements in § 264.1(j), and the elimination of § 264.101 facility-wide corrective action through the new § 264.101(d) provision for remediation waste management sites are not limited to sites permitted under RAPs. States wishing to use the traditional RCRA permits process for activities at remediation waste management sites may do so, and the other benefits of remediation waste management sites (§ 264.1(j), and 264.101(d)) continue to apply to remediation waste management sites under permits, as well as under RAPs. The preamble discussion explaining the need and rationale for these other provisions can be found in the section of the preamble discussing those provisions.

5. Remediation Waste Management Sites Are Excluded From Only the Second Part of the Definition of Facility

This exclusion from the definition of facility is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

6. Facility

EPA is revising the definition of facility, (to make conforming changes with the definition of remediation waste management site), as follows:

Facility means ... (3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to § 264.101, but is subject to § 264.101 corrective action requirements if the site is located within such a facility.

EPA requested comment on this change to the definition of facility at § 260.10 of the proposal, and did not receive any comments opposing this change, and is therefore finalizing this amendment with only two minor changes.

First, the proposed rule language stated that ''notwithstanding (1) and (2)'' remediation waste management sites were not subject to the facility-wide corrective action requirement, but on further reflection, it has become clear that the reference to paragraph (1) was an oversight. This is because the proposed definition clearly stated that remediation waste management sites are only not ''facilities'' ''for the purposes of § 264.101.'' The facility definition in paragraph (1) is not used for those

purposes. In addition, because the facility definition in paragraph (1) is used in implementing the rest of the RCRA hazardous waste regulations, which continue to apply to activities at remediation waste management sites, paragraph (1) must remain applicable.

Second, the proposed definitional change did not include the current language that states ''but may be subject to such corrective action requirements if the site is located within such a facility.'' EPA has added this clause to make the language consistent with the definition of remediation waste management site, which was included in this language at proposal.

As the Agency stated in the preamble to the proposed rule, this language is meant to provide for the following situation: ''In some cases a media remediation site could be part of an operating (or closing) RCRA hazardous waste management facility that is already subject to the § 3004(u) and (v) corrective action requirements; in those cases, identifying an area of the facility as a media remediation site [today's remediation waste management site] would not have any effect on the corrective action requirements for that site or the rest of the facility.'' (61 FR 18793).

D. Staging Pile—A New Kind of Unit

The definition of staging pile states that ''[s]taging pile means an accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements in 40 CFR § 264.554.''

1. Differences Between the Definition of Staging Pile and the Existing Definition of Pile

This definition uses a slight alteration of the definition of ''pile,'' as defined in § 260.10 for waste piles (§ 264.250), which better fits the purposes of today's staging pile rule. The definition of pile differs from the staging pile definition in three ways; the definition of pile:

- Is limited to non-containerized waste;
- Addresses the ''accumulation of solid, nonflowing *hazardous* waste,'' rather than ''solid, nonflowing *remediation* waste;'' and
- Allows for ''treatment or storage'' rather than simply temporary storage.

First, EPA believes it may often be environmentally protective or simply more convenient to move remediation wastes in bags or other containers when placing them into a staging pile. Because bags may reduce blowing of wastes in a pile, or volatilization of hazardous constituents, EPA did not want to eliminate the option of bagging, or other protective activities, of wastes in a staging pile.

Second, because today's rule does not allow ''as-generated'' hazardous waste to be stored or treated in a staging pile, the rationale behind using the term remediation waste rather than simply hazardous waste should be clear. EPA also included the ''solid, non-flowing'' portion of the definition of pile to ensure that liquid wastes will not be placed in the staging pile. Liquid wastes are inappropriate for storing in staging piles because of the possibility of releases and run-off.

Third, the definition of ''piles'' allows both storage and treatment. However, as discussed below, staging piles allow only storage.

2. Differences Between the Proposed Definition of Remediation Pile and the Final Definition of Staging Pile

In the proposed rule, the definition of remediation pile reads that, ''[r]emediation [p]ile means a pile used only for the temporary treatment or storage of remediation wastes, including hazardous contaminated media (as defined in § 269.3), during remedial operations.''

This definition was altered for a number of reasons. First, the Agency felt that including the term ''pile'' in the staging pile definition would only serve to confuse staging piles with waste piles. Furthermore, because staging piles will accept hazardous remediation waste, rather than only hazardous contaminated media for the reasons previously discussed, this portion of the definition also had to be changed. Finally, treatment is not mentioned in today's staging pile definition, because treatment will not be allowed in staging piles. No commenters provided comments directly addressing the definition of remediation pile. For a fuller discussion of staging piles, and the comments EPA received, see the discussion of staging piles in section VII of this preamble.

E. Miscellaneous Unit—An Edit to the Existing Definition

EPA is simply adding the unit ''staging pile'' to the list of units excluded from the definition of miscellaneous unit. The revised definition is as follows:

Miscellaneous Unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR Part 146, containment building, corrective action management unit, unit eligible for research, development, and demonstration permit under § 270.65, or staging pile.

Miscellaneous units are meant to cover units that do not have regulatory provisions specific to that individual type of unit. Because EPA is today adding provisions for staging piles, staging piles should likewise be excluded from the definition of miscellaneous units.

IV. Information on Remedial Action Plans (RAPs) (§§ 270.2, 270.68 and 270.80—270.230)

General Information About RAPs

A. What Are EPA's Objectives for RAPs?

After considering the public comments on the proposal, the Agency crafted the final RAP regulation with the following six objectives in mind:

One, RAPs should be suited to the specifics of managing remediation waste in the context of cleanup, both in procedure and in substantive requirements;

Two, RAPs should ensure compliance with the applicable requirements for safe hazardous remediation waste management;

Three, RAPs should provide certainty and protection to the permitted party, as appropriate;

Four, the RAP approval process should provide opportunities for meaningful public involvement;

Five, because RAPs constitute RCRA permits, the RAP approval process must, at the least, follow the statutory minimum requirements for obtaining a permit; and

Six, RAPs, and the RAP approval process should accomplish the previous objectives through the most streamlined, reasonable, and understandable regulations possible.

In today's rule, EPA believes that it has reached a reasonable compromise consistent with these objectives. In summary, the RAP requirements promulgated today:

- Significantly reduce procedural steps in permitting, while retaining the minimum statutory public participation requirements and certain basic permitting steps or conditions (for example, permit appeal procedures);
- Replacing the detailed requirements in §§ 270.3—270.66 with broader performance standards;
- Significantly reducing and focusing information requirements; and
- Removing the requirement for facility-wide corrective action.

Given this flexibility, EPA believes that it will be possible for EPA and authorized States to develop RAPs that are much more suited to cleanups than are current RCRA permits—that is, a RAP will generally fit the model of a Superfund Record of Decision or an approval of a cleanup workplan, rather than that of a RCRA Part B permit. EPA believes this flexibility is essential for an effective cleanup program.

At the same time, EPA recognizes that its approach to RAPs in today's rule (and more broadly today's rule as a whole) only partially solves the long-standing problems associated with remediations involving hazardous waste regulated under RCRA Subtitle C. For example, as EPA and others have long emphasized, the statutory public participation requirements (newspaper notices and radio spots) are highly prescriptive without, in fact, ensuring effective public involvement. EPA believes a more flexible approach could better reflect the wide variety of cleanup actions, while still providing a full opportunity for public involvement. EPA also recognizes that it has made less extensive changes to Subtitle C permitting requirements as they apply to remediation waste than some have recommended. Indeed, EPA believes that, in the long run, further changes are appropriate.

For example, EPA has left the substantive, unit-specific requirements in 40 CFR part 264 intact (although the Agency has added new flexibility for staging piles), even though EPA recognizes that these requirements do not always make sense in a remedial context. (For example, secondary containment may not always be needed for tanks within an area of contamination.) EPA took this approach in today's rule because it has not yet aired these issues in detail in previous proposals. EPA is deferring action here, however, the issues are continuing to be discussed more fully in the context of possible statutory changes to RCRA.

In the meantime, EPA emphasizes that today's rule, in combination with existing rules and policies, provides important flexibility in cleanup scenarios. EPA not only expects that today's rule will provide significant benefits; EPA also intends (and encourages authorized States) to use existing flexibility in EPA land disposal standards for soils, the CAMU rule (which today's rule is retaining), the Agency's contained-in policy for contaminated media, the AOC concept for contaminated sites, and similar tools to expedite effective cleanups. The flexibility provided by today's rule should be understood within this broader context.

B. What Is a RAP? (§§ 270.68, 270.2 and 270.80)

§ 270.68

To make it clear that RAPs are subject to different, more streamlined requirements than other RCRA permits, EPA created a separate Subpart (40 CFR Part 270, Subpart H) for RAPs. The provision in today's rule in § 270.68 simply points readers who may look for RAPs in the existing Subpart F (Special Forms of Permits) to the section for RAPs in the new Subpart H.

1. The Differences Between a RAP and a Traditional RCRA Permit

§§ 270.2 and 270.80(a)

EPA defines a RAP in §§ 270.2 and 270.80(a) as a ''special form of RCRA permit that you [a facility owner/operator] may obtain instead of a permit issued under sections 270.3–270.66, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10) at a remediation waste management site.'' Often, remedies selected for cleanup sites involve treating, storing or re-disposing of hazardous remediation waste. RCRA permits are required whenever you treat, store or dispose of hazardous waste (unless a specific permit exemption or exclusion applies). Until now, treating, storing or re-disposing of hazardous remediation wastes required the same type of permit as that for as-generated process waste management. Traditional RCRA permits, however, were designed for operating hazardous waste treatment, storage, and disposal facilities managing as-generated process wastes. The permit procedures, requirements, and contents were designed specifically for those situations. Traditional RCRA permits also require facility-wide corrective action under RCRA Sections 3004 (u) and (v). Many of these requirements are not well suited to cleanup activities.

Section 270.80(a) also limits RAPs to permit activities done in the area of contamination or areas in close proximity. This is because EPA generally wishes to encourage owners and operators to conduct remediation waste management activities on-site. EPA does allow RAPs for off-site locations for limited circumstance under § 270.230, when managing the remediation waste off-site will be more protective than managing it on-site.

2. Some Advantages of a RAP Compared to a Traditional RCRA Permit

EPA believes that the traditional RCRA permitting requirements are not well suited for cleanup activities for many reasons.

First, flexibility in public participation for RAPs, as opposed to the more specific requirements for traditional RCRA permits, is necessary because cleanup activities vary greatly in volumes of waste to be managed; amount of time allocated for the project; types of activities to take place; and risks posed by the cleanup activities. Also, EPA and State cleanup programs generally involve ongoing dialogue with the surrounding community about choices of remedies and other considerations. Many of these programs have developed creative and successful public participation strategies which may vary slightly from specific procedures that could be set out in a nationally applicable Federal regulation.

Second, the more streamlined and flexible requirements for RAPs are better designed for the cleanup scenario than requirements for traditional RCRA permits in 40 CFR Part 270 because the Part 270 standards are designed specifically to mirror and implement the requirements throughout Subtitle C for as-generated process wastes. As discussed earlier, the Subtitle C requirements are designed for the on-going management of as-generated waste, and are designed to be a ''cradle-to-grave'' system of regulations that will prevent new releases from the possible mismanagement of hazardous wastes. While this ''cradle-to-grave'' system has been successful in preventing new releases and in providing incentives to minimize the amount of waste generated, the system is often cumbersome when applied to remediation wastes. Remediation wastes have already escaped into the environment, and often are found in unique volumes, matrices, mixtures, etc. The nationally applicable Subtitle C requirements do not often have the flexibility to respond to unique circumstances encountered at cleanup sites. Therefore, the permitting requirements based on the Subtitle C requirements also do not have the proper flexibility to respond to unique circumstances encountered at cleanup sites.

Third, information requirements for traditional RCRA permits are generally based on those nationally applicable requirements mentioned above, and so are not necessarily appropriate for all cleanup sites.

Fourth and finally, as discussed below, EPA believes that requiring facility-wide corrective action for all new RAPs provides disincentives to cleanups and to remedies that involve excavating and treating or moving wastes. These disincentives are discussed below.

In implementing, overseeing, and observing the hazardous waste cleanup programs under RCRA Corrective Action and State cleanup programs, EPA has concluded that the requirement to obtain a RCRA permit for on-site treatment, storage or disposal of hazardous remediation wastes often acts as a disincentive to cleanup, particularly in the cases where the site is not otherwise subject to RCRA. Cleanups may be desirable at these sites for many reasons (for example, a State or Federal cleanup authority might determine that the site presents a hazard; the facility owner/operator may wish to clean up the property voluntarily; or a potential future facility owner may hope to acquire and reuse the property.) Before today's rule, if facility owners and operators of these sites chose to treat, store, or dispose of hazardous remediation wastes on-site, they generally would be required to obtain a RCRA permit, along with all the requirements (including facility-wide corrective action) that come with that permit. Obtaining these permits can be very time-consuming and expensive, and facility-wide corrective action provides a strong disincentive to any action that would require a permit. This requirement to obtain a RCRA permit, especially the requirement for facility-wide corrective action, was found by EPA's Permits Improvements Team (PIT) [7] to be a major disincentive to cleanup. A recent study by the Government Accounting Office (GAO) came to a similar conclusion.[8] To avoid having to secure a RCRA permit, many remedial decision-makers often choose options for remediation that avoid application of the permit requirements, such as capping in place, which may not be the best remedial option for the site.

Under the streamlined approach to permitting promulgated today, these sites (which have sometimes been referred to as "remediation-only sites") can receive a RAP for remediation waste management activities that take place at the site rather than a traditional RCRA permit. EPA has designed the RAPs process to be more streamlined than that for existing permits to reduce disincentives to cleanups. As opposed to traditional RCRA permits, RAP procedures, requirements, and contents are designed specifically for the cleanup scenario.

The differences between the processes for receiving approval of RAPs and for receiving approval of traditional permits are described more fully in the sections that follow, as well as in the section entitled "Comparison of RAPs Process to That for Other Permits."

As discussed more fully in the preamble discussion of the definition of remediation waste management site, RAP recipients (other than those who are already subject to the corrective action requirements because of independent RCRA permitting requirements), are also not required to perform facility-wide corrective action. The regulatory language for the exemption from the requirements in RCRA sections 3004 (u) and (v) does not actually appear in the RAPs section of the regulatory language. Instead, because the requirements for RCRA sections 3004 (u) and (v) are implemented through the regulatory language at § 264.101, the exemption from these requirements in today's rule is found in Part 264 at §§ 264.1(j) and 264.101(d), as well as in the definition of remediation waste management site and facility in § 260.10, instead of part 270.

RAPs cannot be used to permit treatment, storage, and disposal of "as-generated" process wastes. RAPs are limited to authorizing the treatment, storage, or disposal of hazardous remediation wastes. As this preamble discusses, the definition of remediation waste is limited to wastes that are managed to implement cleanup. This does not include "as-generated" process waste or wastes from any activities that are not specifically implemented for the purposes of cleanup.

3. Differences Between "Remediation Management Plans" in the Proposal and "Remedial Action Plans" in the Final Rule

EPA proposed streamlined permits for remediation-only sites under the name Remediation Management Plans, or RMPs. The RMP concept was proposed at §§ 269.40 through 269.45. As in today's rule, RMPs were proposed as a special form of a permit for hazardous remediation wastes; however, RMPs [9] were also the vehicle by which EPA or a State could exempt low-level hazardous contaminated media from Subtitle C management requirements, and could impose any necessary site-specific management requirements on these wastes. As discussed in section II. E. of this preamble, the Agency is not finalizing the aspects of the proposed rule that exempt hazardous remediation waste from Subtitle C, but is finalizing the streamlined permitting process for treating, storing, and disposing of hazardous remediation waste (that is, wastes that would have remained within Subtitle C jurisdiction under the proposal). However, in the final rule, EPA has named these permits Remedial Action Plans or RAPs.

In today's rule, as in the proposal, RAPs streamline the permitting process but, unlike in the proposal, a RAP in today's rule is not used to document and enforce alternative management requirements for remediation wastes that are exempt from Subtitle C. Hazardous remediation wastes remain subject to the applicable requirements in parts 260–271. Many of the provisions of the proposed RMPs have been eliminated or revised to accommodate this change.

The specific differences between RMPs, as proposed, and RAPs, as finalized, are discussed under the description of each section of the final regulation. EPA emphasizes that the contained-in principle, which provided a legal rationale for the proposed approach exempting low-level contaminated media, remains an existing EPA policy. EPA continues to encourage States to apply this policy, where appropriate, to expedite cleanups.

Section 270.80(b)

In § 270.80(b) EPA states that the requirements in §§ 270.3–270.66 do not apply to RAPs unless those traditional RCRA permit requirements are specifically required under §§ 270.80–270.230, but that the definitions in § 270.2 do apply to RAPs. This is meant simply to identify those requirements that apply to RAPs and those that do not. Where appropriate, the RAPs requirements in Subpart H include their own provisions instead of those in §§ 270.3–270.66.

Section 270.80(c)

In addition, new § 270.80(c) provides that, notwithstanding any other

[7] EPA's Permits Improvement Team (PIT) was created in 1994 to identify specific actions that could be taken by EPA to increase the efficiency and effectiveness of environmental permitting programs. The PIT held numerous stakeholder meetings throughout the country and prepared a draft set of recommendations before it finished its work in 1997.

[8] *Hazardous Waste: Remediation Waste Requirements Can Increase the Time and Cost of Cleanups,* U.S. General Accounting Office, GAO/RCED–98–4, October 1997.

[9] EPA has chosen to use the term RAP in the final rule because it is more commonly understood than RMP.

provision of [Part 270] or Part 124, any document that meets the requirements in this section constitutes a RCRA permit under RCRA section 3005(c). This is to ensure that, although RAPs may not be expressly referred to in other provisions of Parts 270 and 124, they are indeed RCRA permits. Although today's rule contains additional language to enhance the reader's understanding, these two new provisions are the same as proposed at § 269.40(c). The Agency did not receive any negative comments on this provision, and has therefore finalized the approach as proposed.

Section 270.80(d)

To facilitate streamlining at cleanup sites, EPA included the provision at § 270.80(d), which states that a RAP may be either: (1) a stand-alone document that includes only the information and conditions required by this Subpart; or (2) part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this Subpart.

EPA anticipates that RAPs will often be granted at the same time that other decisions, such as remedy selection, are made at a cleanup site. Under the cleanup program, the facility owner/operator or the Director may be preparing other documents, such as remedy decision documents, which may cover much if not all of what a RAP will cover. EPA has included this provision to make it clear that the facility owner/operator and the Director do not have to duplicate efforts, and can create one document that serves both purposes. This approach was proposed at § 269.40(e), and again, the Agency did not receive any negative comment on this provision. In this case—where the issuing authority is an authorized State—only the portion of the RAP imposed under today's rule will be enforceable as part of the Federal RCRA program.

Section 270.80(e)

Throughout the development of the HWIR-media rule, there has been much confusion about the relationship between RAPs and cleanup requirements. Notwithstanding the confusion, EPA believes this is a very simple relationship. Cleanup programs dictate the goals of cleanup (that is, "how clean is clean" and how to select remedies, investigate sites, and conduct other related activities). Frequently, the remedies selected under these cleanup programs involve treating, storing, or disposing of hazardous remediation wastes in a way that would require a RCRA permit.

RAPs are simply the permitting mechanism for authorizing (according to RCRA requirements) this treatment, storage or disposal. In § 270.80(e), EPA has clarified that, if you are treating, storing or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your cleanup obligations under those authorities in any way. The RAP does not affect "how clean is clean" (cleanup standards), and does not affect, in any way, existing legal obligations to perform cleanup actions. This was proposed at § 269.1(c), and the Agency did not receive any negative comments on this provision, and so it is being finalized as proposed, except for edits to make it easier to understand.

Section 270.80(f)

New § 270.80(f) provides that interim status facilities that treat, store or dispose of remediation waste under a RAP will not lose their interim status by virtue of receiving an approved RAP, because the RAP applies only to the remediation waste management activities that take place as a result of the cleanup, and not to any obligations under other authorities.

Under today's rule RAPs can now be used to designate CAMUs, temporary units and staging piles (as well as other non-combustion remediation waste management units and operations). Owner/operators of interim status facilities who wish to construct CAMUs, temporary units or staging piles may now apply for a RAP as the vehicle for imposing the site-specific requirements, providing a mechanism for enforcing those requirements and providing for public participation. RAPs provide for all three of these functions, and may be a desirable alternative to a 3008(h) enforcement order.

EPA is concerned that allowing a RAP at an interim status facility may cause confusion about the impact on that facility's interim status, and therefore has included § 270.80(f). Because RAPs are RCRA permits, and because permit issuance at an interim status facility often terminates interim status for that facility, EPA is concerned that some may think that issuing a RAP at an interim status facility terminates that facility's interim status. Existing § 270.1(c)(4) already provides that, if EPA issues or denies a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility, this does not affect the interim status for any unit for which a permit has not been issued or denied. Section 270.80(f) in today's rule serves a similar function by providing that RAP issuance does not terminate interim status for the other parts of the facility not covered by the RAP (or for facility-wide corrective action purposes).

EPA did not specifically propose this provision, but has included it in the final rule to avoid confusion. In the proposed rule (see for example, 61 FR 18791), EPA stated that these provisions would be implemented under many different programs and agencies. In the proposed rule at 61 FR 18814, EPA gave examples of CERCLA sites and permitted treatment, storage and disposal facilities (TSDFs), but did not clarify how these requirements would apply at interim status TSDFs. This was an oversight and is corrected by § 270.80(f) in today's final rule.

C. When Do I Need a RAP? (§ 270.85)

Section 270.85(a)

Section 270.85(a) states that "whenever you treat, store, or dispose of hazardous remediation waste in a manner that requires a RCRA permit under § 270.1, you must either obtain: (1) a RCRA permit according to §§ 270.3—270.66 of [Part 270]; or (2) a RAP according to [Part 270 Subpart H]."

1.What Activities Require RCRA Permits?

Section 270.1 describes what activities require RCRA permits. If the facility owner/operator intends to perform activities that require permits, but is managing only hazardous remediation waste and not as-generated process wastes, he may take advantage of the streamlined procedures for RAPs, or may obtain a traditional RCRA permit. There are also instances where treating, storing or disposing of remediation wastes do not require a RCRA permit. Today's rule, like the proposal, will not change, in any way, when a RCRA permit is required. Thus, no RAP is needed where a permit would not otherwise be required.

One example of when neither RAPs nor traditional RCRA permits would be required is CERCLA removal and remedial actions. CERCLA Section 121(e) grants a RCRA permit waiver for on-site response actions selected under CERCLA Section 121. Generally, however, a Record of Decision (ROD) or other CERCLA decision document would specify the requirements for complying with the substantive RCRA Subtitle C requirements for treating, storing, or disposing of remediation waste on-site. Another example would be when State that is authorized to

implement the RCRA program has a permit waiver authority that is analogous to EPA's authority under CERCLA Section 121(e) or RCRA Section 7003. This permit waiver policy is described in a memorandum from J. Winston Porter, Assistant Administrator, Office of Solid Waste and Emergency Response, EPA to Regional Administrators, Regions I—X, EPA, (November 16, 1987) available in the docket to today's rule. Today's rule does not change or affect this policy in any way.

In addition, facility owner/operators may manage hazardous remediation wastes in a way that does not require a RCRA permit. For example, contaminated remediation wastes can be capped in place, or excavated and transported off-site to a designated, permitted facility for treatment or disposal. Another example is that wastes can be treated or stored on-site in units that are exempt from permitting requirements, such as wastewater treatment units. (See 40 CFR §§ 264.1(g)(6), 265.1(c)(10), and 270.1(c)(2)(v)). Still another example is that remediation wastes can be treated or stored on-site for less than 90 days in tanks, containers, or containment buildings (see 40 CFR 262.34), which also does not require a permit.

Section 270.85(b)

In the proposed rule at § 269.43(f), EPA proposed that RMPs involving on-site combustion of hazardous remediation wastes would have to follow the requirements for issuance of RCRA permits in 40 CFR parts 270 and 124, and would not be eligible to obtain RMPs. EPA has finalized that requirement at new § 270.85(b).

EPA received one negative comment on that provision, which stated that the Agency had not demonstrated how combustion of hazardous remediation waste is different from other management techniques. However, the Agency continues to believe, as stated in the preamble to the proposed rule (61 FR 18818), that it is necessary to include this provision because §§ 270.16 and 270.62 include requirements for trial burns and other important procedures for incinerators that EPA continues to believe are necessary, even for combustion units handling hazardous remediation waste. Also there is a high level of public interest in hazardous waste combustion, which EPA believes merits the extra public participation steps of the traditional RCRA permitting process.

Another commenter asked that EPA clarify the procedures required for permitting of combustion units under RAPs. The proposed rule stated that ''for remedial actions involving on-site combustion of hazardous remediation wastes, the procedural requirements for issuance of RCRA permits . . . shall at a minimum be followed for review and approval of RMPs [which are RAPs in today's final rule].'' This language led to confusion over what requirements are considered ''procedural.'' Today's final rule states that ''[t]reatment units that utilize combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart.''

EPA believes that this revised regulatory language makes it clear that permitting for combustion units does not follow any of the RAP requirements, but instead the traditional RCRA permitting requirements. (However, 40 CFR 264.101(d) of today's rule would exempt a facility receiving a permit for a combustion unit from facility-wide corrective action, if that facility were a remediation-only site (remediation waste management site).)

§ 270.85(c)

The proposed rule provided for the situation where a facility owner/operator permitted for on-going hazardous waste operations sought a RAP for cleanup activities at the facility. Under the proposed rule, a facility owner/operator might desire a RAP for two reasons—the RAP was the vehicle by which remediation wastes could become exempt from Subtitle C, and, for wastes that remained in Subtitle C, the application and procedural requirements for RAPs were more streamlined and better tailored to the remediation scenario.

To accommodate these situations, the proposed rule would have allowed traditional RCRA permits to serve as RAPs (§ 269.40(e)(2)), and also would have allowed the permitted facility to obtain a RAP, which would only cover the remedial operations at a site, in addition to its RCRA permit, (see 61 FR 18814). Because under the final rule, RAPs are not a vehicle for obtaining an exemption from Subtitle C, there is no need to finalize the proposed rule provision allowing traditional RCRA permits to serve as RAPs. On the other hand, the Agency continues to believe it is appropriate to allow permitted facilities to obtain the benefits provided by the RAP format and has crafted today's rule accordingly.

Specifically, today's rule (§ 270.85(c)) states:

> You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements in §§ 270.41 or 270.42 instead of the requirements in this Subpart. When you submit an application for such a modification, however, the information requirements in § 270.42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under § 270.110. When your permit is modified, the RAP becomes part of the RCRA permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated, or when it expires, it will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 43, terminated according to the applicable requirements in § 270.43, and expire according to the applicable requirements in §§ 270.50 and 270.51.

This approach differs from the proposal in that a facility with a permit covering ongoing hazardous waste operations would not obtain a RAP as a separate authorizing document for the hazardous waste management activities conducted during the course of cleanup. The Agency made this change to avoid potential overlaps, gaps or confusion in having two authorizing documents at one facility. Instead, the rule provides that a RAP at a permitted facility be integrated into the permit as a permit modification. Thus, the more streamlined RAP application content requirements in § 270.110 apply, but the procedures for RAP approval in these cases are the permit modification procedures § 270.41 or § 270.42.

The Agency chose the permit modification procedures over the RAP procedures because it believes that establishing two different procedures for permit modifications—depending on whether you were modifying permits to include a RAP, or doing any other form of permit modification under §§ 270.41 and 270.42—would be unnecessarily confusing.

Comments were mixed. Two commenters stated that the proposed rule was unclear as to how RAPs would apply at facilities that already had a RCRA permit. One commenter said that EPA should not require both a RAP and a permit for the same activity. Another commenter suggested amending permits to require compliance with RAPs. Two other commenters disagreed with each other. One stated that RAPs would be beneficial because they would avoid the cumbersome and costly permit modification process. The other stated that it was unnecessary and inappropriate to allow separate and less rigorous procedures at facilities already subject to permitting. EPA agrees with this commenter to the extent that today's rule requires issuance,

modification, revocation and reissuance, and termination of RAPs through standard permit procedures at permitted facilities. But, EPA also believes that the relief provided by the content requirements for RAPs at § 270.100 should be available at permitted facilities. EPA developed the standards of today's rule with cleanups specifically in mind. The Agency believes that they are generally appropriate for cleanups taking place at TSDs, as well as to cleanups taking place under RAPs elsewhere.

There are three classes of modifications for traditional permits, Classes 1, 2, and 3. When modifying a permit to incorporate a RAP, the Director and the facility owner/operator must follow the Class modification procedure that is appropriate for the activities being permitted under the RAP. The last sentence of new § 270.85(c) provides that once the RAP is part of the permit, the applicable permit procedures must be followed for modification, revocation and reissuance, termination and expiration. However, the content requirements for RAPs will always remain those in § 270.110. EPA included this provision to avoid confusion about which requirements apply when making changes to RAPs that are part of RCRA permits.

This does not mean that RAPs at permitted facilities must follow two procedures, one for approval of the RAP and one for permit modification. On the contrary, RAPs at permitted facilities need only follow one process, the permit modification procedure, to receive approval.

D. Does my RAP Grant me Any Rights or Relieve me of Any Obligations? (§ 270.90)

Today's rule at new § 270.90 applies the § 270.4 provisions to RAPs. Section 270.4(a) is known as ''permit as a shield,'' and protects the facility owner/operator in that as long as they comply with the terms of their RAP, they will be considered in compliance with RCRA Subtitle C for enforcement purposes, except for the four exceptions noted below. This means that EPA will not take enforcement actions against facility owner/operators for activities that are in compliance with their RAP, unless one of the four exceptions in § 270.4(a) applies. Although the proposed rule did not contain this provision, EPA requested comment on applying it at 61 FR 18815 of the proposal.

One commenter expressed concern about EPA granting ''permit as a shield'' to RAPs, arguing that the shield concept presumes that all RAPs will be properly drafted, and that this presumption is inappropriate, given the Agency's own acknowledgment, embodied in the proposed rule's requirements for State HWIR-media program withdrawal, that improper drafting may occur. Several other commenters, however, stated that it is appropriate to specify that compliance with a RAP constitutes compliance with RCRA.

The Agency agrees with these latter commenters. The Agency believes that including this provision is necessary to provide facility owners and operators with a measure of assurance that activities performed under an approved RAP will be recognized by the Agency as satisfying Subtitle C requirements for those activities expressly addressed and permitted by the RAP. EPA articulated the rationale for a ''shield'' provision in the May, 19 1980 final rule, which established this provision for permits (see 45 FR 33311). Specifically, EPA stated:

> EPA believes that this ''shield'' provision is one of the central features of EPA's attempt to provide permittees with maximum certainty during the fixed terms of permits. . . . This new provision gives a permittee the security of knowing that, if it complies with its permit, it will not be enforced against for violating some requirement of the appropriate Act [e.g. , RCRA] which was not a requirements of the permit . . . EPA agrees that one of the most useful purposes of issuing a permit is to prescribe with specificity the requirements that a facility will have to meet, both so that the facility can plan and operate with knowledge of what rules apply, and so the permitting authority can redirect its standard-setting efforts elsewhere. If all the 3004 standards were fully enforceable against a permitted RCRA facility even though they were not reflected in the permit (or, perhaps, not consistent with it), facilities would be exposed to unavoidable uncertainty as to the standing of their operations under the law. In addition, such a provision would increase pressure on EPA and States to keep permit conditions applicable to a given facility in a perpetual state of re-examination. EPA's resources will at most be barely sufficient to issue and renew RCRA permits, and review State permits, at the time of their initial issuance and periodic renewal. EPA and States are likely to make much better use of their resources if they restrict examination of permits between issuance and renewal to monitoring compliance and taking enforcement action where necessary.... [The shield] now places the burden on permit writers rather than permittees to search through the applicable regulations and correctly apply them to the permittee through its permit. This means that a permittee may rely on its . . . permit document to know the extent of its enforceable duties.

With regards to the commenter who was concerned about granting ''permit as a shield'' to RAPs, EPA believes that the commenters concerns are alleviated by the differences between the proposed and the final rule. RAPs under the proposed rule performed a different function from RAPs under the final rule. In the proposed rule, RAPs were the vehicle for excluding remediation wastes from Subtitle C requirements and instead imposed site-specific requirements on these wastes. The commenter who was concerned about the permit as a shield provision may have been concerned that a poorly written RAP might include site-specific requirements for wastes excluded from Subtitle C that were not protective of human health and the environment. Because today's final rule does not exclude any wastes from Subtitle C requirements, that is no longer a concern.

As mentioned above, § 270.4(a) includes four exceptions to the ''shield'' provision. Specifically, the permit does not shield the facility owner/operator from enforcement for requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under Part 268 of this chapter restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under Part 264 of this chapter regarding leak detection systems; or

(4) are promulgated under Subparts AA, BB or CC of Part 265 of this chapter limiting air emissions.

With respect to the fourth exception, under § 264.1080(b)(5) the requirements in Part 264 Subpart CC do not apply to ''a waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities.'' Therefore, remediation waste management units permitted by RAPs will not be subject to Subpart CC requirements. EPA expects that any of these four exceptions to the shield, especially numbers (3) and (4), will often not be relevant to activities taking place under RAPs.

Also, in the same way as for traditional RCRA permits, the shield provisions cover only activities that are authorized by the RAP, not any other hazardous waste management activities the facility owner/operator may perform at the site. For example, if the RAP covers a treatment unit, then activities performed in compliance with the RAP requirements for that treatment unit are covered by the ''shield.''

However, if the operator decides to build and use a disposal unit on-site that is not addressed in the RAP, the

operator must either obtain a modification to the RAP, or a traditional RCRA permit for that new activity, or they will not be shielded from an enforcement action under RCRA for operating that unit without a permit. In no way does this provision be shield a facility owner or operator from an enforcement action for a RCRA violation for any as-generated waste management requirements (as those activities are excluded from coverage under RAPs). Finally, because a RAP is simply a permitting mechanism for managing remediation waste, but does not address cleanup obligations, § 270.4(a) does not shield a facility owner/operator from cleanup obligations that apply to facilities subject to Federal or State remedial authorities.

Section 270.4(b) and (c) address property rights, privileges, and authorization of injury, invasion of rights, or infringement of State or local law or regulations. Because the Agency received no adverse comments on these provisions proposed at § 269.40(f) and (g), and because they were the same as § 270.4(b) and (c) for traditional RCRA permits, EPA is not creating new provisions specific to RAPs, but is applying the identical § 270.4(b) and (c) provisions to RAPs as proposed.

Applying for a RAP

E. How do I Apply for a RAP? (§ 270.95)

The first step towards obtaining RAP approval is to apply for a RAP. This section simply states that to apply for a RAP the owner/operator must complete an application, sign it, and submit it to the Director according to the requirements in part 270 Subpart H.

F. Who Must Obtain a RAP? (§ 270.100)

This requirement explains that if the site is owned by one person, but the activities are operated by another person, then it is the operator's duty to obtain a RAP, except that the facility owner must also sign the RAP application. It mirrors the requirement for other permits in § 270.10(b). The operator is the person responsible for the activity being permitted by the RAP, is the most familiar with the proposed activity, and is therefore, the most reasonable choice for who should be responsible for obtaining the RAP. The proposed rule stated that ''the owner/operator must receive approval by the Director of a Remediation Management Plan (RMP).'' The proposal did not distinguish between the facility owner and operator, but the Agency believes that this provision of today's rule will provide additional clarity about who is responsible for obtaining a RAP.

G. Who Must Sign an Application for a RAP? (§ 270.105)

The proposed rule (at § 269.43(b)) (like the final rule today) required both the facility owner and operator to sign the application for a RAP according to § 270.11. Their signatures are meant to certify that the information contained in the RAP application, to the best of the signatory's knowledge and belief, is true, accurate, and complete (see § 270.11 (d)).

In response to the Agency's request for comment on whether signatures of both the facility owner and operator should be required (61 FR 18817), several commenters objected to the proposed requirement, pointing out that in many instances one party may take a completely passive role in the cleanup process. One commenter pointed out that the current owner of a site may not have technical involvement in the cleanup or may be unwilling to commit resources to the cleanup.

These commenters felt that it could obstruct or delay cleanup efforts if both parties are required to sign the RAP application, especially if the passive party was fearful of incurring liability by signing. Other commenters felt that both parties should be required to sign the RAP application (as is required for traditional RCRA permits) as an indication that they both agree with the provisions in it. One of these latter commenters pointed out that States still hold the facility owner responsible for activities on his property regardless of whether another party operates the site. This commenter felt that requiring the facility owner to sign as well as the operator would signify that the property owner is aware of the activities occurring on his property.

EPA has sympathy with commenters on this issue who argue that in some cases owners may take a passive role, especially with respect to how the remediation waste is managed. At the same time, EPA notes that, under the statute, RCRA permits must be issued to both the owner and the operator. EPA also believes that owners, as well as operators, should ordinarily be responsible for the conduct of cleanup activities. Finally, owners may know about activities on the property that the operator is not involved in or aware of, and can provide valuable information for the permit. To be sure, one of the prime justifications for requiring the facility owner's signature on the permit—that the facility owner is liable for facility-wide corrective action—does not apply in this case. Nevertheless, the facility owner's signature is generally important to confirm that the cleanup is proceeding with his knowledge and approval, and to put the facility owner on notice of potential liabilities. Where it is difficult to get a facility owner to agree to a RAP, EPA may find that an enforcement action is more appropriate than a permit.

As proposed (§ 269.43(b)), § 270.105 in today's rule requires the RAP application to be signed according to § 270.11. The requirements in § 270.11(a) specify the appropriate person to sign the RAP application in the case of a corporation, partnership, sole proprietorship, municipality, State, Federal, or other public agency. Section 270.11(b) requires that any reports required by the RAP be signed by the person specified in § 270.11(a) or a duly authorized representative. Section 270.11(c) describes what to do if authorization under § 270.11(b) changes. Section 270.11(d) requires a person signing a document under § 270.11(a) or (b) to certify that the documents were prepared under their direction, that the information is accurate and complete, and that they understand the penalties of submitting false information. EPA has provided that the facility owner may choose an alternative certification under § 270.11(d)(2) if the operator certifies under § 270.11(d)(1).

After reviewing comments on the respective role of the operator and the land owner, EPA concluded that a less rigorous certification may be appropriate for the land owner, if the operator is more familiar with the cleanup activities than the facility owner. As explained earlier, EPA expects that the operator will be preparing the RAP application and will be familiar with its details. He will also be responsible for carrying out the cleanup. Therefore, it makes sense to have the operator provide the certification. At the same time, as a signatory to the permit, the landowner remains jointly and severally liable with the operator, and EPA retains the ability to enforce the terms of the RAP against the landowner where this enforcement is appropriate in EPA's discretion.

EPA believes that the less rigorous certification in § 270.11(d)(2) is appropriate because it continues to require the facility owner to make appropriate inquiries and provide any information he has about the property that will be the subject of the RAP. Other than general comments on who should submit the permit application, EPA did not receive comment on these requirements. Therefore, with this one exception, EPA has finalized the requirements as proposed.

H. What Must I Include in My Application for a RAP? (§ 270.110)

1. Description of the Specific Content Requirements

This subsection lists the specific pieces of information that the owner/operator must include in a RAP application, and also requires the facility owner/operator to submit any other information the Director considers necessary. The information required under § 270.110(a) through (e) includes names and addresses, latitude and longitude of the site, a map showing site location, and scaled drawings of the remediation waste management site features and boundaries.

The proposal did not explicitly list in the ''Content of RMPs'' section the information required in the final rule under § 270.110(a) through (e). However, these details were suggested by a commenter on the proposal. EPA expected that this information would generally have been required under the proposed rule. Because the information would be important in identifying the activities to be authorized by a RAP, the information generally would either have been included in the RAP application, or if not, would have been required by the Director under the proposed § 269.41(c)(10) (''other information determined by the Director to be necessary'').

The Agency, however, agrees with the commenter that it should be added as an express requirement, to avoid any unnecessary delay caused by an applicant's failure to submit it in the first instance. In addition, these information requirements are similar to the types of information required under a Part A application in § 270.13, although better tailored to the remediation scenario.

New § 270.110(f) requires the application to specify the hazardous remediation waste to be treated, stored, or disposed of, to estimate the quantity of waste to be managed, and to describe the processes to be used for treating, storing, and disposing of the waste. This provision finalizes appropriate aspects of what was required under proposed §§ 269.41 (c)(1) through (6).

Specifically, the proposed rule differs from the rule promulgated today in that it required information regarding not only what under today's rule constitutes ''hazardous remediation waste,'' but also what constitutes ''non-hazardous contaminated media.'' The Agency has eliminated references to ''non-hazardous contaminated media'' because, as discussed more fully in preamble section II. E., EPA has decided not to finalize any of the approaches from the proposal that would have excluded remediation waste from Subtitle C, and had the RAP address non-hazardous media. The Agency has therefore eliminated requirements that were proposed to implement that portion of the proposed rule (proposed § 269.41(c)(1) and (3)).

Section 270.110(g) requires the facility owner/operator to submit information to demonstrate that the remediation wastes will be managed according to the applicable hazardous waste management requirements found in Parts 264, 266 and 268. This provision finalizes the proposed provision of § 269.43(c)(2). Although many commenters would have preferred all remediation wastes to be exempt from the Subtitle C requirements, including Parts 264, 266 and 268, for the reasons discussed earlier in this preamble, the Agency has decided not to finalize either the Bright Line or Unitary approaches which would have exempted remediation wastes from Subtitle C, and therefore, all hazardous remediation wastes remain subject to these requirements.

This flexible requirement replaces the detailed, unit-specific requirements in 40 CFR 270.14 through 270.27 that apply to traditional RCRA permits, and which lay out the information required in a Part B permit application. EPA has taken this more flexible approach, both because of the wide variation in cleanup activities, and because of the Agency's interest in streamlining the permit process for remediation activities. In implementing current remedial programs, including CERCLA and EPA's RCRA enforcement programs, the regulated community, the regulators, and interested members of the public successfully work together to develop enforceable remediation plans, and EPA believes there is no need for the Agency at this point to mandate detailed ''information'' requirements for RAPs based on part B requirements. Thus today's rule simply requires the RAP applicant to provide enough information to demonstrate compliance.

Section 270.110(h) requires the RAP applicant to submit enough information for the Director to comply with other Acts, as required for traditional RCRA permits under § 270.14(b)(20). In approving any form of permit, the Director must comply with the requirements in other applicable laws, and therefore, may need information from the RAP applicant to determine the applicability of these other Acts. This was not specifically discussed in the proposal, but where applicable, could have been required under proposed § 269.41(c)(10). The Agency believes that making this requirement explicit will eliminate delays that might result from any potential confusion on this point.

The wide variation in possible hazardous remediation waste management that may take place under RAPs makes it difficult to anticipate all of the Director's information needs. Therefore, § 270.110(i) requires the RAP applicant to submit any other information the Director determines to be necessary for demonstrating compliance with the provisions of Subpart H of part 270 or for determining additional conditions necessary to protect human health and the environment.

The first part of § 270.110(i) was proposed at § 260.41(c)(10); because EPA received no comment on this provision, it is finalized as proposed. The second part § 270.110(i) about information for determining additional conditions necessary to protect human health and the environment simply makes express the Director's authority to request information necessary to enable him to fulfill his duty under the ''omnibus'' authority of RCRA section 3005(c) to include conditions in permits necessary to protect human health and the environment. This statutory provision is codified in today's rule at § 270.135(b)(4).

All of the information required under § 270.110 forms the basis for the Director's determination of whether or not to approve the RAP application. The Agency expects RAPs to be more streamlined than traditional permits and therefore expects that, as a general matter, the information the facility owner/operator will need to submit for a RAP application will be significantly less than is traditionally required for a RCRA Part B permit application under §§ 270.14 through 270.27. This is because the specific Part B requirements for units, which are much more extensive that what is required by today's rule, were designed with long-term operation of a TSDF in mind. This operation is generally very different from the activities that take place as part of a one-time remediation waste management activity.[10]

Also, the Agency believes that, due to the wide range of activities that might take place under a RAP, it is more appropriate to provide flexibility so that the appropriate amount of information can be determined by the site-specific action. RAPs may permit many different

[10] It should be noted that EPA is also developing a proposal to streamline (and in most cases eliminate) information requirements for RCRA permits covering on-site storage or treatment of hazardous waste in tanks or containers.

types of activities, from on-site storage of investigation-derived waste to treatment and permanent disposal under RCRA requirements. EPA has allowed considerable flexibility in what information is required to be submitted, to allow for the variation in the types of activities being performed under a RAP, and the anticipated generally shorter time-frames for remediation waste management activities.

2. Comments on the Contents of RAPs

Several commenters agreed with EPA's basic framework for the contents of RAP applications. Commenters suggested additional information that should be included in a RAP application if it were the vehicle for determining when hazardous contaminated media could be exempt from Subtitle C, but because the RAP is not serving that function, those comments no longer apply. One commenter was concerned that EPA would require information on management of wastes off-site, but that information is not required in today's rule.

One commenter was concerned that the requirements to include volumes of the waste being managed would require excessive site characterization. However, the regulatory language in § 270.110(f) reads, ''an estimate of the quantity of these wastes,'' which is the same language used for Part A permit applications in § 270.13(j). The purpose of this information is simply to provide an idea of the scope of the operation, not to require an exhaustive site characterization effort. EPA understands that the estimated volume of waste to be managed may change significantly in the course of the cleanup.

Another commenter noted that the different types of wastes regulated under the proposed ''Bright Line'' approach made the contents of RAPs overly complicated, but EPA is not finalizing that option in today's rule, and so has eliminated that complication.

Several commenters asked that EPA allow the RAP to be coordinated with other submittals of the same information, so that efforts need not be duplicated to prepare numerous submittals. It is for precisely that reason that EPA has allowed other documents (or parts of other documents) to serve as parts or all of the RAP if they contain the information and conditions necessary for RAPs, so that the facility owner/operator does not have to duplicate efforts. This can be found at new § 270.125.

Finally one commenter suggested that EPA make it possible for a facility owner/operator to incorporate ''presumptive remedies'' into RAPs similar to the approach EPA developed in the CERCLA program. While EPA is not addressing issues such as proper cleanup levels or remedies under today's rule, EPA could develop a set of ''standard'' RAP provisions to cover commonly encountered situations at sites managing hazardous remediation wastes. These generic provisions could be customized, as necessary, to address appropriate site-specific considerations.

EPA believes that a ''generic RAP provisions'' approach can be appropriate at RCRA sites, and it agrees this approach can significantly streamline the development of new documents. EPA will consider creating such a model as guidance for the HWIR-media rule.

However, in the meantime, EPA encourages States, or even large companies with multiple sites, to develop model RAPs. For example, commenters have told EPA that there are multiple, similarly contaminated areas in Alaska involving petroleum product spills. EPA believes that this may be an appropriate situation for regulated industries, the State of Alaska, and EPA to work together to develop a model RAP that would cover the situations frequently encountered in Alaska with petroleum and other contaminants. Such a model RAP could be used, with minor modifications to consider any unique, site-specific circumstances, and would be faster to develop and approve if EPA, the State, and the facility owner/operator had already agreed on the basic principles in the model.

3. Contents of RAPs in the Proposal That Are Not Required in the Final Rule

Several parts of the proposed ''RAPs contents'' requirements are not included in the final rule. First, proposed § 269.41(c)(8) required facility owners and operators to submit information that describes planned sampling and analysis procedures. This requirement is not necessary because waste analysis is required under today's rule at § 264.1(j)(2).

Proposed §§ 269.41(c)(9) and 269.42(b) required facility owners and operators to submit data from treatability studies and full scale implementation of treatment systems to EPA. The Agency has not included that requirement in the final rule. EPA proposed to require the collection of treatability data so that it could set treatment standards with reasonable confidence that those standards could be met with available technologies, and to provide information on the effectiveness of available technologies in treating different kinds of contaminated media.

One of the proposed rule's goals was to provide data to ensure appropriate future treatment requirements. To collect this data, the proposed rule would have required owners and operators to submit data to EPA upon completing remedial treatment (both full-scale as well as treatability studies). EPA has decided not to mandate the collection of treatability data for contaminated media as originally proposed. Since the proposal, EPA has finalized new LDR treatment standards for contaminated soils. EPA believes that those new standards are supported by the available data and does not feel it is necessary to burden the regulated community with the requirement to submit treatability data. Treatability data is discussed more fully in the preamble to the LDR Phase IV rule (63 FR 28556 (May 26, 1998)), in which EPA finalized the soil treatment standards proposed in the HWIR-media proposal.

Also, in the proposed rule at § 269.42(a), EPA proposed that treatability studies that would require a RCRA permit could be conducted under a RMP instead. The significant benefit of this requirement was that those wastes in the treatability study could be excluded from Subtitle C requirements under the RMP. Because RMPs no longer serve that function, the remaining benefit would be the more streamlined process for receiving RAP approval under the final rule instead of a traditional permit.

As discussed throughout the RAPs section of today's rule, any on-site treatment, storage or disposal of hazardous remediation waste that would have otherwise required a RCRA permit may be authorized under a RAP, which would include any treatability studies. Therefore, a separate provision allowing treatability studies under a RAP is not necessary.

EPA recognizes that treatability studies conducted off-site may still confront the problem of needing a traditional RCRA permit, and EPA will evaluate this and any remaining issues with regard to treatability studies in the future.

In the preamble to the proposed rule at 61 FR 18817, EPA requested comment on the limits on the existing Treatability Sample Exclusion Rule (§ 261.4(e) and (f)), which exempts the generator of wastes for treatability studies from 40 CFR Parts 261 through 263, and from notification under RCRA Section 3010. The rule also exempts the facility conducting the study from 40 CFR parts

124, 261–266, 268 and 270 and from notification under RCRA Section 3010. This exemption is currently limited to volumes of no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, and 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream.

This exemption remains in effect for no more than 90 days after the study is completed or one year (two years for bioremediation) after the shipment of the same sample, whichever comes first. The Regional Administrator may grant requests case by case for up to an additional two years for treatability studies involving bioremediation. The Regional Administrator may grant requests case by case for extensions of the quantity limits for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, and 1 kg of acute hazardous waste.

When EPA requested comment on whether it should amend the rule to allow EPA to expand those limits on a site-specific basis; the Agency received several comments. All comments favored giving site-specific discretion to the Director to determine appropriate volumes of wastes to be included in the treatability study, and to determine appropriate timeframes. Despite the favorable comment, EPA is not including this provision in the final rule. The Agency is reviewing more broadly the issue of treatability studies and may consider more extensive relief at a future date.

I. What if I Want to Keep This Information Confidential? (§ 270.115)

Some information required under § 270.110 may be confidential business information, such as the design of treatment units. This provision simply requires the facility owner/operator to assert a claim of confidentiality at the time the information is submitted, and EPA will treat the information according to 40 CFR part 2 (Public Information).

EPA has included this provision in the final rule, which is substantially the same as § 270.12 (with only minor changes meant to make the regulation more readable), to allow the facility owner/operator to protect this information. This provision was not discussed in the proposal, but EPA has added it to allow for confidentiality in the same way as with other permitting requirements, and to protect legitimate confidential business information of RAP applicants.

J. To Whom Must I Submit My RAP Application? (§ 270.120)

This provision simply requires that the facility owner/operator submit the RAP application to the Director. This was proposed at § 269.41(a). The ''Director'' is the EPA or State official responsible for the RCRA hazardous waste management program in the relevant State or Tribal lands, and is defined in § 270.2.

K. If I Submit My RAP Application as Part of Another Document, What Must I do? (§ 270.125)

To avoid duplicative processes, today's rule (§ 270.80(d)) allows RAPs to be a part of another document, such as a State cleanup program's remedy selection document, or a workplan for a cleanup. In many cases, the Agency expects RAPs to be issued at the time that a site manager is selecting a remedy, which will often include a mandatory process for including the public in the remedy selection process, and completion of remedy decision documents, under a cleanup program. Therefore, it would be a waste of time and resources to require a separate RAP application. If the facility owner/operator is preparing the other document(s), then today's rule, at new § 270.125, allows the facility owner/operator to submit the RAP application as a part(s) of those documents. In this case, the rule requires that the facility owner/operator identify the parts of the document that make up the RAP application, so that the Director can develop an appropriate draft RAP, and so the public can comment on it. Often, however, it will be the Director who is preparing the other documents, in which case, the facility owner/operator may choose to submit a separate RAP application, and the Director may incorporate the elements that make up the draft RAP into the other document(s) that he is preparing prior to public comment.

1. Provisions From the Proposal That Are Not Included in the Final Rule

The proposed rule required that ''such [other] documents must be approved by the Director according to procedures that allow equivalent or greater opportunities for public involvement than those prescribed in § 269.43.'' This statement was confusing as to whether those ''other'' documents would be considered RAPs.

Any RAP application to receive approval as a RAP must follow the authorized RAP procedures of the authorized State or EPA. However, EPA expects that different States will apply for authorization of different types of programs and processes to qualify as RAPs. Therefore, RAPs in different States may look somewhat different, and the processes may vary, but all RAPs must be approved under a program authorized for this regulation.

Because this is already required under the State authorization procedures, and therefore language in the RAPs section of the regulations is not necessary, EPA has not included it in the final rule. In addition, EPA intends it to be clear that the Director may do more in the way of public involvement than is required under today's rule and the facility owner/operator is certainly encouraged to do so. However, that is always possible under RCRA authorized programs, and again it is not necessary to include this statement in the RAPs regulatory language.

As mentioned elsewhere, EPA has written the process for RAP approval to be as flexible as possible so that approval of RAPs, be they stand alone documents or parts of other documents, can be integrated as smoothly as possible into other approval and public comment procedures taking place at the site. EPA expects EPA Regional and State programs implementing the RAP provisions to merge processes at cleanup sites as much as possible to streamline the approval and public participation processes. At the same time, since RAPs will be issued under a Federally authorized program, and will be Federally enforceable, it will be important for States to identify when requirements are imposed under RAPs, and when they are imposed under independent sate authority.

Getting a RAP Approved

L. What Is the Process for Approving or Denying My Application for a RAP? (§ 270.130)

Section 270.130 specifies the basis upon which the Director will determine whether to tentatively decide to either approve the RAP application and therefore prepare a draft RAP, or to deny the RAP application and therefore prepare a notice of intent to deny the RAP application (''notice of intent to deny''). If the Director finds that the RAP application includes all of the information required under § 270.110 (correct signatures, names addresses, maps, drawings, specifications of the wastes; information to demonstrate compliance with applicable part 264, 266 and 268 requirements; information necessary for the Regional Administrator to carry out his duties

under § 270.3; and other information specified by the Director) and he determines that the information is in fact sufficient to show compliance with the regulatory standards, then he will make a tentative decision to approve the RAP application and prepare a draft RAP. If the Director finds that the RAP application does not meet these criteria, and if the facility owner or operator fails or refuses to correct any deficiencies, then the Director will make a tentative decision to deny the RAP application, and prepare a notice of intent to deny. The most critical parts of the Director's determination is whether or not operation according to the RAP will ensure compliance with applicable Part 264, 266, and 268 requirements.

As with any permit, the Director may deny the RAP application either in its entirety or in part. If the Director decides to either approve or deny the RAP application, he will then solicit, consider, and respond to public comments before making his final decision on the RAP application. The Director's decision is called a ''tentative'' decision at this stage until he has solicited, considered, and responded to public comments.

Because it is important for the regulated community, the regulators, and the public to clearly understand the basis for the Director's decision to approve or deny a RAP application, EPA has added these provisions to provide clarity.

The proposed rule at § 269.43(e) simply stated that ''[w]hen the Director determines that a draft RAP is complete and adequately demonstrates compliance with applicable requirements, the RMP shall be approved according to the [certain specified] procedures.'' Today's final rule provisions of § 270.130 make express both what was meant by ''complete and adequate,'' and the Agency's underlying assumption that, like the traditional permit process, the RAP approval process will be one of interaction between the applicant and the Agency. In addition, the regulations allow the Director to tentatively deny the RAP in whole or in part, where appropriate.

Thus, in a tentative permit decision, the Director would solicit public comment both on the parts of the RAP that are tentatively approved and on the parts that are tentatively denied.

As stated above, EPA expects the RAP approval process will be one of interaction between the RAP applicant and the Director until the Director is satisfied that he has enough information to tentatively approve or deny the RAP application. Thus, the rule has been written to make this expectation clear. Of course, the exact number of opportunities the Director should provide to correct deficiencies will depend on site-specific circumstances. The rule does make clear, however, that some opportunity to correct deficiencies must be given before a RAP application is denied.

M. What Must the Director Include in a Draft RAP? (§ 270.135)

Sections 270.135(a) and (b) specify the contents of a draft RAP. In today's rule, EPA is allowing flexibility in the format for RAPs. EPA expects that the RAP application will form the basis of the draft RAP. EPA does not expect the regulatory agency to engage in a time-consuming process of re-creating or re-formatting all of the information in the RAP application. Generally, EPA believes that records of decision, workplans, and other documents developed under existing cleanup programs such as CERCLA and RCRA will provide good models for RAPs. Under § 270.135(a) and (b) the Director is required to include in the draft RAP:

(1) The information from the RAP application discussed above (§ 270.110(a)–(f)) (for example, name of the facility, ID number, site boundaries, etc.); and

(2) Terms and conditions required under this section.

Section 270.135(b) specifies that RAPs must include:

(1) Terms and conditions necessary to ensure that the operating requirements specified in the RAP comply with the applicable provisions of parts 264, 266, and 268;

(2) Terms and conditions in § 270.30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating the RAP; and

(4) any additional terms and conditions necessary to protect human health and the environment.

The Agency received no adverse comment on the proposed requirement that RAPs include terms and conditions that ensure compliance with the applicable provisions of Parts 264, 266, and 268 (proposed sections 269.40(b) and 269.41(c)(2)), and therefore today is finalizing this requirement at § 270.135(b)(i) with minor editorial changes. To promote streamlining, however, the final rule also expressly allows these requirements to be specified ''expressly or by reference.'' In other words, when RAP conditions are based solely on what is required by the regulations (that is, there is no need to establish site-specific conditions), the RAP may either duplicate the text of the requirements from the regulations in describing what is required under the RAP, or may simply cite the applicable requirements. Of course, many Subtitle C requirements, such as design requirements for CAMUs, temporary units, and staging piles in Part 264, must be derived site-specifically, and therefore, must be included in each individual RAP if these units will be used.

The Agency did not specifically request comment on requiring the terms and conditions in § 270.30 to apply to RAPs. However, the Agency believes these terms and conditions provide legal clarity on such issues as ''duty to comply,'' ''duty to reapply,'' and ''inspection and entry,'' and will ensure effective implementation of the RAP.

Therefore, EPA has added this requirement to RAPs at § 270.135(b)(2). Many of the conditions in § 270.30 will not apply to specific actions taken under a RAP. For example, if all remediation waste is managed on-site under the RAP, then there will be no requirement for manifests, and therefore the manifest discrepancy report required under § 270.30(l)(7) will not apply to that RAP. Similarly, the monitoring requirements in § 270.30(j) would apply only to monitoring associated with units regulated under the RAP. It would not apply to general site investigation or monitoring at the cleanup site. In the future, EPA may further simplify these requirements and revise them so they are tailored more specifically to cleanup, and so that they provide greater flexibility.

Section 270.135(b)(3) requires the Director to include in the draft RAP the procedures for modifying, revoking and reissuing, and terminating the RAP, as is required under §§ 270.175, 270.180 and 270.185. These procedures are discussed fully in the preamble sections discussing the procedures for modification, revocation and reissuance, and termination in §§ 270.175, 270.180 and 270.185.

Finally, the requirement of § 270.135(b)(4) for the Director to include ''any additional terms or conditions necessary to protect human health and the environment,'' is simply a codification of RCRA section 3005(c)(3), commonly referred to as RCRA's ''omnibus permit authority provision.'' This provision allows the Director to add terms and conditions necessary to protect human health and the environment as concerns the activities expressly permitted under the RAP.

However, the Agency has also added a degree of specificity to this provision in the final rule. Specifically, today's rule expressly provides that these

additional terms or conditions include, ''any additional terms and conditions ... necessary to respond to spills and leaks during use of any units permitted under the RAP.''

The Agency added this provision to clarify that, although remediation-only facilities are no longer subject to RCRA section 3004(u) facility-wide corrective action, they do not escape cleanup responsibilities for the units permitted by the RAP. Because any units permitted under a RAP will be subject to the applicable part 264 requirements and must be approved by the Director in the RAP, EPA believes that most units will not experience problems with spills or leaks, because they will be well designed and maintained.

Also, most units permitted under RAPs will be shorter term than most units at operating TSDF, and so will be less likely to develop leaks. However, if unlikely spills or leaks occur, these units are not exempt from spill response and cleanup requirements specific to these units. The omnibus provisions in § 270.135(b)(4) provide an added option for dealing with these events from activities permitted under the RAP.

The RAP is not required to include information or conditions related to cleanup levels, site investigation, remedy selection, or similar requirements not specifically related to hazardous remediation waste management subject to RCRA permitting.

New § 270.135(c) provides that if the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP. This is the same requirement for the Director as the earlier requirement for the RAP applicant (in new § 270.125), that if the RAP applicant prepares the RAP application as part of another document, he must identify the portions of the other document that make up the RAP application. This simply allows for consolidation of documents when other decisions, such as remedy selection, are occurring at the same time as decisions on the RAP, and allows the Director to prepare only one document instead of several. This approach was proposed at § 269.40(e)(2) and EPA did not receive any negative comments on this procedure.

1. Provisions of the Proposal That Are Not Included in the Final Rule

The proposed rule also contained several additional requirements for RAP terms and conditions that the Agency is not finalizing today. First, during the development of the proposal, some of the FACA Committee members expressed concerns that certain cleanup activities may unintentionally cause additional contamination through cross-media transfer of contaminants (that is, transfer of contaminants to clean soil, air, and surface or ground water).

In response to these concerns, EPA proposed (at § 269.41(c)(7)) to require the facility owner/operator to submit information that demonstrates that any proposed treatment system will be designed and operated in a manner that will adequately control the transfer of pollutants to other environmental media. This aspect of the proposal was important because the proposal exempted significant portions of remediation waste from unit-specific standards.

However, in today's final rule all hazardous remediation wastes remain subject to Subtitle C requirements, including those designed to prevent cross media contamination (for example, the requirements in § 264.175 for tanks, § 264.221 for surface impoundments, and § 264.251 for waste piles, covering such cross-media prevention techniques as liners and covers, and controls to prevent migration into groundwater or surface water). This requirement therefore is no longer generally necessary and the Agency did not include it in the final rule. In addition, the Director may address any remaining concerns about cross-media transfer of contaminants related to the remediation waste management activities permitted by the RAP under the Agency's omnibus permitting authority, addressed above.[11]

[11] In addition to the existing regulatory requirements, since proposal, EPA has developed the Best Management Practices (BMPs) for Soil Treatment Technologies (EPA530-R97-007, May 1997) guidance document on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media. The guidance outlines the potential cross-media concerns for specific activities and recommends approaches for preventing cross-media transfer of contaminants. Its primary purpose is to prevent the cross-media transfer of contaminants during implementation of contaminated soils or solid media treatment technologies in compliance with applicable State and/or Federal regulations.

This document does not replace any existing State or Federal regulations or guidance. It was developed to support the HWIR-media rule. The BMPs guidance was not developed for and should not be used as a compliance guide for any particular set of cleanup standards, but instead as a reference during implementation of those standards. Similarly, BMPs are not meant as a selection tool for remedial treatment technologies; they should be used during the implementation stage of remedies once they are selected. The facility owner/operator and the Director should consider whether this guidance will provide helpful recommendations for the remediation waste management taking place under the RAP.

In addition, §§ 269.43(c) and (d) of the proposal allowed the Director to add provisions to the RAP specifying the conditions under which the owner/operator would manage media under a RAP, and concentration levels below which the Director would no longer consider the media to contain hazardous waste, and to add provisions (if necessary) specifying when the Director would consider threats to human health and the environment from the media to be minimized. These provisions were based on the proposed rule's provisions that would allow the Director to exempt hazardous contaminated media from Subtitle C if it were below the proposed Bright Line levels (see proposed § 269.4, and preamble about the Bright Line at 61 FR 18794; about the LDR requirements at 18804; and about treatability variances at 18810).

In some cases, under the proposal, the media would have been exempt from most of Subtitle C, but remain subject to LDR treatment standards. In those cases, the Director might specify minimize threat levels under a treatability variance as an alternative LDR level (instead of requiring treatment to the levels required in part 268). This approach was finalized in the recent Phase IV Land Disposal Restrictions Rule (63 FR 28556 (May 26, 1998)).

N. What Else Must the Director Prepare in Addition to the Draft RAP or Notice of Intent to Deny? (§ 270.140)

Once the Director has prepared the draft RAP or notice of intent to deny, § 270.140(a) requires the Director to prepare a statement of basis supporting the RAP decision. Section 270.140(b) requires the Director to compile an administrative record and specifies the contents of the administrative record for the draft RAP, which are:

(1) The RAP application and any supporting data;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all the documents cited in the statement of basis; and

(4) Any other documents supporting the decision to approve or deny the RAP.

Today's rule also provides that any documents which are readily available to the public do not need to be physically included in the administrative record as long, as these documents are specifically referenced. This eliminates the need to unnecessarily copy documents such as regulations and statutes, and other commonly available documents, and to crowd each administrative record with

documents that can be easily found elsewhere.

The statement of basis and the administrative record are essential to explain and document the basis for the Director's decision to approve or deny the RAP, and if the RAP is appealed, they provide the record for review by the Environmental Appeals Board or similar State body. The information in the administrative record allows members of the public to review the basis for the Director's decision in order to participate in a meaningful way during the comment period. The requirements for a statement of basis and administrative record are the same as the requirements in §§ 124.7 and 124.9 for other RCRA permits, except that they have to be re-worded to be more readable.

The proposed rule did not allow for administrative appeals and did not expressly require a statement of basis or compilation of an administrative record. However, because (in response to public comments) the final rule does allow for administrative appeals, as discussed later, the statement of basis and administrative record are essential to successful operation of the appeals process, and EPA has therefore added them to the requirements for RAPs in today's final rule.

New § 270.140 (c) requires that information contained in the administrative record be made available for public review upon request. This ensures that the public can review all relevant documents in preparing their comments on the draft RAP.

O. What Are the Procedures for Public Comment on the Draft RAP or Notice of Intent to Deny? (§ 270.145)

1. A Description of the Requirements

Today's rule sets out procedures for reviewing and approving RAPs. EPA considers public review and comment procedures an extremely important part of the review and approval process for remedial activities. EPA recognizes that remediation waste management activities will vary greatly in scope and risk involved, and the Agency in turn believes that public participation should vary depending on the scope and risk involved with the remediation waste management taking place. EPA expects that States that apply for authorization for today's rule may request authorization for programs that vary somewhat from today's requirements, and EPA wants to allow for flexibility in this process. EPA expects States and Regions issuing RAPs to make appropriate decisions about what levels of public participation are appropriate in different situations. However, to receive authorization for RAPs, States must at least require the minimum public participation requirement mandated by RCRA section 7004(b) and must have requirements equivalent to the other requirements in today's rule. For further discussion of State authorization issues, see the State Authority section of today's preamble.

EPA is finalizing its proposal to require the use of the statutory public participation requirements in RCRA section 7004(b). Thus, if the Director makes a tentative decision to approve or deny the RAP application, he must:

- Send notice to the facility owner/operator of his decision with a copy of the statement of basis (§ 270.145(a)(1);
- Publish that decision in a major local newspaper of general circulation (§ 270.145(a)(2);
- Broadcast his decision over a local radio station (§ 270.145(a)(3);
- Send a notice of his intent to approve or deny the RAP to each unit of local government having jurisdiction over the area in which the site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site (§ 270.145(a)(4).

This was proposed at § 269.43(e)(1)(i) and (ii).

Section 270.145(b) requires that this notice provide the public with the opportunity to submit written comments on either the draft RAP or the notice of intent to deny within no fewer than 45 days. This was proposed at § 269.43(e)(1)(ii).

Section 270.145(c) specifies the information requirements for the notice, which are:

(1) The name and addresses of the office processing the RAP application;

(2) The name and address of the RAP applicant and the site or activity;

(3) A description of the activity;

(4) The name, address, and phone number of a person from whom interested persons may obtain further information;

(5) A description of the comment procedures and other procedures by which the public may participate;

(6) If a hearing is scheduled, the date, time, location, and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record and times when it will be open for public inspection; and

(9) Additional information the Director considers necessary or proper.

These requirements ensure that the public will have enough information to participate in a meaningful way in the comment process.

The proposed rule required the same procedures. Proposed § 269.43(e)(1)(i) required notice according to the procedures of 40 CFR 124.10(d) for the contents of the notice. In the final rule, EPA has incorporated applicable requirements in § 124.10(d) directly into the regulations for RAPs (with non-substantive changes made to incorporate the requirements into today's readable format) to avoid potentially confusing cross-referencing.

Section 270.145(d) requires that if within the comment period the Director receives written notice of opposition to his decision to approve or deny the RAP and a request for a hearing, the Director must hold an informal public hearing. The Director may also determine on his own initiative that a hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must:

- Schedule the hearing at a location convenient to the nearest population center to the remediation waste management site;
- Give notice again in the newspaper and on the radio and to the local government including the information described above; and

(1) Reference the date of any previous public notices relating to the RAP application;

(2) Include the date, time, and place of the hearing; and

(3) Provide a brief description of the nature and purpose of the hearing, including procedures.

Again, these hearing requirements are identical to what was proposed at § 269.43(e)(2), but with minor editorial changes to increase readability. These requirements are also required under RCRA section 7004(b).

2. Commenters Requested More Flexibility

Several commenters requested additional flexibility in the public participation process under today's § 270.145 requirements. Commenters suggested that RAPs for media that were excluded from Subtitle C should not have to follow the RCRA statutory public participation requirements. Today's rule does not exempt any hazardous remediation waste from Subtitle C, so RAPs always must serve as RCRA permits and must follow the RCRA statutory requirements for permits. Commenters specifically mentioned the 45-day comment period, the requirement to hold a hearing if one is requested, and the requirement to send a copy of the RAP to each State

agency having any authority under State law with respect to any construction or operations at the site. Commenters generally suggested that EPA should allow flexibility in how public participation was performed, depending on the activities taking place at the site.

However, under today's rule, RAPs constitute RCRA permits, and therefore, the statute mandates certain very specific public participation activities in RCRA section 7004(b) including the 45-day comment period, hearings, and sending copies of the RAP to State agencies. EPA has limited any additional specificity (for example, the requirements for the contents of a notice in § 270.145(c)) of today's rule to information or procedures necessary for smooth implementation of those statutory requirements, and has not included other procedural requirements, such as §§ 124.31–124.33.

The requirements in § 270.145(a)(2), (3), (4), (b) and (d) are direct requirements from section 7004 of RCRA. The only requirements that EPA has added beyond the statutory requirements are:

- For the Director to send a notice of his decision to the RAP applicant (§ 270.145(a)(1));
- The content requirements for the public notice of the RAP decision (§ 270.145(c)); and
- The content requirements for the public notice for any hearings (§ 270.145(d)(1)–(3)).

EPA believes that it is important to notify the RAP applicant of the Director's decision, and for public notices to include sufficient information about RAP decisions and public hearings to allow meaningful public participation. This is why EPA has added these few requirements to the statutory minimum procedures, and these requirements are the same as the equivalent requirements for traditional RCRA permits. It is, however, the Agency's policy on public participation to stress the importance of appropriate public participation in environmental decision-making.

EPA has acknowledged repeatedly that the Agency believes that the RCRA statute is overly prescriptive in its definition of public participation requirements for RCRA permits applying to remediation-only sites. Indeed, cleanups under EPA's own Superfund program—which provides a full and extensive opportunity for public participation—might not meet all of the RCRA statutory standards. Ideally, EPA would provide significantly greater latitude for State programs in today's rule; however, the Agency believes it is constrained by the statute. For this as well as other reasons, the Administration is supporting legislative reform of RCRA specific to remediation waste.

P. The Importance of Public Involvement in the RAP Process

It is EPA's policy to encourage public involvement early and often in the permitting process, in its remediation programs, as well as in other Agency actions. EPA intends this rule, and its implementation, to be consistent with that policy.

EPA also recognizes that existing State and Federal authorities provide for public involvement through widely varying processes. EPA, in crafting today's rule, intends to provide enough procedural flexibility so that States will not have to either modify their public involvement policies, or duplicate their efforts towards public participation in order to comply with slightly different requirements under today's rule.

EPA recognizes that meaningful public participation means that all potentially affected parties have an opportunity to participate early in the process and have ample time to participate in the remediation waste management decisions. Today's rule establishes the minimum procedures for public involvement—public notice and opportunity for comment when the authorized regulatory agency makes a preliminary decision to either approve or deny a draft RAP. EPA wishes to encourage involvement of the public throughout the remediation waste management process. EPA also believes that particular situations may warrant more than these minimum requirements.

In general, the level of public involvement will depend on the action—for example, the Agency may simply provide the minimum required opportunity for public comment on a proposed RAP for on-site storage of waste with low levels of contamination before it is removed, but may provide higher levels of involvement when a RAP includes treatment of a large quantity of remediation waste or on-site waste disposal. For these reasons, EPA believes that public involvement should be tailored to the needs at the site, and has therefore provided necessary flexibility in this rule.

Some cases may warrant more than notice and opportunity for comment. The Director or the facility owner/operator may choose to voluntarily take additional steps beyond what is required in today's regulations when additional involvement is warranted. In some cases, meaningful public notice may include bilingual notifications, publication of site fact sheets or of legal notices in city or community newspapers (or other media, such as radio, church organizations, and community newsletters) at key milestones in the remediation waste management decision process. Existing forums of communication, such as regular community meetings and electronic bulletin boards can be used to provide regular progress reports on remediation waste management activities.

The idea of different levels of public involvement is not new. EPA has long recognized that the level of public involvement should be determined by the action taking place. As an example of EPA's recognition that different activities warrant different levels of public participation, in a final rule dated September 28, 1988 (53 FR 37936), EPA promulgated regulations to govern modification of permits. Those regulations established different levels of public involvement depending on the significance of the permit modification.

Class 1 modifications, which apply to minor changes to permits, require minimal public involvement. The permittee must send a notice of the permit modification to all persons on the facility mailing list, and to the appropriate units of State and local government. Interested persons may request review of these permit modifications.

Class 2 permit modifications require increased public involvement, and Class 3 modifications, for major modifications to permits, require far more extensive involvement of the public—publication in a local newspaper, a public meeting, and a public comment period. To assist facility owners and operators in implementing the rule, EPA classified different activities as Class 1, 2, or 3 modifications, based on the significance of the action in Appendix 1 to § 270.42. These different classes of permits show that EPA has long agreed that different levels of public participation are appropriate for different activities.

EPA has also issued guidance on public involvement which may, as appropriate, be used as guidance in implementing today's rule (*see* the RCRA Public Participation Manual, September, 1996, EPA 530–R–96–007). This manual provides guidance on addressing public participation in the permit process, including permitting and enforcing corrective action activities. The manual emphasizes the importance of cooperation and communication and highlights the public's role in providing valuable input. It stresses the importance of early and meaningful involvement of the

public in Agency activities, and of open access to information.

In addition to the manual, EPA fully encourages the Director and the RAP applicant to consider, as appropriate, The Model Plan for Public Participation, developed by the Public Participation and Accountability Subcommittee of the National Environmental Justice Advisory Council (a Federal Advisory Council to the U.S. Environmental Protection Agency) when taking actions that would benefit from additional public involvement beyond what is required in today's rule. The Model Plan encourages public participation in all aspects of environmental decision making. It emphasizes that communities, including all types of stakeholders, and regulatory agencies should be seen as equal partners in any dialogue on environmental justice issues. The model also recognizes the importance of maintaining honesty and integrity in the process by clearly articulating goals, expectations, and limitations.

Most recently, the Agency issued the Enhanced Public Participation Rule (60 FR 63431 (December 11, 1995)), which amended 40 CFR parts 124 and 270 to provide for public participation earlier in the permitting process, and expanded public access to information throughout the permitting process and the operational lives of facilities. It requires the person associated with the facility, usually the facility operator, to notify the public before applying for a permit under § 124.31.

The Agency encourages using this rule, as appropriate, as guidance for cleanups that require a RAP, especially when there is a highly toxic or large volume of remediation waste. Where a cleanup involves treating, storing or disposing of hazardous remediation waste and a RAP is issued, public participation on the RAP should generally be folded into the broader strategy for encouraging public involvement in the cleanup. EPA encourages regulators and facility owners/operators implementing the provisions of today's final rule to refer to these regulations and guidance documents as guidance in developing appropriate public participation activities for individual RAPs.

Q. How Will the Director Make a Final Decision on My RAP Application? (§ 270.150)

1. A Description of the Requirements

Section 270.150(a) requires the Director to consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny. Section 270.150(b) and (c) require that, when the Director has responded to all significant comments and revised the RAP as appropriate and has determined whether the RAP includes all the required information and terms and conditions, he must issue a final decision on the RAP application, and notify in writing the RAP applicant and all commenters on the draft RAP or the notice of intent to deny. This was proposed at § 269.43(e)(4), on which the Agency received no adverse comment.

Section 270.150(d) specifies that if the Director's final decision is that his tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP. This is the same as the approach taken for traditional RCRA permits (see § 124.6(b)), and the Agency sees no reason to deviate from that approach in today's rule.

Under new § 270.150(e), when the Director issues his decision, he must include reference to the procedures for appealing the decision. Because appeals were not provided for in the proposed rule, this is a new requirement EPA has added to the final rule. This is the same requirement as for permits under § 124.15(a), and EPA did not see any reason to differ from these existing requirements for permits.

New § 270.150(f) requires that, before issuing the final RAP decision, the Director compile an administrative record that includes the information from the administrative record from the draft RAP and also:

(1) All comments received;
(2) Tapes or transcripts of hearings;
(3) Written materials submitted at hearings;
(4) Responses to comments;
(5) New material placed in the record since the draft RAP was issued;
(6) Other documents supporting the RAP; and
(7) The final RAP.

This section again repeats that material readily available need not be included. This is the same as for the administrative record for draft RAPs and also for traditional RCRA permits.

Section 270.150(g) requires that the administrative record must be made available for review by the public upon request.

As described for the administrative record for the draft RAP, EPA believes that express requirements for compiling administrative records are essential for successful hearing of appeals, and because appeals were not permitted in the proposal, EPA did not include this requirement in the proposal. However, an administrative record is now a necessary part of today's final rule. The elements of the administrative records for RAPs are the same as those required for traditional RCRA permits under § 124.18. EPA believes that the same information that is necessary to understand the decision-making on a traditional RCRA permit is also appropriate for RAPs.

2. Comments on the Proposed Requirements

The proposed rule requirement for the Director to consider and respond to any significant comments, and to modify the RAP as appropriate, was at § 269.43(e)(3). (The final rule uses the word ''revised'' instead of ''modified'' to avoid confusion with §§ 270.170 and 270.175 pertaining to post-issuance modifications.) Several commenters were concerned that the Director would unilaterally modify RAPs due to public comments without consulting with the facility owner or operator. They asked that EPA require the Director to consult or negotiate with the facility owner or operator before making modifications due to public comment. One commenter explained that changes resulting from public comment may substantially increase the cost of compliance, or otherwise significantly affect the facility's ability to complete remedial actions, in which case the facility would have no choice but to comply, or suspend remedial activities while seeking judicial review. Commenters were also concerned that any action that requires approval from the Agency takes a very long time to get approved. The commenter asked for EPA to limit the Director's review period to 60 days, and if the Director had not acted on the RAP within 60 days, the RAP would go into effect automatically.

EPA considers open communication with the facility owner/operator important to successful implementation of the RCRA program. EPA encourages Regional offices and States implementing today's rule to discuss, when appropriate, any revisions that may be made to the RAP in response to public comment with the facility owner/operator before making them. The Agency has not added this as a requirement to the approval process, however. An overriding objective of today's rule is to eliminate unnecessary process from the regulations. The Agency believes that a mandatory consultation process such as that suggested by the commenter is unnecessary because today's rule, unlike the proposal, provides for appeal of the Director's final decision to EPA's Environmental Appeals Board. Facility

owner/operators who are unhappy with changes made in response to public comment will have ample opportunity, at that time, to convince the Agency to change the contested provisions.

EPA has also decided not to limit the amount of time the Director has to review and approve RAPs so that if the Director does not act, the RAP becomes effective. EPA does not believe that the Agency would be fulfilling its statutory obligation to ensure compliance with RCRA requirements if RAPs could become effective without an affirmative decision from the Director (see RCRA section 3005). In addition, this would be especially problematic because under new § 270.90, the RAP generally serves as a shield against enforcement, and therefore the Director must make an affirmative decision that the RAP will ensure compliance with the applicable Subtitle C requirements before the RAP can become effective.

Commenters also asked that the facility owner or operator be required to provide copies of all documents he is required to maintain during the remedial activity into a local library to allow for public review. EPA encourages any steps the Director can take to facilitate meaningful public involvement, but again has chosen to limit actual regulatory requirements in an effort to maintain a more flexible process. EPA already requires the Director to make the administrative record available under both §§ 270.140(c) and 270.150(g). In addition, the Director can require the facility owner/operator to set up an information repository as a part of the RAP under the terms and conditions imposed at § 270.135, if the Director considers a repository appropriate. We believe these authorities allow the full range of options to assure easy public access to information so that meaningful public involvement can occur.

The requirement for the Director to make a determination at § 270.150(b) and (c) was proposed at § 269.43(e)(4), and stated ''When the Director determines that the RMP adequately demonstrates compliance with all applicable requirements. . . .'' The requirements in § 270.150 of today's final rule clarify what the proposal meant by ''all applicable requirements.''

The proposed rule did not expressly outline the procedures if the Director decided to deny a RAP. This was an oversight. To correct that oversight, EPA has made denial procedures for RAPs equivalent to approval procedures for RAPs.

R. May the Decision To Approve or Deny My RAP Application Be Administratively Appealed? (§ 270.155)

The Agency had originally proposed to eliminate administrative appeals (that is, to the EPA Environmental Appeals Board) because EPA felt that allowing facility owner/operators to proceed directly to judicial review (if necessary) after the Director's decision on the RAP would streamline the process. However, numerous commenters did not believe that this particular part of the proposal resulted in any beneficial streamlining. Commenters expressed an interest in being able to avoid expensive and time-consuming judicial proceedings by first requesting an administrative appeal. Also, one commenter pointed out that in instances where the RAP applicant is a Federal agency, the judicial review process is not available because Federal administrative agencies are unable to seek judicial review of final actions of other Federal administrative agencies. No commenters wrote to support EPA's proposal to not provide for appeals.

The Agency agrees with these commenters that allowing for further review within the Agency will, in many cases, help avoid time-consuming and costly litigation. Because, in the remediation setting, this is time and money better spent on cleanups, the Agency has decided in this final rule to provide for administrative appeals for RAPs. Thus, the procedure in new § 270.155 requires facility owner/operators to follow the procedures of § 124.19 for appeals. The only difference between the process EPA requires for RAPs, and the traditional § 124.10 requirements is that when the Director gives public notice of appeals decisions for RAPs, (under § 124.19(c)), he will follow the RAPs public participation procedures in § 270.145 instead of those in § 124.10, which are used to give public notice of appeals decisions for traditional RCRA permits.

Sections 270.155(a)(1)-(3) include requirements for what the public notice of the appeal must include, which are: (1) the briefing schedule for the appeal; (2) a statement that any interested person may file an amicus brief with the Environmental Appeals Board; and (3) the appropriate information from § 270.145(c), such as the name and address of the remediation waste management site and a description of the proposed activities.

The requirements under § 270.155(a)(1) and (2) for what to include in the public notice already appear in § 124.19(c), but are repeated in § 270.155 for clarity. Section 124.19(c) also specifies that public notice of appeals decisions will be given as provided in § 124.10. However, EPA has specified in today's rule that public notice of appeals decisions for RAPs will follow the procedures of § 270.145, and will contain the information from § 270.145 (c), instead of § 124.10.

For clarity, new § 270.155(b) repeats the requirement in § 124.19 that exhausting the administrative appeals procedure of § 124.19 is a prerequisite to judicial review under RCRA section 7006(b). This is the same requirement as in place for traditional RCRA permits under § 124.19(e), and EPA saw no reason to differ from the current requirements.

S. When Does My RAP Become Effective? (§ 270.160)

Section 270.160 states that the RAP is effective 30 days after the Director has notified the facility owner and operator and all commenters that he approves the RAP. This is the same as the effective dates for traditional RCRA permits. The 30-day period allows time for parties to appeal the Director's final decision before the RAP is effective. EPA stated in the preamble to May 19, 1980 rulemaking, when these provisions for permits were promulgated, that the 30 days ''is a necessary part of a party's right to request an evidentiary hearing.''

Under § 270.160(a), the Director may specify a later effective date in the final RAP decision if he feels that a longer time is necessary to allow facility owners and operators more time to come into compliance with the new requirements, or knows of other necessary reasons for a later effective date.

Section 270.160(b) specifies that if a RAP has been appealed, and the appeal is granted, conditions of the RAP will be stayed according to the provisions of § 124.16, pending the outcome of the appeal. The Director may identify which conditions of the RAP are severable, and therefore are not stayed. However, the provisions that are appealed and any provisions that are not severable from the appealed provisions will be stayed.

Section 270.160(c) specifies that the RAP may become effective immediately if no commenters requested a change from the draft RAP. This is because if no one requested a change, then no one would have the right to an appeal. Only parties who comment on the draft RAP may request appeal.

The proposed rule did not specify effective dates for RAPs. This was an oversight EPA has corrected in today's final rule. These effective date requirements are the same as those currently required for traditional RCRA permits under § 124.15(b), and EPA saw

no reason to differ from these existing requirements.

T. When May I Begin Physical Construction of New Units Permitted Under the RAP? (§ 270.165)

Section 270.165 specifies that the RAP applicant cannot begin physical construction of new units before receiving a finally effective RAP. This is the same as the requirements for traditional RCRA permits at § 270.10(f)(1).

How May My RAP be Modified, Revoked and Reissued, or Terminated?

U. After My RAP Is Issued, How May It Be Modified, Revoked and Reissued, or Terminated? (§ 270.170)

Plans for remedial actions sometimes need to be modified, revoked and reissued, or terminated. Often, modifications, revocations and reissuances, or terminations are necessary as new information becomes available. To retain reasonable flexibility in the remedial process—where it is difficult to predict all contingencies, and where different State programs may have different existing requirements for when plans need to be modified, revoked and reissued, or terminated—today's rule (as did the proposal), does not include specific procedures for RAP modification, revocation and reissuance, or termination but requires the Director to specify these procedures in the RAP. This provides authorized State or Federal programs the ability to allow modifications, revocations and reissuances, and terminations when and how they would fit efficiently into the State or Federal program. Today's rule at § 270.170 requires (the same as the proposal) that the Director include these procedures in the RAP, and also requires that these procedures provide for public review and comment if there is a ''significant'' change in the management of hazardous remediation waste at the site, or in circumstances which otherwise merit public review and comment. This was proposed at § 269.44(a) and is consistent with EPA's preference for involving the public in important decisions.

While commenters agreed with this general approach, two commenters asked for clarification on what constitutes a ''significant'' modification. EPA expects the Director to consider examples such as changes in treatment processes, use of new units, or activities that would require Class 2 or 3 modifications in Appendix 1 to § 270.42 as ''significant'' modifications (see also § 270.42(d)(2)). EPA expects that activities that would require Class 2 or 3 modifications would generally be the same kinds of activities that would be considered ''significant'' in this case. However, because activities that take place at cleanup sites are so often influenced by the site-specific factors that affect the management of remediation wastes at each site, EPA has decided not to put any limits into the regulatory language defining a ''significant'' change. This allows the Director full discretion to determine what constitutes ''significant'' for any given site.

The proposed regulatory language explaining which modifications should include public participation included modifications that were ''major or significant.'' EPA considers ''major'' and ''significant'' to mean the same thing in this instance—and so has eliminated that redundancy by limiting the final rule to the term ''significant.''

Proposed § 269.44 referred only to modifications and not to revocation and reissuance, which was an oversight. Proposed § 269.45 included revocation with expiration and termination. The requirements for both proposed sections were the same, stating that the Director would specify procedures for these actions. EPA has decided to move the requirement to specify procedures for all these activities into one section (§ 270.170) because the same requirement applies to all of these activities, that the Director must specify procedures for modification, revocation and reissuance, and termination in the RAP.

Today's final rule also allows the Director to specify these modification, revocation and reissuance, or termination procedures individually or to incorporate them by reference. EPA expects that State programs may already have or may develop standard modification and revocation and reissuance procedures. EPA intended for the proposed rule language, which simply stated that the ''Director shall specify . . . procedures,'' to allow States having existing procedures to incorporate these procedures by reference, but the final rule language makes that explicit. EPA believes that incorporating already approved procedures by reference can save time and controversy in preparing and approving RAPs.

Section 270.170 also specifies that if your RAP has been incorporated into a traditional RCRA permit, then the RAP will be modified, revoked and reissued, or terminated according to the applicable traditional RCRA permit requirements. Of course, the Director may, as appropriate, specify in the RAP additional grounds or procedures, at his discretion. This is conforming change to make this requirement consistent with § 270.85(c), which allows RAPs to be incorporated into traditional RCRA permits.

V. For What Reasons May the Director Choose To Modify My Final RAP? (§ 270.175)

Today's rule specifies at § 270.175 that the Director may determine on his own initiative that a modification is necessary. New §§ 270.175(a) (1)–(8) specify the causes that justify a Director-initiated modification. The only cause specified in the proposal for Director initiated modifications was ''new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site'' (see 61 FR 18854). The Agency received no adverse comment on limiting the Director's discretion in this area. However, the Agency has decided to clarify the causes for Director-initiated modifications in today's RAPs regulations to include the same causes for Director-initiated modifications as for traditional RCRA permits under §§ 270.41 and 270.43. EPA believes this is an outgrowth of the proposed requirement, and responds to commenters' concerns that the Director had too much discretion as to when he could modify RAPs.

As discussed above, the proposed rule allowed the Director to make ''unilateral'' modifications based on ''new information which indicates that such modification may be necessary to ensure the effective implementation of remedial actions at the site.'' Commenters expressed concern about what they saw as the Director's too-broad discretion to make ''unilateral'' modifications. In response to these comments, today's final rule requirements for ''causes'' adds more specificity to what that ''new information'' may be.

Section 270.175(b) allows the Director to modify the RAP as necessary to ensure the facility continues to comply with the currently applicable requirements of parts 124, 260–266 and 270 when he reviews a RAP for a land disposal facility every five years, as is required under § 270.195. This same requirement applies to traditional RCRA permits under § 270.41(a)(5).

Also to protect the facility owner/operator, at new § 270.175(c) the Agency has included the provision that applies currently to traditional RCRA permits which specifies that the Director will not reevaluate the suitability of the location of the facility at the time of RAP modification. This would cause too

much disruption to facility operations. The location will be evaluated once when the RAP is initially approved, but once approved it will not be reevaluated unless new information or standards indicate that a threat to human health or the environment exists that was unknown at the time of RAP issuance.

W. For What Reasons May the Director Choose To Revoke and Reissue My Final RAP? (§ 270.180)

The Agency has specified in new § 270.180(a) causes for when the Director may modify or revoke and reissue a RAP. Again, these causes are the same as those for permits under the current regulations at §§ 270.41 and 270.43, and are intended to provide assurance to the facility owner/operator security that they can operate in compliance with their permit without fear that their permit will be modified without a good cause.

EPA explained its original reasoning for promulgating causes for Director-initiated modifications and revocation and reissuances of traditional RCRA permits at 45 FR 33314 (May 19, 1980). That preamble stated that ''EPA has rewritten the permit modification section . . . to provide greater certainty to permittees during the period when they hold permits and thereby make it easier to make business decisions and obtain financing . . . Normally, a permit will not be modified during its term if the facility is in compliance with the conditions of the permit. The list of causes for modifying a permit is narrow; and absent cause from this list, the permit cannot be modified.'' In that notice, EPA also explains the specific rationale for each of the causes for Director-initiated modifications, revocations and reissuances, which are the same causes as allowed in today's rule. EPA included the same protection for owners and operators when RAPs are revoked and reissued at § 270.180(b) as is provided for when RAPs are modified at § 270.175(c). That is that the Director will not reevaluate the suitability of the location of the facility at the time of RAP revocation and reissuance. The reasons for this protection are discussed above at § 270.175(c).

X. For What Reasons May the Director Choose To Terminate My Final RAP, or Deny My Renewal Application? (§ 270.185)

Unlike in the proposed rule, the Agency has decided to retain the requirements in § 270.43 for causes for permit termination. Thus in new § 270.185, EPA cites the three reasons from § 270.175 why RAPs may be terminated. They are that:

(1) The facility owner/operator violates the RAP;

(2) The facility owner/operator did not fully disclose or misrepresented information during the application process; or

(3) The activity authorized by the RAP endangers human health or the environment, and can only be remedied by termination.

The Agency believes it is appropriate to retain these requirements for RAPs because they specify the basis of what EPA believes should be potential grounds for termination, while providing assurances of certainty to the facility owner/operator by limiting the reasons the Director may terminate the RAP. The proposed rule did not specify detailed reasons for why RAPs could be terminated, but simply left that up to the Director to specify in the RAP.

Y. May the Decision To Approve or Deny a Modification, Revocation and Reissuance, or Termination of My RAP Be Administratively Appealed? (§ 270.190)

Section 270.190(a) states that any commenter on the modification, revocation and reissuance or termination, or any participant in any hearings on these actions, may appeal the decision to modify, revoke and reissue or terminate a RAP to the Environmental Appeals Board, using the same procedures as those used for appealing the original RAP decision in § 270.155. Appeals of approvals of modifications, revocation and reissuances, and terminations of traditional RCRA permits follow the same process as appeals of original permit decisions. EPA has decided that it will be easiest to understand if RAPs follow the same construct as traditional RCRA permits. Also, modifications of RAPs could possibly include significant changes in the remediation waste management activities at the remediation waste management site, and so the right to appeal these decisions is important to the facility owner/operator and to the community.

Section 270.190(b) specifies that denials of requests for RAP modification, revocation and reissuance or termination may be informally appealed, and § 270.190(c) sets out the procedures for informal appeals which are that: (1) The person appealing the decision must send a letter to the Environmental Appeals Board; (2) the Board has 60 days to act; and (3) if the Board does not take action within 60 days, the appeal will be considered denied.

In the May 19, 1980 final rule which created the § 124.5 requirements for informal appeals, EPA explained the Agency's rationale in this way: ''EPA rejected comments urging that modification denials be appealable through the same agency procedures as permit issuance or denial. Departures from the cycle of permit issuance and periodic examination should not be encouraged in such a manner. If encouraged, they could keep many permits in a state of perpetual reexamination thus impeding the control program being implemented.'' EPA has chosen to apply the same process for RAP modification, revocation and reissuance and termination denials as applies to the same decisions for traditional RCRA permits. This process for informal appeals is the same as the process for informal appeals of denials of requests for permit modification, revocation and reissuance and termination in § 124.5(b), except that it has been re-written to be more readable. EPA sees no reason why the processes should differ.

Section 270.190(d) states that this appeal is a prerequisite to judicial review of these actions. This same requirement applies to traditional RCRA permits under §§ 124.19(e) and 124.5(b).

Of course, because the proposal did not allow for appeal of RAPs, it also did not allow for appeal of RAP modification, revocation and reissuance, or termination. However, the Agency has provided these provisions in response to commenters' requests, as more fully discussed in the preamble section for § 270.155 entitled ''May the decision to approve or deny my RAP application be administratively appealed?''

Z. When Will My RAP Expire? (§ 270.195)

As with all RCRA permits, § 270.195 requires (as proposed at § 269.45) that RAPs have a maximum life of 10 years, and that RAPs that permit land disposal units be reviewed every five years. This requirement is a statutory requirement under RCRA section 3005(c)(3). Of course, in many cases, remedies will be short-term; in those cases, the RAP would specify a shorter term than the 10-year maximum. The Agency did not receive any adverse comment on this requirement.

AA. How May I Renew my RAP if It Is Expiring? (§ 270.200)

Like the rule for traditional RCRA permits (see § 270.10(a)), today's rule provides that the procedures for renewing RAPs (new § 270.200) are the

same as the procedures for issuing RAPs. The proposed rule's silence on this issue was an oversight.

BB. What Happens if I Have Applied Correctly for a RAP Renewal, But Have Not Received Approval by the Time My Old RAP Expires? (§ 270.205)

The same as § 270.51 provides for traditional RCRA permits, new § 270.92(e) provides assurances to the facility owner/operator by stating that an expiring RAP remains in effect until a new RAP is effective, as long as a timely application has been submitted and, through no fault of the facility owner/operator, the Director has not issued an effective RAP before the previous RAP expires. This will ensure that remediation waste management will not be interrupted because the Director was unable to renew the RAP before the previous RAP expired. Again, EPA did not specify requirements in the proposed rule for this situation, but is expressly including these requirements in today's rule to ensure effective implementation.

Operating Under Your RAP

CC. What Records Must I Maintain Concerning My RAP? (§ 270.210)

As discussed above, the administrative record for RAPs must be kept by the Director under §§ 270.140 and 270.150. Under new § 270.210, however, the facility owner or operator is required to keep records of all data used to complete the RAP application and any supplemental information that is submitted for at least 3 years from the date the application is signed, and any operating and/or other records the Director requires the facility owner/operator to maintain as a condition of the RAP.

This language is included to remind the facility owner/operator that recordkeeping and reporting requirements may be imposed under the Director's authority to impose ''terms and conditions necessary to ensure that the operating requirements specified in your RAP comply'' with applicable requirements (§ 270.135). Although the Agency proposed that all recordkeeping and reporting requirements would be set on a site-specific basis (see 61 FR 18817), the Agency is including these requirements in today's rule to avoid unnecessary disputes each time a RAP is issued. In addition, the facility owner/operator must comply with recordkeeping requirements from the applicable Part 264 requirements.

The requirements in new § 270.210 are the same as those for traditional RCRA permits required under § 270.10(i), except that they have been reworded to be more readable. In the May 19, 1980 notice where EPA first promulgated the § 270.10(i) requirements, EPA justified the requirement saying that ''[t]he recordkeeping requirements are necessary to support any subsequent EPA enforcement action for false reporting'' (45 FR 33300 (May 19, 1980)).

Several commenters supported EPA's proposal to allow the Director to set all recordkeeping and reporting requirements site-specifically in the RAP. However, two commenters requested that EPA require the owner/operator to maintain certain records in all cases. One requested that EPA require the facility owner/operator to maintain records about waste that is shipped off-site for management to provide EPA the ability to track the waste if a non-hazardous determination was found to be inappropriate. Another commenter suggested requiring the facility owner/operator to maintain a copy of the RAP, testing results, and manifests and/or bills-of-lading for wastes moved off-site.

All of these comments were based on the premise that EPA was allowing some contaminated media to be exempted from Subtitle C requirements. However, in today's rule, all hazardous remediation wastes remain subject to Subtitle C, including the requirements for manifests, which should alleviate the concerns of the two commenters who recommended requiring manifests. Also, all hazardous remediation wastes remain subject to the applicable requirements in Part 264, some of which require the facility owner/operator to maintain certain records.

In addition to those requirements, EPA decided it was appropriate to require the same recordkeeping requirements for RAPs as are required for traditional RCRA permits under § 270.10(i). These provisions require the facility owner/operator to maintain records of data used to prepare the RAP application and supporting documents. EPA believes that these requirements sufficiently respond to the concerns raised by the two commenters.

DD. How Are the Time Periods in the Requirements of This Subpart and My RAP Computed? (§ 270.215)

Although the proposal did not discuss this issue, to avoid unnecessary disputes over the computation of time, EPA has decided to add new § 270.215, which keeps the provision at § 124.20 clarifying how time periods specified in the permitting rules will be computed. Specifically, § 270.215(a) specifies that any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. Section 270.215(b) specifies that any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. Section 270.215(c) specifies that if the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day. Finally, § 270.215(d) specifies that whenever a party or interested person has the right or is required to act within a prescribed period after the service of notice or other paper upon him or her by mail, 3 days must be added to the prescribed term. The regulatory language includes examples to make these requirements easier to understand.

EE. How May I Transfer My RAP to a New Owner or Operator? (§ 270.220)

The Agency has decided to apply the same requirements to RAPs (under new § 270.220) that § 270.40 requires for traditional RCRA permits. This requires that if the ownership or operational control of the facility changes, the RAP must be modified or revoked and reissued to reflect this change. Again, although this was not proposed, the Agency added it to ensure that the appropriate person is responsible for activities permitted under the RAP.

Note, however, that a change in facility ownership or operational control should not be considered a ''significant'' change; the regulations for traditional RCRA permits in § 270.40 allow a change in facility ownership to be made as a Class 1 modification to a permit, which is not a significant change.

Like § 270.40, new § 270.220 requires the new facility owner or operator to submit a revised RAP application no later than 90 days before the scheduled change, and requires a written agreement for the date for transfer of RAP responsibility, and includes requirements for Part 264, Subpart H, Financial requirements. The requirement to submit the revised RAP application to the Director 90 days before the change allows adequate time to revise the RAP before the change occurs, makes clear when facility ownership or operational control is transferred, and ensures that a responsible person will be fulfilling the Part 264, Subpart H, financial responsibility requirements for the facility at all times. These requirements in new § 270.220 are identical to the requirements in § 270.40, except that they have been rewritten to be more readable and to use the words ''RAP'' and ''remediation waste management site'' instead of ''permit'' and ''facility.''

FF. What Must the State or EPA Region Report About Non-compliance With RAPs? (§ 270.225)

Section 270.225 requires the State or EPA Region implementing RAPs to report to the EPA Regional Administrator or to EPA headquarters, respectively, on noncompliance with RAPs according to § 270.5. The proposed rule did not explicitly include this permitting requirement, which is currently imposed for traditional RCRA permits. However, without soliciting comment on this issue more explicitly, EPA is reluctant to eliminate this requirement for RAPs.

Obtaining a RAP for an Off-site Location

GG. May I Perform Remediation Waste Management Activities Under a RAP at a Location Removed From the Area Where the Remediation Wastes Originated? (§ 270.230)

New § 270.80(a) states that a RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated and areas in close proximity to the contaminated area, except as allowed in limited circumstances under this section. This limitation was originally included in the definition of remediation waste management site in the proposal for today's rule. Many commenters addressed this limitation in their comments. One commenter argued that managing remediation waste away from the area of contamination might be the most environmentally protective option in some cases. For example, permafrost in many areas in Alaska means that surface water is abundant and floodplains are extensive, so if the area of contamination were in these areas, it would be more environmentally protective to treat, store, or dispose the remediation waste at a more suitable, possibly remote, location. Other commenters suggested that it would be environmentally beneficial to locate remediation waste management sites away from the area of contamination if the contaminated area were located in a potable well field or over a sole-source aquifer.

One commenter raised the point that ''pipelines and other industries that operate facilities on extensive linear rights-of-way frequently must deal with historical contamination of soils at multiple, noncontiguous locations, many of which may be extremely remote. In these instances, it is most cost-effective to establish a centralized remediation site, rather than to carry out remedial treatment at each site of original deposition. This allows the remedial treatment to be carried out at a location selected for characteristics to minimize exposure to sensitive environments and to resident human populations.''

Other commenters pointed out that some large facilities may limit public access, and that plant services and equipment, such as waste water treatment plants and paved areas for staging may be far away from the contaminated areas. These commenters suggested expanding the definition to include, if necessary, the entire facility boundary (that is, areas under common ownership) to allow the use of an area that may be several miles away, but better suited or safer for remedial functions, yet contained within the perimeter of the facility's security fence.

Another commenter raised the point that contaminated areas are often located in areas of a site remote from utilities such as electricity, steam, roadways, etc., and that it would be reasonable to allow these remediation wastes to be managed in other areas of the site where these utilities were available. Finally, the Department of Energy (DOE) commented that there are locations where space is limited, and the remediation site needs to be expanded to a location that is removed from general employee access, and that at large sites with multiple areas of contamination, it might be most efficient to consolidate those wastes into one centralized management area within the boundaries of the facility.

The Agency proposed to limit media remediation sites to the ''area of contamination'' and ''areas in close proximity'' to ensure adequate oversight of the waste management activities, to ensure that the process was streamlined, and to reduce administrative complications. Many commenters considered EPA's concerns and also added additional potential concerns that locations away from the area of contamination might become contaminated in the course of waste management, that surrounding communities might be affected by this waste management, and that these might be long-term actions which might not be desirable to the surrounding community.

However, commenters also suggested solutions. Commenters suggested that the Agency set up a preference for locating remediation waste management sites in the area of contamination or areas in close proximity, unless good justification could be made why other locations would be preferable. In light of concerns about control over the boundaries of a remediation waste management site, and community involvement, commenters suggested that the RAP approval process would provide the Director the opportunity to approve or deny the designation of the boundaries of the remediation waste management site, would allow the surrounding community to participate in the decisions for activities that might affect them, and would provide the oversight to ensure proper waste management.

EPA agrees that in some cases, such as the commenters have raised, it may be preferable to designate alternative locations for remediation waste management, and has added the special requirements under § 270.230 for performing remediation waste management activities at a location removed from the area where the remediation wastes originated, to respond to these comments. Section 270.230(a) and (b) allow the facility owner/operator to request and the Director approve a RAP for an alternative location if performing the remediation waste management activities at such a location will be more protective than managing the remediation in the area of contamination or areas in close proximity. Section 270.230(c) specifies that a RAP for an alternative location will be approved or denied according to the procedures and requirements for RAPs in this Subpart.

EPA expressed concern about the possibility of contaminated areas being located in floodplains in the proposal, and was persuaded by the other examples provided by commenters such as permafrost areas, potable well fields, and sole source aquifers. EPA agrees that it would not be environmentally desirable to designate remediation wastes management sites in these locations. EPA agrees that centralized treatment, in the types of situations described by the commenters, may be environmentally beneficial. The Agency does not want to inhibit the remediation of contaminated properties.

The Agency has set specific requirements in § 270.230(d) for RAPs at alternative locations. First, EPA has specified in § 270.230(d)(1) that the RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated. EPA wants to encourage environmentally beneficial cleanups, but does not want to allow a commercial remediation waste management facility to open as an ''alternative location'' which is owned and operated exclusively by someone who is not involved in the cleanup activities, and then be exempt from facility-wide corrective action

requirements. Therefore this limitation ensures that the facility owner or operator performing the cleanup activities be a permittee at the remote location, as either the operator or the owner, or both. Of course, others can also be permittees (for example, the land owner, if not the same as the person performing the cleanup). For example, in the situation discussed above where it may be more protective to remove remediation wastes for management outside of a floodplain in Alaska, the remote location may be owned by someone other than the person responsible for the cleanup, such as the Federal government. In that case, the person responsible for the cleanup and the Federal agency responsible for the land would be the permittees for the remote location.

Sections 270.230(d)(2) and (3) require that RAPs for alternative locations are subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33, and the public notice requirements in § 124.10(c). EPA has required this additional public participation for these alternative locations to give the community surrounding the alternative location ample opportunity to participate in the decisions about managing remediation waste in their community.

Remediation waste management sites located in contaminated areas will presumably be subject to extensive public participation as part of the remedy selection process, and also the community will be receiving the benefit that a contaminated area in their community will be cleaned up. In alternative locations, the community would not be involved in the process of selecting the remedy for the contaminated area, nor would they be receiving the benefit of their community being cleaned up. Therefore, EPA felt it was important to require this additional public participation.

Section 270.230(d)(4) requires these alternative locations to comply with the location standards of § 264.18. Remediation waste management sites located in areas of contamination cannot choose their location. The area of contamination is already established, and therefore it does not make sense to require these remediation waste management sites to comply with the seismic location standard. However, owners and operators of these alternative locations can choose the location and so should comply with this standard.

Finally, § 270.230(e) specifies that these alternative locations are remediation waste management sites, and retain the benefits of remediation waste management sites, that is, the exclusion from facility-wide corrective action, and the application of the performance standards in § 264.1(j) instead of Part 264, Subparts B, C, and D. EPA believes that the disincentives to cleanup would remain if EPA required facility-wide corrective action for these alternative locations, and so is keeping this exclusion the same as it applies to other remediation waste management sites to eliminate disincentives to cleanup. Also, the same reasons why the § 264.1(j) performance standards are more appropriate for remediation waste management sites than Part 264, Subparts B, C, and D, also apply to why § 264.1(j) is more appropriate for these alternative locations than Part 264, Subparts B, C, and D.

EPA believes that the requirements for the Director to approve the designation of the remediation waste management site in the RAP or other permit will assure that the location will be decided for the best environmental reasons. Also, the RAP or other permit approval process for designating the remediation waste management site will ensure that the public has the opportunity to comment on the decisions of where to locate the remediation waste management site.

Finally, the Agency wishes to make it clear that if an owner/operator manages hazardous remediation wastes as part of cleanup on their facility, and ships that waste off-site, then, of course, they become a generator. Therefore, when they ship the waste off their facility, including shipping it to a facility under an off-site RAP under § 270.230, they must comply with the applicable requirements for generators, such as manifesting and transportation requirements.

If an owner/operator will be treating, storing, or disposing both on-site and off-site (in a way that triggers the requirement for a permit in § 270.1), the owner/operator must get a separate RAP (or a traditional RCRA permit) for both the on-site and the off-site activities. Only the off-site RAP, however, is subject to § 270.230.

HH. Comparison of the RAPs Process to That for Traditional RCRA Permits

The procedures for approving RAPs in today's rule are more streamlined than the requirements for traditional RCRA permits. EPA expects that RAPs will most often be developed concurrently with the cleanup's remedy selection process. Most cleanup programs contain a remedy selection process requiring the Director's approval and public participation. (As discussed in the State authorization section of this preamble, a program without the required RAP public participation provisions will not be authorized to implement today's rule.)

As described elsewhere in today's preamble, EPA has intentionally constructed the RAP requirements to allow enough flexibility to integrate them with remedy selection requirements. EPA expects remedy selection and RAP approval will most often occur together, and therefore has designed the RAPs process to allow this. EPA expects joint issuance of RAPs and remedy selection documents that will be significantly more streamlined than separate permitting and remedy selection processes and will still maintain meaningful public involvement.

In addition to general streamlining, there are eight specific steps in the traditional permitting process that EPA has eliminated for RAPs.

- First, and perhaps most significantly, in an effort to better tailor the RAPs requirements to the cleanup setting, the content requirements for RAP applications (from § 270.110) are significantly less than those required in a RCRA Part B permit application.
- Second, § 124.3(c) requires a ''completeness check'' for traditional permits, which EPA does not require for RAPs. Instead, for RAPs, new § 270.130 describes the finding that the Director will make to determine whether to tentatively approve or deny a RAP application. Obviously, if the Director feels that a RAP application is incomplete, the Director will communicate with the RAP applicant to fill in any gaps, but it is not a specific additional step in the process.
- Third, EPA has removed the facility mailing list (§ 124.10(c)(1)(ix)) requirements; and
- Fourth, has reduced the Director's public notice requirements under § 124.10(c)(1). (For RAPs, the Director must send notices to local and State agencies as required under RCRA 7004(b), and to the RAP applicant.)
- Fifth, EPA is not requiring a pre-application public meeting and notices (§ 124.31); nor
- Sixth, public notice at the application stage (§ 124.32); nor
- Seventh, the requirements for an information repository (§ 124.33) at remediation waste management sites, but encourages the Director and the RAP applicant to conduct these activities where appropriate.
- Eighth and finally, the procedural requirements for modification and termination, revocation and reissuance are much more flexible for RAPs than for traditional RCRA permits. Today's

rule allows the Director to specify these requirements site-specifically in the RAP, instead of the EPA-promulgated requirements such as in §§ 270.41, 270.42, and 270.43. EPA expects that many States will have established procedures in their remedial programs for modifying, terminating and revoking and reissuing RAPs. EPA is allowing for any of these State requirements as long as they meet the threshold requirements of including an opportunity for public participation whenever significant modifications are made (see § 270.170).[12]

V. Requirements Under Part 264 for Remediation Waste Management Sites (§ 264.1(j))

In the proposed rule at § 269.40(b), EPA proposed that media remediation sites (finalized in today's rule as remediation waste management sites) would be subject to the applicable provisions of part 264 except Subparts B (General Facility Standards) and C (Preparedness and Prevention). Subparts A and D–DD would continue to apply unchanged, at least for wastes above the Bright Line. EPA proposed this approach, as one option, because the unit specific standards of part 264 provided ready-made standards to ensure protection of human health and the environment. However, EPA recognized that part 264 standards other than those in Subparts B and C also may not be appropriate and solicited comment on which, if any, other provisions of part 264 should not apply to media remediation sites (61 FR 18814). EPA also requested comment on the ''Unitary Approach'' that would remove all part 264 standards for remediation wastes.

After examining public comments on this part of the proposal, EPA has decided to finalize a somewhat different approach from what was proposed. Specifically, today's rule at § 264.1(j) provides that remediation waste management sites must comply with all parts of part 264 except Subparts B, C, D (Contingency Plan and Emergency Procedures), and § 264.101.[13] In place of the requirements in Subparts B, C, and D, however, EPA is finalizing performance standards based on the general requirement goals in these sections.[14] These new standards eliminate the specific requirements of Subparts B, C, and D, which for two reasons can be inappropriate for remediation-only sites. Either the requirements were not specifically designed for the treatment, storage, and disposal activities during cleanups, or they are likely to duplicate or conflict with requirements imposed under the remedial authority compelling cleanup.

Thus, the provisions finalized today ensure that the concerns addressed by these provisions will be addressed by the Director in the permit or RAP, without requiring specific conditions that may be inappropriate. At the same time, EPA has chosen not to amend the unit-specific standards of Part 264 for remediation waste, although the Agency continues to believe a more extensive revision of these requirements is appropriate. The applicability of § 264.101 is discussed in section VII. of this preamble.

A. Comments on Applying Part 264 Standards to Remediation Waste Management Sites

Many commenters, arguing for the Unitary Approach, suggested that Part 264 standards should not apply to remediation waste management, and that regulatory Agencies overseeing cleanup should have broad flexibility in imposing conditions on specific units.

Other commenters suggested more narrowly that several of the specific Part 264 management provisions included in the HWIR-media proposal are unnecessary for managing remediation wastes under a RAP. The earlier commenters argued that these requirements were clearly intended for the long-term management of hazardous waste at facilities which manage these materials on an on-going basis, whereas many cleanups are short-term and do not lend themselves to these restrictive provisions. These commenters argued that more flexibility is necessary to allow cleanups to take place quickly and to proceed unencumbered by regulatory provisions more appropriate for the risks posed by managing hazardous ''as-generated'' process wastes.

Specifically, several commenters suggested that the Agency should allow the Director to waive specific requirements from Part 264 or make site-specific adjustments under appropriate site-specific circumstances.

Part 264, Subpart E

Commenters specifically mentioned Part 264, Subpart E, requirements for manifesting, and commented that these requirements should not apply to wastes managed on-site. One commenter stated that manifesting requirements were not appropriate for all corrective action activities and that specific manifesting requirements should be set out in the RAP for that site. EPA disagrees; the Agency believes that manifesting is no less important when hazardous wastes are being transported off-site in the remedial context than in the as-generated waste context, and so these requirements continue to apply to hazardous remediation wastes. However, manifests are not required when wastes are managed on-site.

Part 264, Subpart F

Another commenter stated that Subpart F §§ 264.90–264.100 groundwater monitoring and corrective action requirements should not apply to remediation waste units, because that would lead to a perpetual cycle of waste management activities. This commenter, in EPA's view, has raised a complex and important issue. EPA believes that, where a new land based unit is created as part of corrective action, it should be handled as a landfill—subject to Subpart F groundwater requirements (including Subpart F § 264.100 corrective action)—or as a CAMU, under which EPA establishes alternative site-specific conditions to protect groundwater.

On the other hand, where an old regulated unit has released hazardous constituents into the environment, and releases from the unit are being addressed as part of a cleanup, EPA believes that Subpart F requirements do not make sense (since these requirements were designed primarily as preventive standards for units that had not yet had releases into the environment); instead, remedial authorities like CERCLA or RCRA 3004(u) are better suited for defining groundwater monitoring and cleanup requirements at these units.

EPA's post-closure rule, which was promulgated on October 22, 1998 (63 FR 56710), is designed to allow integration of cleanup requirements at closing regulated units into broader cleanup requirements at specific sites, and may address the commenters' concerns. Areas of contamination, which are not typically ''regulated units'' subject to Subpart F or unit-specific RCRA requirements would be handled in a similar fashion. The regulatory agency facing an area of contamination would

[12] Note that by complying with the public participation requirements for RAPs, a facility owner/operator may not have automatically fulfilled all applicable public participation requirements for corrective action, closure/post-closure, or any other cleanup-related activities that require public participation and the facility owner/operator needs to remain cognizant of these separate public participation requirements.

[13] Note that § 264.1080(b)(5) already includes an exemption from Subpart CC for certain wastes that are generated as the result of implementing remedial activities.

[14] Of course, facilities other than remediation-only facilities must comply with Subparts B, C, and D.

base specific decisions on groundwater monitoring, cleanup levels, and cover requirements on the remedial authorities being invoked, rather than on RCRA Subpart F or other unit-specific requirements.

In summary, where a new land-based unit is created, EPA disagrees with the commenter; in this case, current Part 264 standards (including the CAMU) should continue to apply. But where an old or existing unit is being addressed as part of a cleanup, EPA shares the commenter's concerns. EPA believes that considerable flexibility already exists in the RCRA regulations to address this situation, but the Agency also acknowledges that further evaluation (including possible statutory changes) is appropriate.

Part 264, Subpart G

Another commenter stated that Subpart G closure requirements could be incorporated into the RAP, and therefore a separate closure plan or permit would be redundant. EPA agrees with this commenter, and throughout the RAPs section of today's preamble stresses the importance of integrating processes and documents whenever possible and helpful. EPA agrees that, if closure requirements can be integrated into the RAP, then two separate documents will not be necessary.

At the same time, today's rule does not alter the way that Subpart G or unit specific closure requirements apply to cleanup sites. Subpart G and unit specific closure requirements apply to new units permitted under a RAP, but not to areas of contamination, or to old units not already subject to Subtitle C (for example, units where non-hazardous wastes that subsequently became hazardous were disposed). This is how closure requirements apply at any other regulated facility. Thus, if a new landfill were created under a RAP in the course of a remediation, it would be subject to Subpart G closure standards. Or, the Director might approve a CAMU, which would provide greater flexibility than the landfill closure standards.

Subpart G or unit-specific closure standards will not apply in areas of contamination where new "placement" of hazardous wastes has not occurred.[15] Closure, and monitoring, at these units or areas will be a remedial issue, to be addressed under the remedial authority under which the cleanup is being performed.

Part 264, Subpart H

Several commenters focused on Part 264, Subpart H, financial assurance. They suggested that financial assurance for corrective action has a very different purpose from the propose it has for operating facilities. Also, they suggested that sites should be allowed to set up site-specific plans for financial assurance, depending on the specifics of the site and the activities taking place.

Today's rule, however, does not address financial assurance for corrective action requirements, such as the ability to finance a cleanup and meet remedy goals. It does not impose any additional requirements for financial assurance for corrective action, beyond what a facility may already be subject to under other authorities. Thus, at a remediation-only site, today's rule would impose no financial assurance for corrective action. However, if the site is located at a facility subject to corrective action, then the financial assurance requirements for the corrective action activities will still apply to the full extent provided by this Subpart (that is, on a facility-wide basis). That is, designation as a remediation waste management site does not eliminate otherwise applicable financial assurance requirements.

At the same time, however, EPA has chosen to retain the unit-specific financial assurance requirements for third-party liability and closure. EPA recognizes that the very detailed nature of the Agency's current requirements in these areas may constrain some State programs, and that in some cases it may be better for the environment if marginal facility owners are allowed (or required) to proceed with cleanup, even if they cannot secure financial assurance mechanisms. (In this case, an enforcement mechanism may be preferable to a permit mechanism.) EPA, however, did not solicit, or receive, sufficient comment in this area to change the current requirements. Thus, remediation units permitted under a RAP will remain subject to the unit-specific RCRA financial assurance requirements for third-party liability and closure.

Part 264, Subparts I, J, K, L, M, N, and O

One commenter suggested that the requirements in 40 CFR part 264, Subparts I, J, K, L, M, N, and O, be specifically incorporated into RAPs only as necessary. The commenter suggests that they might not be necessary for managing low-risk media. However, EPA is not finalizing the Bright Line which would have distinguished between high- and low-risk media. EPA agrees that these requirements only need to be incorporated into the RAP if they apply to units being permitted under the RAP.

Part 264, Subpart BB

Finally, one commenter suggested dividing Subpart BB into three tiers:

(1) Subpart BB would not apply to actions that would take place for a shorter time than one year;

(2) The Director would apply Subpart BB, as appropriate, to actions that would take between one and three years; and

(3) Subpart BB would apply in its entirety for actions taking longer than three years. Again, EPA has chosen not to amend the unit specific standards of part 264 for remediation waste, although the Agency continues to believe a more extensive revision of these requirements is appropriate.

EPA believes that it will be extremely rare for the Part 264, Subpart BB, requirements to apply to units managing remediation waste. The Subpart BB requirements only apply to units managing wastes with organic concentrations of at least 10 percent by weight. EPA believes that concentrations at that high a level are rarely found in remediation wastes. Also, if the Director determines that the Subpart BB requirements do apply, but are not appropriate for a particular cleanup site, the Director can designate the unit as a temporary unit. That allows the Director to modify the unit-specific standards as appropriate in cleanup situations. However, temporary units may only be used for a limited period of time.

B. EPA's Response to These Comments

The Agency agrees with the many commenters who pointed out that more flexibility is desirable for many cleanups, but does not believe at this point that a blanket exemption from Part 264 is appropriate. In the first place, certain requirements (for example, MTRs for landfills) are imposed by statute, and EPA does not believe the Agency has the authority to eliminate them in today's rule. In addition, EPA does not believe the Agency has fully aired the issues for public comment. For example, EPA is not convinced that secondary containment is needed for tanks in all remedial situations. However, EPA did not solicit comment specifically on this issue, and the Agency is not prepared today to finalize amendments to the current regulations.

[15] For a description of what constitutes "placement" in an area of contamination, see the March 13, 1996 memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, regarding "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups."

At the same time, EPA believes that the current regulations already provide significant flexibility in remedial contexts. Secondary containment, for example, is not necessarily required for tanks or other units used in remediation if they were approved as temporary units under § 264.553. Innovative technologies can often be permitted under the flexible standards of Subpart X. As discussed earlier, the CAMU regulations provide flexibility for land-based units, as do staging piles, which are promulgated in today's rule and discussed elsewhere in this preamble.

On the question of air emissions, raised specifically by one commenter, EPA notes that the temporary unit standards allow the Director to develop alternative operating standards for temporary tanks and containers managing remediation waste (which would include alternative standards to Subpart BB; if they applied). And furthermore, EPA has explicitly exempted on-site remedial activities under EPA or State cleanup authorities from Subpart CC standards. Thus, while EPA believes that further review and tailoring of the current technical permitting standards for remediation waste is appropriate, the Agency also concludes that considerable flexibility already exists.

C. EPA Is Providing Relief From Part 264, Subparts B, C, and D

On the other hand, in today's rule, EPA is amending the general facility standards of Subparts B, C, and D to provide greater flexibility for owner/operators of remediation waste sites. Instead of the current, detailed requirements in these Subparts, persons managing remediation waste sites will be able to meet general performance standards. These performance standards define the facility requirement, such as ''inspect the facility . . . often enough to identify problems in time to correct them,'' but allow considerable flexibility to the regulator in determining how an owner/operator will meet those standards. The Agency believes that the basic goals of Subparts B, C, and D continue to be important, but also EPA believes that the protection desired under Subparts B, C, and D can be achieved at remediation waste management sites by applying the performance standards of today's rule.

Flexibility in applying many of these substantive requirements is important because of the wide variety of remediation waste management activities that may be permitted under a RAP, everything from managing small volumes of investigation-derived wastes, to remediating large volumes of contaminated soils, or treating highly concentrated remediation wastes. Also, some activities permitted under RAPs may be very short-term actions, and yet some may involve multi-year treatment of remediation wastes at a large remediation waste management site. The following paragraphs describe the flexibility EPA is providing for general RCRA facility standards in § 264.1(j).

The opening sentences of § 264.1(j) provide for applicability of these provisions instead of § 264.10.

Section 264.1(j)(1)

Instead of § 264.11, new § 264.1(j)(1) requires the facility owner/operator to obtain an EPA identification number. These identification numbers are important to allow EPA and States to track activities at facilities that generate hazardous wastes, whether as a result of ongoing processes or during cleanup. This is a simple procedure and can be done quickly. This standard is only different from § 264.11 entitled ''identification number,'' because of editorial changes to enhance readability.

The requirements in § 264.12 do not apply to remediation waste management sites because they are requirements for receiving wastes from foreign (§ 264.12(a)) and off-site (§ 264.12(b)) sources, which will not occur at remediation waste management sites. (Owner/operators are exempt from the § 264.12(b) requirements when they are also the generator. The only way an owner/operator can have a RAP at an off-site location is if they are both the generator and the owner/operator of the off-site location. Therefore, this requirement will never apply to RAPs.)

Section 264.1(j)(2)

Instead of ''general waste analysis'' (§ 264.13), today's rule requires a chemical and physical analysis of the hazardous remediation waste under new § 264.1(j)(2) , which at a minimum must contain all the information needed to treat, store, or dispose of the waste according to this part and part 268. The waste analysis must be accurate and up to date.

This requirement mirrors the existing requirement in § 264.13(a)(1), which sets out the general goal of the waste analysis requirement. However, this standard eliminates requirements that:

(1) Were written with facilities engaged in the business of hazardous waste operations in mind (for example, § 264.13(a)(3), which addresses analysis of wastes from unfamiliar off-site sources); or

(2) Are likely to duplicate or conflict with requirements imposed by the remedial authority at the site (for example, 264.13(b) to develop an analysis plan that may duplicate testing done for site-characterization and remedy selection).

EPA expects that waste analysis plans developed under a reliable cleanup program, such as EPA's RCRA corrective action program or its CERCLA program, will provide enough data to meet this requirement. EPA emphasizes that waste analysis should be tailored to provide information needed to manage cleanup wastes successfully. EPA does not encourage analysis for analysis' sake.

Section 264.1(j)(3)

Instead of the ''security'' provision (§ 264.14), EPA has promulgated a performance standard at § 264.1(j)(3) to warn potential intruders and to minimize the unauthorized entry of persons or livestock onto the active portion of the remediation waste management site. EPA allows an exemption from this requirement if the facility owner or operator can show that this entry will not injure these persons or livestock or cause violations of the requirements in part 264.

For traditional RCRA permits, this requirement and the exemption are at § 264.14(a). However, § 264.14(b) and (c) are very detailed in exactly how to provide that security. EPA has determined that, for remediation waste management sites, the performance standard reasonably provides that the site will be secure, but allows flexibility in achieving that goal. This takes into account the different types of activities that may be taking place at remediation waste management sites.

Section 264.1(j)(4)

Instead of the ''general inspection requirements'' (§ 264.15), EPA has promulgated a performance standard at § 264.1(j)(4) requiring facility owner/operators to inspect the facility often enough to identify problems in time to correct them before a problem leads to a human health or environmental hazard. This performance standard, which is the same as the current permitting requirement, also:

- Requires the facility owner/operator to take action immediately if a hazard is imminent or has already occurred;
- Is drawn from the language in § 264.15(a) and (c);
- Ensures that the facility owner/operator will make appropriate inspections; but
- Allows for flexibility in how these inspections will be done.

EPA is not requiring the other parts of § 264.15(b) and (d) regarding a written schedule and log, but instead, new

§ 264.1(j)(12) and (13) require the facility owner/operator to have a plan and records. EPA expects this approach will be more streamlined than requiring a separate plan and record for each activity under 264.1(j).

Section 264.1(j)(5)

Instead of the ''personnel training'' requirements at § 264.16, EPA has promulgated § 264.1(j)(5) requiring the facility owner/operator to train personnel to perform their duties in a way that ensures the facility's compliance with the requirements in this part, and to respond effectively to emergencies. This performance standard is derived from the requirements in § 264.16(a)(1) and (3).

Training is important when personnel are dealing with hazardous substances, not only to ensure proper precaution during normal operations, but also to ensure that well-trained personnel are available and can respond effectively in emergencies. This performance standard requires training, but is flexible enough to cover a wide range of reasonable programs. For example, where a site is subject to Occupational Safety and Health Administration (OSHA) or similar training standards for hazardous waste site workers, additional standards probably will not be necessary. EPA does not want to create duplicative requirements where training is already adequate.

EPA is not specifying all of the details of how to provide and keep records of training as is required under § 264.16(a)(2), (b), (c), (d), and (e). EPA believes that each site will be very different and require different intensities of training. Also, § 264.1(j)(13) will ensure proper records are maintained.

Section 264.1(j)(6)

Instead of the § 264.17 ''general requirements for ignitable, reactive, or incompatible wastes,'' EPA has promulgated the performance standard at § 264.1(j)(6). This standard requires facility owners and operators to take precautions when managing ignitable, reactive and incompatible wastes. This performance standard is similar to the § 264.17(a) and (b) requirements.

Because ignitable and reactive wastes can be highly dangerous materials, and because different properties of different hazardous wastes can cause explosions, toxic fumes, or other hazards if they react with other incompatible materials, it is important to take appropriate precautions when dealing with these wastes. EPA did not include the specifics of how to separate wastes from potential sources of ignition or reaction or what kinds of reactions to avoid or how to document compliance. EPA believes that, due to the level of oversight at cleanup sites, these precautions will be adequately addressed, and recordkeeping will be addressed under new § 264.1(j)(13).

Section 264.18(a) does not make sense for remediation waste management sites, as contaminated areas are already located in a certain location, and if the remediation waste management site must be located in the area of contamination or areas in close proximity, there is not much choice about where to locate the remediation waste management site. Therefore, EPA has not included a performance standard for remediation waste management sites instead of § 264.18(a). However, EPA expects facility owners and operators to do their best to locate units a safe distance from faults whenever possible. EPA has required compliance with this standard under § 270.230(d)(4) when alternative locations are approved for remediation waste management.

Section 264.1(j)(7)

Section 264.1(j)(7) is the same requirement as the provisions of § 264.18(b) for floodplains, but re-written to enhance readability. Section 264.18(b) already provides some flexibility for locating within a floodplain (provided certain mitigating design or operating criteria are met). Today's performance standard allows the same flexibility.

Section 264.1(j)(8)

Section 264.1(j)(8) is the same requirement as § 264.18(c) for salt dome formations, salt bed formations, underground mines, and caves. This is also a RCRA statutory requirement at RCRA § 3004(b), and is the same as that in § 264.18(c), but is re-written to enhance readability. EPA believes that it is unlikely that the situation contemplated in this provision would arise during a remediation, but—because the requirement is statutory—EPA included it in today's rule.

Section 264.1(j)(9)

Section 264.1(j)(9) requires the facility owner/operator to have a construction quality assurance (CQA) program for all new surface impoundments, waste piles (except staging piles), and landfill units at the remediation waste management site according to the requirements in § 264.19. While this requirement is included under ''General Facility Standards,'' EPA views the requirement as more akin to the unit-specific, technical standards that appear later in Part 264. Because EPA did not specifically solicit comment on the technical need for these requirements in a remedial context, or the possibility of more flexible alternatives, the Agency is not prepared at this point to revisit them. Therefore, EPA (consistent with the Agency's decision to leave Part 264 unit-specific requirements intact) has simply required compliance with the existing requirements in § 264.19. EPA notes, however, that these requirements do not apply to CAMUs or to already existing areas of contamination where waste is left in place.

Section 264.1(j)(10)

Section 264.1(j)(10) requires that, instead of Subpart C—Preparedness and Prevention (§§ 264.30 through 264.37) and Subpart D—Contingency Plan and Emergency Procedures (§§ 264.50 through 264.56), the facility owner/operator must have accident preparedness and prevention procedures and a contingency and emergency plan. These plans must: (1) ensure that the hazardous waste units at remediation waste management sites are designed, constructed, maintained, and operated to minimize the possibility of an emergency; and (2) minimize hazards to human health or the environment from any emergencies from treating, storing, and disposing of the hazardous remediation waste.

The performance standard embodies the requirements in § 264.31 and § 264.51. However, the Part 264, Subparts C and D, requirements include considerable detail about preparing for and responding to emergencies. In the cleanup scenario, this detail can become a problem because of the wide variety of activities taking place. Detailed requirements may be redundant with other cleanup requirements or simply unnecessary in many cases. For example, the cleanup program overseeing the remediation may already have procedures for notifying police, fire departments, and emergency personnel. In this case, the specific requirements in Part 264, Subparts C and D, would be redundant. Because of the wide variety of activities that may be taking place at a remediation waste management site, and the fact that these activities may often be short-term, EPA is allowing considerable flexibility in these preparedness requirements.

Section 264.1(j)(11)

New 264.1(j)(11) requires the facility owner/operator to designate one or more employees as an emergency coordinator. This is the same requirement as under § 264.55. This requirement makes it possible to implement the emergency

procedures in the contingency and emergency plan quickly and efficiently. In any circumstance involving treating, storing, or disposing of hazardous wastes, including hazardous remediation wastes, an emergency coordinator facilitates an effective response.

Sections 264.1(j)(12) and (13)

New § 264.1(j)(12) requires the facility owner/operator to have and implement a plan or plans to meet the requirements in subparagraphs (j)(2) through (j)(6) and (j)(9) through (j)(11). Thus, the facility owner/operator must have a plan to address waste analysis, security, inspection, training, waste compatibility, construction quality assurance, and accident preparedness. Also, new § 264.1(j)(13) requires the facility owner/operator to maintain records documenting compliance with subparagraphs (j)(1) through (j)(12).

In the existing Subparts B, C, and D, each of the individual sections has requirements to have plans and keep records. New §§ 264.1(j)(12) and (13) streamline those requirements by requiring only one plan and one set of records to cover the requirements instead of several plans and sets of records. Note, however, that the owner/operator is not limited to one plan; more than one plan would be perfectly acceptable if that is more appropriate for the particular site. These plans and records are necessary so that the Agency or the public can inspect the facility's compliance with these requirements. EPA believes that any well-managed remediation project will have plans and records of this type, and the Agency does not anticipate that sites with acceptable plans as part of their remedial activities will have to reformat or rewrite these plans solely to meet the performance standards of today's rule.

It is important to note that, in the same way as the current Part 264 standards apply to facilities, these new standards under § 264.1(j) apply at remediation waste management sites only to *hazardous* remediation waste management units, not to units that are not otherwise subject to Part 264 requirements, such as solid waste management units, or exempt hazardous waste units. [16]

In the proposed rule, the requirements in Subparts B and C were waived for media remediation sites (which in the final rule are remediation waste management sites) under RAPs. There was no mention that there could possibly be a media remediation site that was not permitted by a RAP. Under the final rule, EPA acknowledges that there may be remediation waste management sites that are permitted under a traditional RCRA permit, and so has not specified that the new part 264 requirements for remediation waste management sites are limited to those permitted under RAPs, but are available for all remediation waste management sites.

The arguments for alternative standards still apply, even without the limitation to RAPs. Remediation waste management sites will vary greatly between the different types of remediation wastes and activities taking place. They will be subject to cleanup requirements under the programs requiring cleanup at these sites, and often cleanup requirements and the traditional part 264 standards may be duplicative. Therefore, today's rule makes these new part 264 performance standards available for all remediation waste management sites.

VI. Application of RCRA Sections 3004(u) and (v), and § 264.101 to Remediation Waste Management Sites (§ 264.101(d))

EPA proposed that the 3004(u) and (v) facility-wide corrective action requirement (which is implemented through § 264.101) would generally not apply to facilities that obtain RMPs (see proposed § 269.40(d)). EPA has included in the final rule in § 264.1(j) that § 264.101 does not apply to remediation waste management sites. However, some remediation waste management sites may be part of a facility that is subject to a traditional RCRA permit because that facility also treats, stores, or disposes of hazardous wastes that are not remediation wastes. The rule does clarify that in these cases, Subparts B, C, and D, and § 264.101 do apply to the facility subject to the traditional RCRA permit. EPA also amended § 264.101 to add a paragraph (d) as follows: ''(d) This section does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.'' Subpart F § 264.101 facility-wide corrective action does not apply to remediation waste management sites. [17] This issue is more fully discussed in today's preamble section on the definition of remediation waste management site.

VII. Staging Piles (§§ 260.10 and 264.554)

A. Introduction and Background

Today's rulemaking establishes a new type of unit— the staging pile— which will provide needed regulatory flexibility for the facilitation of certain cleanup activities, while ensuring environmentally protective results. A staging pile is an accumulation of solid, non-flowing remediation waste (as defined today in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. Today's regulations provide the Director with the authority to designate and approve staging piles for the purpose of storing remediation waste. In today's staging pile provisions, EPA has modified the remediation pile concept proposed in the HWIR-media proposal on April 29, 1996 in response to comments and also to correspond with other changes that have been made to the rule since its proposal.

A goal repeated throughout today's final rule is the achievement of environmental progress by facilitating the cleanup of as many contaminated sites as possible. The physical, economic, and technical limitations on the operation of a cleanup program often dictate that remediation wastes be temporarily stored on-site prior to completion of the remedial activity. The regulations establishing staging piles are designed to provide greater flexibility for decision-makers to implement protective, reliable, and cost-effective remedies. Staging piles will allow short-term storage to occur under circumstances that are protective of human health and the environment, without the extensive set of prescriptive standards that may be required for units in long-term use.

EPA believes that the additional flexibility provided by staging piles will improve the ability of program implementors and facility owner/operators to implement the most effective remedy for any given facility. For example, the use of staging piles will facilitate short-term storage of remediation wastes so that sufficient volumes can be accumulated for shipment to an off-site treatment facility, or for efficient on-site treatment. The Agency also anticipates, for example, that staging piles will facilitate treatment technologies such as chemical extraction by allowing on-site accumulation of sufficient treatment

[16] Of course, solid waste management units are subject to § 264.101 corrective action requirements at facilities subject to corrective action.

[17] The exclusion of remediation waste management sites from the definition of facility in today's rule is strictly limited to the definition of facility for purposes of corrective action, which is found in part (2) of the definition of facility. Remediation waste management sites are not excluded from part (1) of the definition of facility for other purposes.

volumes. In addition, staging piles should be useful since they will allow storage of wastes during the conduct of interim measures at a facility, while decisions on the final remedy are being formulated. Longer-term and more complex activities such as land-based treatment and permanent disposal will not be allowed in staging piles. As discussed more fully below, the Agency believes that these activities are more properly conducted in CAMUs (§ 264.552, promulgated on February 16, 1993; 58 FR 8658).

To facilitate the cleanup of sites contaminated with hazardous waste, the Agency believes that it must remove some of the obstacles to cleanup that exist in the RCRA Subtitle C program. These obstacles stem from the Subtitle C program's structure as primarily a ''prevention oriented'' program, with requirements that can act as a disincentive to protective remedies in ''response-oriented'' programs and can limit the flexibility of decision-makers to choose the most appropriate remedy at a site. Although LDRs and MTRs, established in RCRA Section 3004 (m) and (o) respectively, are appropriate to ensure proper ongoing management or permanent disposal of hazardous industrial waste, these sections of the statute often become a barrier to cleanup and overall environmental protection when applied to remediation waste.

Under current regulations, waste piles are considered land disposal units, and all hazardous wastes must therefore be treated to LDR standards before being placed into a waste pile. Large volumes of waste and contaminated media are often encountered during remedial actions and, because LDR and MTR often create a disincentive to exhuming hazardous remediation waste, EPA believes that allowing these wastes to be temporarily stored in on-site piles without meeting LDR and MTR standards will significantly further prompt remediation. Accommodating the need for temporary storage in piles without imposing LDRs and MTRs was also generally supported by the Committee authorized by the Federal Advisory Committee Act (FACA), representing the interests of industry, government and environmental groups, whose recommendations formed the basis for the proposed rule. In addition, the overwhelming majority of commenters that addressed the proposed remediation piles expressed support for a new type of unit that would allow for temporary storage in piles. A number of commenters emphasized that, even if EPA decided to retain the CAMU regulation, piles would be useful as a reasonable option for storage of materials awaiting transport or on-site treatment. Although many of the commenters also supported treatment in piles (which is not allowed under today's rule), the consensus of commenters was that the ability to operate some kind of temporary pile that would not trigger LDRs or MTRs would be beneficial to the remedial process by promoting efficient cleanups. Not one of the commenters disputed that LDRs and MTRs can be a barrier to increasing the rate and quality of cleanups. It was with the backing of this consensus that today's staging pile regulation was formulated.

Applying LDRs to temporary placement of remediation waste often makes it impractical to store hazardous remediation wastes in a pile pending its ultimate disposition, since this land placement generally may not occur prior to treatment to LDR standards. This essentially presents the remedial decision maker with three options:

- Leaving remediation waste in place;
- Storing it in a tank or container (or temporary unit, when available) prior to further management;
- Or seeking a CAMU.

Leaving waste in place is often an unsatisfactory solution due to the potential for future risks to public health, an outcome that EPA strives to discourage. Temporary unit or tank and container storage, although sometimes preferable in cases where the volume of waste is not particularly large, may cause delay and add complexity for sites with a large volume of waste, while providing little, if any, additional benefit to human health and the environment. CAMUs are also an option, but they have proved to be administratively complex for relatively short-term storage. The Agency therefore believes that the temporary storage in staging piles, subject to regulatory imposition of site-specific requirements and oversight, is preferable to the present regime, which encourages the continuing, unmanaged presence of remediation waste for an indefinite period of time.

Staging piles do not replace existing mechanisms that allow remediation waste managers to tailor RCRA requirements to accommodate site-specific circumstances. These include CAMUs, temporary units (§ 264.553), treatability variances (§ 268.44), and the Area of Contamination (AOC) policy.[18] Rather, staging piles provide an additional mechanism which may be used for short-term storage when, for example, the AOC policy does not apply and tank, container, or temporary unit storage is not feasible. Below is a comparison chart of the units most applicable to today's rulemaking:

Type of unit	Unit structure	Kind of waste	Time limit	Management activities
Staging Pile § 264.554	Pile	Remediation Waste	2 years plus one 180-day extension period.	Storage.
CAMU § 264.552	Designated Area or Unit within a Facility.	Remediation Waste	None	Treatment, Storage, and/or Disposal.
Temporary Unit § 264.553.	Tank or Container Storage Area.	Remediation Waste	1 year plus a 1 year extension period.	Treatment and/or Storage.
Area of Contamination.	Land-based Area of Contamination.	Remediation Waste	None	Storage, In-Situ Treatment, Disposal.

B. A Summary of Principal Changes From the Proposal

1. Changes From the Proposal

The staging pile regulation promulgated today is based on the remediation pile regulation proposed on April 29, 1996 in the HWIR-media proposal. Today's regulation differs from the remediation pile proposal in five main ways:

- The name is changed;
- Treatment in the pile is not allowed;
- ''Temporary'' is defined;
- A more specific performance standard is added; and

[18] Memorandum from Michael Shapiro, Director, Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement, EPA to RCRA Branch Chiefs and CERCLA Regional Managers (March 13, 1996).

• The closure requirements are defined.

These changes, as well as other issues and responses to major comments, are discussed below.

First, EPA changed the name from ''remediation piles'' to ''staging piles'' to make it clear that these piles are to be used only for the temporary storage of remediation wastes, and not for other remediation activities such as treatment.

Second, the primary difference between the staging pile regulation finalized today and the proposed remediation pile regulations is that today's rule does not allow for treatment in the pile. The Agency recognizes the effectiveness of many treatment approaches relying on engineered piles, and does not wish to discourage their use, where appropriate. At the same time, one commenter vigorously opposed treatment in remediation piles. The Agency acknowledges that some forms of ''treatment,'' (for example, air stripping, or in some cases, biological treatment) may raise concerns with regard to air emissions. Therefore, for today's rule, EPA has restricted treatment to units other than staging piles, such as CAMUs. The CAMU decision criteria, as applied through the overseeing agency designation process, provide a way to ensure that the activities that occur in a CAMU have more protective design and operating controls than what is called for in the case of the short term, generally lower risk activities, allowed to take place in staging piles. The CAMU regulation includes, for example, a specific ground water monitoring requirement and an associated performance standard (40 CFR 264.552(e)(3)). Furthermore, the designation of a CAMU through a permit modification requires the more extensive Class 3 procedures while today's staging pile regulation requires Class 2.

In addition, the temporary unit regulation (§ 264.553, promulgated on February 16, 1993; 58 FR 8658) allows for treatment, as well as storage, of hazardous remediation waste in tanks or containers.[19] Like the CAMU rule, the regulations governing temporary units are designed to address the risks posed by treatment in the remedial setting. First, temporary units are containerized, rather than land-based, and therefore generally pose less risk of releases or cross-media transfer than do the land-based staging piles. In addition, temporary units may only operate for one year unless they receive an extension. The temporary unit extension, which can be granted once for one year, can only be provided after a site-specific determination is made by the Director that continued operation of the unit will not pose a threat to human health and the environment and is necessary to ensure timely and efficient implementation of remedial actions at the facility (§ 264.553(e)). The temporary unit time limitation is more stringent than the time limit provided in today's staging pile regulation. In general, the relatively short amount of time allowed for treatment in a temporary unit addresses the greater risk to human health and the environment that may arise through treatment activities.

Third, unlike the proposal, the final rule defines the temporary nature of staging piles as a two-year lifetime for the pile. At the end of the operating term for the staging pile (which can be designated by the Director as any amount of time up to two years), all hazardous remediation waste and residues in the pile must be removed unless an operating term extension (of up to 180 days) is granted by the Director.

Fourth, the Agency believes that the process and analysis necessary for the designation of a staging pile should be more straightforward than that needed for a CAMU due to the lower level of potential risks presented from the nature of activities that can take place in a staging pile, and EPA has designed today's regulation accordingly. Because staging piles are intended for the temporary storage of remediation waste, they will complement CAMUs and temporary units by providing program implementors and facility owners/operators with an intermediate option to use in a number of circumstances, such as when temporary units do not have the capacity for the chosen remedial strategy, but a CAMU is not necessary.

A modest difference between the proposed remediation piles and the staging piles promulgated today is that the Director will have more than the temporary unit decision factors (as proposed) to guide the establishment of design and operating criteria for a staging pile. In response to commenters' requests, today's rule includes a more specific performance standard, set out in § 264.554(d)(1), which expands upon the temporary unit decision factors to assist the Director in determining appropriate staging pile design and operating standards based on conditions at a particular site. This performance standard will be discussed in detail in the section of this preamble dealing with the staging pile performance criteria. The Agency's goal in providing this performance standard is to ensure that the design criteria used for a staging pile correspond to site- and waste-specific characteristics. The proposed regulation for remediation piles included only a reference to the decision factors for temporary units as a guide to the Director in setting case-by-case standards for remediation piles. Today's staging pile regulatory text includes language similar to the temporary unit decision factors, as well as a performance standard, both of which are incorporated directly into the regulation to add more predictability and assurance of protectiveness into the process of designating a staging pile. Clear expectations for performance should provide a beneficial focus for both the program implementor and the facility owner/operator.

Fifth, at the end of the staging pile's operating term or extension period, the staging pile is subject to one of two sets of closure requirements based on whether the staging pile has been located on either a previously contaminated or a previously uncontaminated area of the facility. If the pile has been located in an uncontaminated area of the site, any remaining contamination (containment system components, subsoils, etc.) must be decontaminated according to the clean closure standard for waste piles in § 264.258(a) and the closure performance standard of § 264.111. (For interim status facilities, the standards to be used are located in § 265.258(a) and § 265.111.) On the other hand, if the pile has been located on a previously contaminated area of the site, all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate must be removed or decontaminated within 180 days after the expiration of the operating term of the staging pile. Also, the facility owner/operator must decontaminate contaminated subsoils in a manner and pursuant to a schedule that the Director determines will protect human health and the environment. These closure requirements were added to the final rule in response to comments pointing out that despite mentioning that ''clean closure'' was a requirement in the proposed rule preamble, the Agency had not included this language in the rule text.

2. Consistent With the Proposal

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous

[19] Using the temporary unit regulation, the Director imposes alternative requirements, based on site-specific conditions, for temporary tank or container units used for the treatment or storage of remediation waste during a remedial action.

contaminated media. Like CAMUs and temporary units, staging piles cannot be used to manage hazardous waste from ongoing industrial processes, commonly referred to as ''as-generated'' hazardous waste. In addition, as proposed, a staging pile may be used only for the storage of ''solid, non-flowing'' hazardous remediation waste. Flowing wastes are inappropriate for staging piles because of the possibility of releases and run-off of these wastes.

Also unchanged from the proposal is the provision that staging piles will not be considered land disposal units and therefore placement of remediation waste into a staging pile will not trigger LDRs or applicable MTRs (RCRA section 3004(o). However, assuming the waste is subsequently managed in a way that triggers these requirements, LDRs and MTRs will ultimately apply to the remediation waste.

C. What Is a Staging Pile? (§ 264.554(a))

Section 264.554(a) states that ''a staging pile is an accumulation of solid, non-flowing remediation waste (as defined in 40 CFR 260.10) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Director according to the requirements in this section.'' This provision includes the definition of staging pile from § 260.10 which is discussed in the definitions section of this preamble. This provision also limits where the owner/operator may locate a staging pile to within the contiguous property under the control or the owner/operator. This limitation was originally in the definition of remediation waste, however, as discussed in the definitions section of this preamble, EPA believed this limit was more appropriate in the regulatory text rather than in definitions. Finally, this provision specifies that staging piles must be designated by the Director according to this section. Without designation as a staging pile, a pile will be considered a ''waste pile'' under § 264.250, and therefore subject to the requirements in that section (including LDRs and applicable MTRs). Since today's staging pile regulation is not self-implementing, the Director must incorporate the provisions for a staging pile into a permit (either traditional permit or RAP), closure plan, or order in which it is designated.

In keeping with the proposal, staging piles will be able to accept all types of solid, non-flowing remediation waste, rather than only hazardous contaminated media. Despite criticism from one commenter who stated that only media should be allowed to be managed in a remediation pile, not other forms of remediation waste, the Agency has retained this approach because non-media wastes can be generated in very high volumes creating remedial obstacles similar to those created by large volumes of hazardous contaminated media. In support of the proposed approach, another commenter argued that because contaminated media is often ''found in the same shovel'' as sludges and debris it would be both difficult and inefficient to attempt to regulate these differently. At sites where this occurs, staging piles would likely not facilitate an appropriate remedy if limited to accepting only media.

One commenter suggested that the Agency should encourage the management of sludges and other non-media remediation wastes in tanks and containers instead of piles. EPA believes that the Agency has at least partially addressed the commenter's concern by limiting the use of staging piles to non-flowing wastes. This restriction serves to eliminate some sludges as well as other problematic wastes. EPA also emphasizes that tanks and containers can provide important protection in certain circumstances (for example, to address run-off concerns), and the Agency recommends the use of these units where appropriate. At the same time, EPA disagrees with the commenter's premise that a waste's status as ''media'' or ''non-media'' is particularly relevant to the kind of unit that waste should be stored in. The concentration of hazardous constituents, their leachability, and their volatility are far greater concerns. More generally, EPA believes that the decision on which specific remediation unit is most appropriate at a given cleanup depends on numerous site-specific factors, and that this decision should be made through the site-specific permit process. EPA has issued extensive guidance on the management of remediation waste, both under RCRA and CERCLA (including the Best Management Practices Guidance developed in conjunction with this rule), which site managers and regulators can use in making their decision. EPA, however, has concluded that more specific direction on this issue is not appropriate or necessary in today's rule.

Finally, as mentioned above, the final rule provides that staging piles may be used only for storage of remediation wastes. ''Treatment'' will not be permitted primarily for the reasons outlined in the ''A Summary of Changes from the Proposal'' section of this preamble. To summarize, treatment was a particularly sensitive issue for one commenter and EPA acknowledges that treatment, in some cases—such as air stripping—may involve higher levels of risks than typical storage. Furthermore, treatment, especially biological treatment, is often a long-term activity. Since staging piles are to be temporary, they will not necessarily require fixed controls such as leachate collection and removal systems, which are more appropriate for long-term use. Instead, staging piles should be relatively easy to create and dismantle given their temporary nature and to expedite remedial activities by providing the opportunity for short-term storage. Given these considerations, EPA has decided that treatment should occur in units that provide more specific safeguards; that is, treatment units meeting 40 CFR Part 264 requirements, including those units specifically designed for treatment in the cleanup context (for example, CAMUs and temporary units).

Although many commenters supported both treatment and storage in temporary piles, no commenter suggested that, without including the possibility of treatment, the piles would not facilitate the remedial process. Rather, a number of commenters directly supported the need for temporary storage of remediation waste in piles, without LDR or MTR applicability, before subsequent management. One commenter specifically stated that EPA should limit these piles to storage only, citing the increased potential for emissions to the air and other pathways if treatment were allowed. The Agency believes that today's staging pile regulation adequately addresses the commenters' concerns.

D. How Is a Staging Pile Designated? (§ 264.554(b))

Staging piles are subject to a few key limitations. First, today's rule specifies that the facility owner/operator may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to LDRs) [20] only if you follow the standards and design criteria the Director has designated for that staging pile. This language is an outgrowth of the language proposed in § 264.554(a), which provided that a

[20] For a discussion of situations where remediation wastes that are no longer ''hazardous'' may nonetheless remain subject to LDRs see 63 FR 28617–28620 (May 26, 1998).

remediation pile would only be used for the storage of remediation waste based on design and operating standards the Director had designated on a case-by-case basis. Both versions of this language make it clear that remediation piles would not be self-implementing and would have standards that must be designated by the Director. The Agency received no adverse comments on this aspect of the proposal, and so has only re-worded this requirement for readability in the final rule.

Second, the final rule states that the Director must designate the staging pile in either a permit or, at an interim status facility, in a closure plan or order (consistent with §§ 270.72(a)(5) and (b)(5)). Consequently, staging piles can also be approved under a RAP as finalized by today's rule in Part 270 (because a RAP is a form of a permit). The proposed rule would have required remediation piles to be designated in a ''permit or order'' (proposed § 264.554(a)). Commenters did not question this approach; however, today's rule includes one clarifying change to the proposed regulatory language, as well as an additional mechanism for designating a staging pile.

The Agency adds a clarifying change to today's final rule language which specifies that staging piles may be designated in orders at interim status facilities only. In the proposal, the Agency did not specify when orders could be used to designate a staging pile. EPA intended that the same mechanisms be used under today's rule to designate staging piles as can be used under the current regulations to designate other types of units. At most facilities, it is necessary to receive a permit to implement hazardous waste management units. However, at interim status facilities, units can be implemented according to §§ 270.72(a)(5) and (b)(5) when required under an order. EPA, therefore, has included the language in the final staging pile rule clarifying that orders may be used to designate a staging piles at interim status facilities to be consistent with how other types of units can currently be designated.

In today's rule EPA has included an additional mechanism—the closure plan—for the designation of staging piles at interim status facilities, since the Agency believes that staging piles will be useful to facility owner/operators where remediation is conducted during the closure of waste management units. EPA believes it is appropriate to allow staging piles to be designated through closure plans since final closure plans are enforceable and because the closure plan approval process, both at permitted and interim status facilities, incorporates sufficient public participation. In addition, EPA believes it is also appropriate to make closure plans available for the approval of staging piles at interim status facilities because an order may not always be suitable. For example, the owner/operator of an interim status facility may wish to conduct cleanup at a regulated unit and achieve closure by removal even when he is not required to do so under an order. As part of the closure, the facility owner/operator may find it most practical to stage the removed waste in a pile, before it is moved to an on or off-site treatment unit. In this case, the facility owner/operator can include staging piles, if necessary for voluntary cleanup, into his closure plan.

At a permitted facility, a closure plan is a part of the original permit, and so is approved following the traditional permit approval process. Modifications to closure plans are incorporated into permits as permit modifications and follow the appropriate permit modification procedures found in § 270.42. Because staging piles require a Class 2 permit modification, as discussed in the ''How may my existing permit (for example, RAP), closure plan, or order be modified to allow the use of a staging pile?'' section of today's preamble, a staging pile incorporated into a closure plan modification would also require at least Class 2 procedures. Because staging piles can be approved through permits, it follows that a staging pile can be designated in a closure plan at a permitted facility. Nonetheless, EPA wanted to make this clear, and therefore has explicitly stated that staging piles can be designated in closure plans.

At interim status facilities, the process used to gain approval of a closure plan also requires an opportunity for public notice and comment. Specifically, these closure plans are approved according to the requirements in § 265.112(d). These requirements include the opportunity, available through a newspaper notice, for the facility owner/operator and the public to submit written comments on the closure plan and request modifications to the plan within 30 days of the date of the notice. In addition, the Director can hold a public hearing to clarify any issues regarding the closure plan. Therefore, approved closure plans can be used to designate staging piles under today's rule.

The regulations regarding staging piles are expected to be applicable or relevant and appropriate requirements (ARARs) for the remediation of RCRA hazardous wastes at CERCLA sites. In these cases, staging pile requirements would be incorporated into CERCLA decision documents rather than permits, closure plans, or orders. This section of the rule also includes language to make it clear that a staging pile only need be designated in a permit (for example, a RAP), closure plan, or order when hazardous remediation waste (or remediation waste otherwise subject to LDRs) is being stored. Non-hazardous remediation waste or remediation waste that is no longer subject to LDRs can, of course, be stored in a pile without being designated as a ''staging pile.''

The third provision of new § 264.554(b) is the provision that the Director must establish conditions in the permit, closure plan, or order that comply with paragraphs (d)–(k) of the staging pile regulation. This portion of the regulation simply serves to affirm that the provisions of the staging pile regulation will be incorporated by the Director into the designating mechanism for the pile.

E. What Information Must I Provide To Get a Staging Pile Designated? (§ 264.554(c))

Section 264.554(c)(1) sets out the requirement that the facility owner/operator must provide information to the Director that will enable him to designate a staging pile according to the regulatory requirements in today's rule. The Agency does not believe that the evaluation of these performance criteria will generally involve detailed quantitative analyses; the level of detail needed by the Director to make decisions on appropriate design and operating criteria will vary case-by-case depending on site-specific factors, such as proximity to points of exposure, physical and chemical characteristics of the waste, and hydrogeological conditions at the site. The Agency anticipates that the information contained in the RCRA Facility Investigation or an analogous document will contain most of the information necessary to designate a protective staging pile. The Agency's intention with this portion of the regulation is not to create a burdensome reporting requirement, but rather to authorize the Director to require sufficient information to enable him to designate a staging pile.

Today's rule also requires a certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information provided by the facility owner/operator, that this certification is not necessary to

ensure a staging pile that is protective of human health and the environment (§ 264.554(c)(2)). This certification should be incorporated into any documentation necessary for the permit, closure plan, or order in which the staging pile is designated. The Agency's intention is not to create an obstacle for the facility owner/operator, but rather to provide assurance that the technical information is accurate, has been prepared by technically competent personnel, and can be relied upon by the Director. If the Director believes that this certification is unnecessary, such as in a case where the staging pile design is to be very simple due to a short term of storage or relatively low constituent concentrations, the Director may waive the need for the professional engineer certification. Finally, RCRA § 264.554(c)(3) enables the Director to request any additional information that he determines is necessary to protect human health and the environment. EPA expects that this provision will be used infrequently, but considers it important to ensure that all pertinent information is available to the Director when making a decision on designating a staging pile or staging pile extension. Because this is not intended to be a burdensome provision, the Director should restrict any information request to that which is necessary to protect human health and the environment. The Agency intends this portion of the regulation to reinforce the Director's ability to request additional information to ensure that, for example, staging piles are designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment (§ 264.554(d)(1)(ii)).

Although an information requirement was not included explicitly in the proposed remediation pile regulation, EPA believes that the Director's need for information to designate a protective staging pile was a principle embedded in the proposal. The proposed remediation pile regulation was centered around providing, both the regulatory agency and the facility, site-specific flexibility with the goal of matching the risk-based regulatory requirements with the conditions at a particular site. This flexibility can only be granted when there is an exchange of accurate and sufficient information between the facility and the regulatory agency. Moreover, under the proposal, the Director could, of course, have denied a request to designate a remediation pile if he did not have sufficient information to make a sound protectiveness judgement, so his ability to obtain additional information was implicit. Therefore, to clarify this expectation, today's § 264.554(c) explicitly defines what kind of information must be provided to the Director to enable him to make the findings mandated by the regulations.

F. What Performance Criteria Must the Staging Pile Satisfy? (§ 264.554(d))

1. Performance Standards for Staging Piles (§ 264.554(d)(1))

Many commenters requested that the Agency avoid prescriptive national standards that would not take into account site-specific considerations and therefore would be likely to over or under estimate the exact design and operating requirements needed at any given facility. There were, however, persuasive comments suggesting that a performance standard for staging pile design and operation is necessary, in addition to the decision factors, to better guide the program implementor and facility owner/operator in setting site-specific design and operating criteria that will protect human health and the environment. Consequently, today's rule finalizes a performance standard that, in combination with a specific time limit for the piles, will ensure that staging piles are protective without sacrificing the flexibility that helps make staging piles an implementable option at facilities.

The Agency proposed a standard for remediation piles that reads ''the Director may prescribe on a case-by-case basis design and operating standards for such units that are protective of human health and the environment.'' In response to comments suggesting a more specific performance standard for staging piles, the Agency has promulgated today's performance standard for staging piles. The staging pile performance standard is based on the principles underlying the staging piles provisions, as well as provisions that were already included in the proposed remediation pile regulation. In designating the performance standard the Agency looked to the standard in the CAMU rule as guidance (§ 264.552(c)).

The performance standard finalized in today's rule (§ 264.552(d)(1)) supplements the decision factors for temporary units as proposed. The Agency believes that finalizing more than the decision factors provides the designating authority with more complete guidance for the establishment of protective design and operating criteria. Under the rule, the decision factors are elements that must be considered when establishing standards for the staging pile. The performance standard is the Agency's overall requirement for the construction and engineering of the unit. There were some commenters that suggested the Agency promulgate specific technical requirements for the staging piles. These comments appear to be based on the concern that the proposed remediation piles, which allowed treatment and longer term storage, did not have baseline standards. EPA believes that today's staging pile regulation, which allows short-term storage only, would not be improved by prescriptive standards due to the relatively low risk posed by the piles and the requirement that the Director take into account site-specific conditions in setting standards.

The performance standard for staging piles has three parts. First, ''the staging pile must facilitate a reliable, effective and protective remedy.'' (§ 264.552(d)(1)(i)) Second, ''the staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate),'' (§ 264.552(d)(1)(ii)). Finally, ''the staging pile must not operate for more than two years, except when the Director grants an operating term extension under paragraph (i) (entitled ''May I Receive an Operating Extension for a Staging Pile?'') of this section. You must measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or three years, whichever is longer,'' (§ 264.552(d)(1)(iii)).

Therefore, in designating a staging pile, the first consideration of the Director will be whether the pile will facilitate the implementation of a reliable, effective, and protective remedy (§ 264.554(d)(1)(i)). This criterion is designed to require a site-specific showing that the premise behind allowing for these piles (see 61 FR 18831) is satisfied at each site where they are used. By including this criterion, the Agency is emphasizing that the goal of today's staging pile regulation is not to undercut the protectiveness of the existing Subtitle C regime, but rather to assist in the execution of reliable, effective, and protective remedies.

The second criterion requires that activities associated with the design and

operation of the staging pile must prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (§ 264.554(d)(1)(ii)). This portion of the performance standard is an outgrowth of the proposed remediation pile regulation, because it simply adds specificity to the proposed rule's requirement that the standards must be ''protective of human health and the environment'' (proposed § 264.554(a)) and that the ''Director shall specify in the permit or order . . . any requirements for control of cross-media contaminant transfer'' (proposed § 264.554(d)). Section 264.554(d)(1)(ii) also builds upon the fourth and sixth decision factors mentioned later in this section of the preamble (§ 264.554(d)(2)(iv) and (vi) which require the Director to consider the potential for releases from the unit and the potential for human and environmental exposure when establishing standards for the staging pile). A similarly worded performance standard was suggested by one of the commenters on the proposal. The Agency agrees with the commenter that it is advantageous to include a provision directly in the performance standard for staging piles, as is finalized in today's rule. The Agency emphasizes that minimizing or adequately controlling cross-media transfer (for example, transfer to air through volatilization or particulate matter) is vital to the protectiveness of a staging pile.[21]

This second criterion is also included to ensure that there will be no unacceptable risks created by the storage of hazardous remediation waste in a staging pile either during the remedial activities or afterwards. Liners, covers, and run-off/run-on controls are all examples of design stipulations that might be appropriate in specific circumstances, and these examples have been included directly in the regulation to assist the Director. These examples, however, are in no way a definitive list of possible design stipulations that could be included in the permit, closure plan, or order, nor would they always be necessary. Depending on site-specific circumstances, ground water and air monitoring equipment may also be appropriate to ensure adequate attention to cross-media transfer from a staging pile. However, the Agency anticipates that this monitoring equipment will often be installed as part of the overall cleanup at the site rather than for the staging pile itself. In addition to the type of substantive standards and design criteria described above, the rule also allows the Director to specify operating requirements for the staging pile by providing that the Director must include ''standards.'' Examples of these operating requirements include appropriate inspection schedules and recordkeeping.

The Agency believes that the Director will be able to make a determination of what design and operating requirements are necessary to prevent or minimize releases from the staging pile based on information from the facility owner/operator, site assessments, past overseeing agency experience, and standard good engineering practices. If the facility owner/operator does not provide the information necessary for an informed decision to be made regarding what requirements are protective, the staging pile should not be designated by the Director.

One commenter suggested a ''no significant migration'' standard be included in the rule. The Agency agrees that a staging pile should be designed to prevent any significant additional migration of hazardous waste and hazardous constituents. However, EPA did not include this precise language in the final rule because EPA believes that the requirement that a staging pile be designed so as to prevent or minimize releases of hazardous waste and hazardous constituents into the environment and minimize or adequately control cross-media transfer will have an equivalent effect.

The final performance criterion (§ 264.554(d)(1)(iii)) limits the use of staging piles to two years, unless a 180-day extension is provided, and establishes a recordkeeping requirement. Refer to the discussion later in this section on time limits for details of this provision.

2. Decision Factors for Staging Piles (§ 264.554(d)(2)

In the proposal, EPA requested comment on whether to prescribe any specific design or operating standards for remediation piles or to allow the Director to establish requirements on a case-by-case basis using the decision factors specified for temporary units. The Agency's intent to use the slightly modified temporary unit decision factors, as expressed in the proposal, received no negative comments and consequently they are finalized in today's rule. The Agency continues to believe that these decision factors are reasonable and will result in sound decisions for staging pile design. Specifically, the rule requires the Director to consider the following factors in establishing the standards and design criteria for the staging pile:

(1) Length of time the pile will be in operation;
(2) Volumes of wastes to be stored;
(3) Physical and chemical characteristics of the wastes to be stored in the unit;
(4) Potential for releases from the unit;
(5) Hydrogeological and other relevant environmental conditions at the facility which may influence the migration of any potential releases; and
(6) Potential for human and environmental exposure to potential releases from the unit.

EPA believes that these considerations will help ensure that the staging pile will be designed to protect human health and the environment.

G. May a Staging Pile Receive Ignitable, Reactive, or Incompatible Remediation Wastes? (§ 264.554(e))

The final rule contains a new provision, § 264.554(e), that addresses the handling of ignitable or reactive remediation wastes in a staging pile. This new provision is a modification of § 264.256, the special requirements for ignitable and reactive wastes in a waste pile. Section 264.554(e) prohibits placement of ignitable or reactive remediation waste into a staging pile unless the waste is made non-ignitable or non-reactive as these characteristics are defined in § 261.21 and § 261.23, while also complying with § 264.17(b) (which lists reactions that precautions must be taken to prevent) or the waste is managed in such a way that it is protected from materials or conditions which may cause it to ignite or react. EPA expects that non-flowing wastes encountered during cleanup will rarely be ignitable or reactive.

When they are, however, they clearly require continuing protection from conditions which may cause them to ignite or react. An important factor to note is that mixing of wastes in a staging pile is relatively common when storing large volumes of waste. Unless these wastes are rendered non-ignitable or non-reactive, the facility owner/operator may find it difficult to protectively manage these wastes in a staging pile. Reactive wastes may be particularly difficult to manage since a staging pile can be directly exposed to the

[21] Consulting the Agency's Best Management Practices (BMPs) for Soil Treatment Technologies (EPA530–R97–007, May 1997) guidance document, which was developed to provide guidance on how to identify and minimize the potential for causing cross-media contamination during implementation of cleanup technologies for contaminated soils or solid media, is recommended to assist in ensuring that this portion of the performance standard is achieved.

environment. The Agency will allow the management of ignitable or reactive wastes in a staging pile, as long as the wastes are protected from the material or conditions which may cause them to ignite or react. The modification to § 264.256 makes the provision applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. Also, the language modified from that of § 264.256 does not allow waste to be treated, rendered, or mixed immediately after placement in a staging pile, although this language is included in the waste pile regulation (§ 264.256(a)).

Since treatment is not permitted in a staging pile, this portion of the waste pile regulation was considered by the Agency to be inappropriate and therefore was not included in today's rule.

H. How Do I Handle Incompatible Remediation Wastes in a Staging Pile? (§ 264.554(f))

The final rule also contains a new provision, (§ 264.554(f)), that deals with the handling of incompatible wastes in a staging pile. This provision is a modification of § 264.257, the special requirement for incompatible wastes in waste piles. The modification makes the provision applicable to remediation waste in staging piles rather than hazardous waste in waste piles and enhances its readability. The potential dangers from the mixing of incompatible wastes include, but are not limited to, extreme heat, fire, explosion, and violent reaction. Clearly, the potential impacts on human health and the environment which could result from these conditions must be avoided.

To this end, the regulation includes a provision that staging piles should not contain incompatible wastes unless precautions are taken to avoid the reactions listed in § 264.17(b). The regulation also states that if remediation waste in a staging pile is stored near incompatible wastes, precautions must be taken to ensure that these materials are protected or separated from one another. Finally, for the same reasons as those provided above, today's regulation states that remediation waste must not be piled on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to ensure compliance with § 264.17(b).

Although these provisions were not included in the proposed rule, EPA believes that it is reasonable to include them in today's final rule because the provisions do not create an additional regulatory burden for either the Director or facility owner/operator. The Director would normally examine the possibility of risk from ignitable, reactive, or incompatible wastes being placed in a pile before designating a pile, so these provisions simply serve to ensure that this caution will be exercised in every case.

I. Are Staging Piles Subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)? (§ 264.554(g))

Like placement of remediation waste into CAMUs, placement of remediation wastes into staging piles will not trigger RCRA LDRs. Because staging piles are generally a subset of units that, absent today's rule, would be CAMUs, this provision is based on the Agency's view, fully explained in the preamble to the CAMU rule, that placement into these units does not constitute "land disposal" under RCRA section 3004(k) (See 58 FR 8658, 8662 (February 16, 1993)). As stated in that preamble, EPA believes this interpretation is reasonable "since remedial areas are not a listed regulatory unit under 3004(k), because Congress recognized that the application of LDRs to remediation wastes might require a different framework than that developed for the application to as-generated wastes, and, . . . because the direct application of preventive standards to remediation wastes is often inappropriate and counterproductive." (See 58 FR 8662). Also, as explained in the preamble to the CAMU rule, staging piles would not be subject to the MTRs under section 3004(o), because the pile is not a land disposal unit subject to those requirements.

J. How Long May I Operate a Staging Pile? (§ 264.554(h))

The remediation pile provisions, as proposed, did not set limits on the amount of time that remediation waste could be in the pile, other than to say that these piles would be "temporary" and only available for use during remedial operations. The proposal requested comment on whether time limits and renewals that prescribe the lifetime of remediation piles should be set at the national level.

Only one commenter agreed with the proposal that EPA should not set a specific limit, but instead allow the staging pile to operate indefinitely.

All other commenters on this issue recommended that EPA set a specific time limit for operation of staging piles. Suggestions ranged from six months to three years, however, the majority of commenters recommended two years. Several commenters also suggested that EPA allow a limited extension of the time limit when necessary. Suggestions for extensions ranged from six months to three years.

EPA has decided to impose a two-year time limit on staging piles, with the opportunity to obtain a six month extension, when necessary. EPA agrees with commenters who feel that there is a need to define "temporary" in the context of staging piles. The Agency also agrees with commenters who argued that a two-year time limit is reasonable for the staging piles and therefore has promulgated this limit in today's rule. The Agency does not believe that staging piles should exist indefinitely or with an undefined "temporary" lifetime because these units might not be designed in a manner protective enough for the "de facto" disposal that might occur. In other words, if "temporary" was left as the only standard, the storage in staging piles could take place for such a long period of time that the risks to human health and the environment would be essentially equivalent to a disposal scenario, which the staging piles standards in today's rule are not designed to address. The Agency does not believe it is necessary to create standards in today's rule to accommodate a long-term storage scenario because long-term storage and disposal can be conducted in CAMUs and, as discussed below, the operations the Agency intends to accommodate in this rule—staging—can generally be conducted during the 2-year time period.

EPA believes that a time limit that generally corresponds to the length of time needed for staging or storage activities at a site is appropriate. EPA consulted with program implementers at the Regional and State level who agreed that 2 years was an appropriate limit for staging piles.

In response to commenters' suggestions, EPA has decided to allow a 6-month extension for staging pile operation when necessary (see the preamble discussion for § 264.554(i)). EPA again consulted with Regional and State program implementers who agreed that six months was an appropriate amount of time to allow for an extension. As discussed below in section K, EPA believes that six months provides an adequate balancing of interests in providing flexibility while ensuring that staging piles are indeed temporary.

In practice, a facility owner/operator could request, or the Director could designate on his own initiative, a shorter lifetime for a staging pile and consequently the Director could set design and operating requirements that

would take into account this shorter period of storage. The Director is encouraged to establish a duration shorter than two years, when appropriate.

Longer-term use of a staging pile, however, is much more similar to ''disposal'' activities which provide a greater opportunity for releases. As stated in the ''Summary of Principal Changes from the Proposal'' section above, the Agency has concluded, for the purposes of today's rule, that land-based treatment activities, long-term storage, and permanent disposal are more appropriately addressed using the CAMU provisions in § 264.552.

One commenter suggested that a two-year time limit on staging piles is also consistent with the limits on the storage of prohibited wastes under § 268.50, EPA's regulations implementing RCRA section 3004(j).[22] In response to this comment, which highlighted the relationship between the staging pile provisions and § 268.50, the Agency today is also amending § 268.50 to expressly provide that storage of hazardous wastes in approved staging piles is not subject to the prohibition contained in that section (§ 268.50(g)).

Section 268.50 provides that hazardous wastes prohibited from land disposal may not be stored unless certain conditions are met. For treatment, storage, or disposal facilities, those conditions are that this storage takes place in tanks, containers or containment buildings and is ''solely for the purpose of accumulation of such quantities of hazardous waste as necessary to facilitate proper recovery, treatment, or disposal.'' In addition, dates of accumulation generally must be clearly marked and recorded.

EPA believes an express exemption from these requirements (as opposed to amending them to add staging piles to the list of units in which storage may conditionally take place) will eliminate the need for regulatory agencies and site owner/operators to engage in unnecessarily duplicative factual findings, because the concerns underlying the requirements in § 268.50 (that is, that storage of prohibited wastes only occur ''as necessary to facilitate proper recovery, treatment, or disposal'') will necessarily be satisfied during approval of the staging pile. Specifically, as discussed above, by imposing a two-year time limit on staging pile operation, today's rule is consistent with the time limits in § 268.50 (and, by way of analogy, the two-year cap on case-by-case capacity variances under RCRA section 3004(h)(3)). In addition, staging piles will only be used during remediation, a process that is specifically designed to ''facilitate proper recovery, treatment or disposal'' of wastes. The final staging pile rule promulgated today will further ensure this result, since it specifically requires that staging piles only be approved where they will ''facilitate the implementation of a reliable, effective and protective remedy.''

The final rule also makes clear that the operating term limit (§ 264.554(h)) is to be measured from the initial placement of remediation waste in a staging pile. The closure process must begin at the end of the operating term or extension term (if approved by the Director) for the staging pile. EPA believes that, to make this requirement implementable, a record must be kept which defines the date of initial placement of waste into the staging pile. Therefore, EPA has included a provision in the staging pile performance standard (§ 264.554(d)(2)(iii)) that requires that a record of initial placement date be kept by the facility owner/operator for the life of the permit, closure plan, or order or for three years, whichever is longer. This will aid in the enforcement of staging pile time limits by providing a specific date by which to measure how long remediation waste has been stored in the pile. The three-year period used in today's rule as the minimum period of record retention, is in keeping with the recordkeeping requirement of ''at least three years'' found in § 270.30(j) (which outlines the monitoring and recordkeeping regulations applicable to all permits) and a number of other recordkeeping requirements in RCRA regulations (for example, § 262.40).

K. May I Receive an Operating Term Extension for a Staging Pile? (§ 264.554(i))

In the proposal, the Agency requested comment on whether any time limits placed on remediation piles should be renewable. In response, an operating term extension period was suggested by a number of commenters. Recommendations for the length of this extension period varied from six months to three years. The Agency agrees with these commenters in that it can be difficult to judge in advance the amount of time that will be necessary to store remediation wastes in furtherance of a remedy. EPA recognizes that in some cases unforeseen circumstances may dictate that a staging pile remain in service beyond the limit originally set in the permit, closure plan, or order. For example, unexpectedly large volumes of waste may need to be handled to complete the remedy, or the remedial process may be slowed by forces beyond the control of the facility owner/operator or Director. An extension would be appropriate, for example, when wastes being stored in a staging pile are to be taken to an off-site facility, but that facility no longer has the capacity, or is unwilling, to accept the wastes. Consequently, today's rule includes a provision, § 264.554(i), that states the Director may provide one extension of up to 180 days as a modification of the original permit, closure plan, or order.

To justify to the Director the need for an operating term extension, the facility owner/operator must provide sufficient information to enable the Director to make a determination that continued operation of the unit:

- Will not pose a threat to human health and the environment; and
- Is necessary to ensure timely and efficient implementation of remedial actions at the facility. In addition, the regulation states that the Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary to ensure protection of human health and the environment. This language is based, in large part, on the time limit extension language for temporary units, which provides a one-year extension beyond a one-year operational limit (§ 264.553(e)). EPA believes that this language is both appropriate and reasonable for staging piles. The Agency believes that the language addresses the concerns of commenters who suggested, among other things, that the extension should be consistent with the extension in § 264.553, especially since the temporary unit extension provision can only be approved after a showing that a time extension will not threaten increased environmental risk. The Agency agrees with these comments, as well as with other commenters who saw the need for an extension period to ensure that unexpected circumstances will be accommodated by the staging pile regulations. The Agency believes that the criteria that must be met before the Director grants an extension of the operating term for a staging pile are appropriate as they correspond to the overall goals of the staging pile regulation.

The initial criterion, ensuring that continued operation of the unit will not pose a threat to human health and the environment, is a reasonable test to maintain the protective nature of the staging pile despite the increased

[22] RCRA section 3004(j) provides that wastes prohibited from land disposal may be stored ''solely for the purpose of the accumulation of such quantities of hazardous waste as are necessary to facilitate proper recovery, treatment or disposal.''

storage time. The second criterion allows the Director to specify further standards or design criteria for the staging pile if the increased storage time requires more protective or different specifications. EPA believes that it is unlikely that additional standards will be necessary for only a 180 day extension; however, this criterion will allow the Director to impose these standards in unusual circumstances. One commenter stated that the temporary unit extension provision of§ 264.553(e) was too prescriptive to be appropriate for remediation piles. This commenter felt that any extension should be approved or rejected based solely on site-specific considerations. However, EPA believes that the criteria finalized today leave the Director with ample discretion to consider site-specific factors in making decisions on extensions, and yet place appropriate limits on that discretion. The Agency also believes that limiting the number of extensions to one of up to 180 days will reduce the potential administrative burden that could be created by facility owner/operators seeking multiple extensions for staging pile operations, as well as ensuring that staging piles are indeed ''temporary.''

Furthermore, if the facility owner/operator or Director can anticipate, before designating the staging pile, that additional time will be necessary for staging activities, EPA recommends the use of a CAMU instead of a staging pile. If the facility owner/operator and Director are not able to anticipate that a CAMU will be preferable to a staging pile, the option remains to designate an existing staging pile as a CAMU through the CAMU approval process. This might require modifications to the design of the staging pile to address the risk posed by longer-term storage. Modifications necessary to designate a CAMU from what was previously a staging pile might include leak detection systems, run-off controls, air emissions controls, ground water monitoring systems, and leachate collection systems. However, the specific modifications will depend on the nature of the unit and the future plans for it.

L. What Is the Closure Requirement for a Staging Pile Located in a Previously Contaminated Area? (§ 264.554(j))

The preamble to the proposal stated that ''remediation piles would be required to close by removal of all wastes (i.e. 'clean close').'' This requirement, however, was not explicitly stated in the proposed regulation. This created confusion with some commenters, who requested that ''clean closure'' be defined and stated clearly in the final rule. In response to these comments, explicit closure requirements are included in today's rule. EPA foresees two scenarios applicable to closure in which a staging pile might be designated: (1) in an area of previous contamination, with remediation waste consolidated from non-contiguous areas of contamination (designation of a staging pile is not necessary if all the wastes are consolidated from within one area of contamination, see discussion below); and (2) in an uncontaminated area of the site. Consequently, the closure requirement is divided into two parts: § 264.554(j), which applies to staging piles designated at contaminated areas of the site; and § 264.554(k), which applies to staging piles designated at uncontaminated areas of the site.

At closure of staging piles located in previously contaminated areas, the final rule requires the facility owner/operator to ''remove or decontaminate all remediation waste, contaminated containment system components, and structures and equipment contaminated with waste and leachate within 180 days after the expiration of the operating term of the staging pile.'' The Agency included this provision, which contains typical ''clean closure'' language (see § 264.258(a)), to ensure that closure of staging piles at facilities is completed in a safe and protective manner, as well as within a reasonable time frame. The 180-day time limit for removal and decontamination is an outgrowth of comments made requesting that the Agency ensure that temporary piles will indeed be temporary and of the intention expressed in the preamble to the proposal to require clean closure, a process under the Agency's regulations that must be complete within 180 days (§ 265.113). The Agency believes that a 180-day period is reasonable, as well as comparable to existing closure requirements in Parts 264 and 265.

The closure standard for staging piles designated in previously contaminated areas differs from the typical clean closure standard in the way that any contaminated subsoils created by the staging pile will be addressed.[23] Today's standard, instead of simply requiring ''removal or decontamination,'' specifies that the facility owner/operator, ''must also decontaminate contaminated subsoils in a manner, and pursuant to a schedule, that the Director determines will protect human health and the environment.'' This change was made in response to a commenter who identified the utility of considering the closure of a pile as part of the ongoing remedial process at a site. The Agency was persuaded by this comment to design a standard that recognizes that staging piles will only be used in the cleanup context, where the staging piles will likely be an intermediate step towards the cleanup of a site. In addition, since the portion of the facility where the staging pile will be located will have been previously contaminated, it may be very difficult to distinguish this previous contamination from residues that may have been left by the staging pile. Therefore, in designing today's standard, the Agency felt it was appropriate to include a standard that would allow any cleanup of soils contaminated by the staging pile to be coordinated with the site remedy, rather than addressed under a distinct set of resource-intensive requirements.

Because the final remedy at the site may not occur within 180 days after the operating term of the staging pile expires, the closure requirement does not include a time limit for this decontamination of contaminated subsoils. It is the Agency's expectation that the decontamination of any contaminated subsoils will be consistent with the overall remedy at the site. The Agency expects that the Director will often incorporate the schedule and cleanup levels for the chosen remedy at the site as the closure standards for the staging pile in the authorizing vehicle (for example, the RAP). By providing that contaminated subsoils must be decontaminated ''in a manner, and pursuant to a schedule, that the Director determines is necessary to protect human health and the environment,'' the Agency believes it is providing essential flexibility, while at the same time ensuring that the use of a staging pile does not increase contamination where it was located. The Agency believes that this design fulfills the goal of protection of human health and the environment in these unique circumstances.

[23] Of course, EPA expects (and today's rule requires) that staging piles located in previously contaminated areas will be designed and operated in a manner that prevents or minimizes the release of additional contaminants to the degree technically practicable. A prime objective of remedial waste management is preventing further releases that will require cleanup. Consequently, EPA fully expects that at the majority of facilities that use staging piles, no decontamination of subsoils will be necessary due to the protective structure of the site-specific staging pile design and operating standards. However, as with other units regulated under Subtitle C, the Agency acknowledges the possibility that residues can remain after all remediation waste is removed from the pile and containment system components are decontaminated.

M. What Is the Closure Requirement for a Staging Pile Located in an Uncontaminated Area? (§ 264.554(k))

Under today's rule (§ 264.554(k)), staging piles located in previously uncontaminated areas of the site must be closed according to the closure requirement for waste piles in § 264.258(a) as well as the closure performance standard of § 264.111 (or the requirements in § 265.258(a) and § 265.111) within 180 days after the expiration of the operating term of the staging pile (Part 265 is applicable to staging piles designated at interim status facilities). The Agency does not prefer the siting of staging piles in previously uncontaminated areas of the facility, yet acknowledges that site conditions may dictate such a siting (for example, to site the staging pile outside of a floodplain or lagoon area). As stated above, the 180-day time limit for removal and decontamination is, in part, in response to comments made requesting the Agency to ensure that staging piles would indeed be temporary. It should be noted that the reference to ''post-closure escape of hazardous wastes'' in the § 264.111 and § 265.111 does not eliminate the need for clean closure of staging piles. As stated in § 264.258(a) and § 265.258(a), all waste residues, contaminated containment system components, contaminated subsoils, and structures and equipment contaminated with waste and leachate must be removed or decontaminated. The closure requirements that a staging pile located in a previously uncontaminated area of the site must fulfill should be included, according to currently applicable procedures, directly into the permit, closure plan or order in which the staging pile is designated to ensure a clear and enforceable outcome.

N. How May My Existing Permit (for Example, RAP), Closure Plan, or Order Be Modified To Allow Me To Use a Staging Pile? (§ 264.554(l))

The proposal did not specifically address the process for designating a staging pile at an already permitted facility. EPA anticipates that staging piles will most often be designated as part of the approval of remedy selection at a site; and therefore, like selection of the remedy, staging piles will generally be approved using the Agency's permit modification procedures. To add certainty to this process, today's rule specifically requires that incorporation of a staging pile, or staging pile extension, into an existing permit be conducted according to the Agency-initiated permit modification procedures (§ 270.41) or the Class 2 permit modification procedures under § 270.42. The Agency believes that a Class 2 designation is generally appropriate as it corresponds to the Class 2 permit modification necessary for the approval of temporary units, a close analogue to staging piles. If the Agency did not specify permit modification procedures in today's rule, the procedure outlined in § 270.42(d) would have been necessary, requiring a Class 3 modification unless the modification requestor could have provided information sufficient to support the requested classification. EPA believes that it is preferable to explicitly state that Class 2 procedures should be used to designate a staging pile or staging pile operating term extension, rather than default to § 270.42(d) procedures. Furthermore, the Class 3 modification procedures that would be required under § 270.42(d) are inappropriate for staging piles. Class 3 permit modification procedures are designed for changes that substantially alter the facility or its operations (§ 270.42(d)(2)(iii)). EPA believes the additional requirements in the Class 3 procedures would unnecessarily delay the process of designating a staging pile, diminishing the ability of staging piles to facilitate the remedial process. The subject of what permit modification procedure to use when designating a staging pile did not surface in the comments on the proposal.

Other than through a traditional permit modification, a staging pile or staging pile operating term extension can also be designated through modification of a RAP, closure plan, or order. As finalized by today's rule, RAPs are a new type of permit in which staging piles can be approved. Because traditional permit modification procedures are available when incorporating a staging pile or staging pile operating term extension into a traditional RCRA permit, EPA also believes it is reasonable to allow staging piles and staging pile operating term extensions, designated through a RAP, to be modified through RAP modification procedures. Therefore, as stated in the staging pile regulations at § 264.554(l)(2), ''[t]o modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under §§ 270.170 and 270.175.'' Although this language was not used in the proposed remediation pile regulation, it is an outgrowth of the RAP section of the proposal to use the RAP modification procedures to incorporate staging piles or staging pile operating term extensions, similar to the way traditional permit modification procedures would be used.

In addition, modification of a closure plan to incorporate a staging pile or staging pile operating term extension should proceed according to the requirements in § 264.112(c) at permitted facilities or the requirements in § 265.112(c) at interim status facilities. As discussed in the ''How is a Staging Pile Designated?'' section of today's preamble, the closure plan is an additional mechanism by which a staging pile can be designated. In keeping with the use of closure plans, the Agency believes that the use of the established closure plan modification procedures cited above is reasonable.

Finally, modification of an order to incorporate a staging pile or staging pile operating term extension must occur according to the terms of the order and the applicable provisions of § 270.72 (a)(5) or (b)(5). Any inclusion will be governed by the standards promulgated today and, as noted below, the Agency's policy on public participation and corrective action orders should be followed.

The Agency received no comments on the proposal regarding the use of these, or any other, modification procedures to designate a staging pile or staging pile operating term extension.

O. Is Information About the Staging Pile Available to the Public? (§ 264.554(m))

Section 264.554(m) requires the Director to document the rationale for designating a staging pile or operating term extension for a staging pile and to explain the basis for the designation. The rationale for these decisions should be incorporated as part of the Statement of Basis in a permit, closure plan or order modification. Documentation of staging pile decisions is analogous to the documentation the Agency currently makes to support the selection of a remedy. Therefore, if a staging pile is incorporated as part of a final remedy, this explanation would be incorporated into the Statement of Basis for the remedy under a permit modification, closure plan or under an order. The staging pile rationale, as determined by the Director, will be available to the public through the appropriate public participation process. This requirement was not included in the proposal, but is intended simply to clarify and emphasize that staging pile decisions must be documented and explained as part of the existing notice and comment procedures for orders, permits, and closure plans. EPA believes that documenting the designation rationale is necessary to ensure that the public

has access to information relevant to the designation of a staging pile which is both substantial and clear. The Agency believes that including regulatory language to this effect is in keeping with EPA policy with regard to the importance of meaningful public participation.[24]

Public participation during the staging pile designation process, when implemented through the traditional (non-RAP) permit process, will proceed as prescribed in the Class 2, or Agency initiated, permit modification procedures. If the staging pile is designated in an order, it is the Agency's current policy that the order provide a level of public participation and comment comparable to that provided for in a permit modification (see RCRA Public Participation Manual, Chapter 4; and "Corrective Action for Releases from Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule," 61 FR 19432; (19453–19454) (May 1, 1996)). Since a staging pile has been designated as a Class 2 permit modification, these procedures should be used for public participation under an order. Documentation should be made available to the public through the order approval or order modification process.

P. What Is the Relationship Between Staging Piles, Corrective Action Management Units, and the Area of Contamination Policy?

The CAMU rule provides flexibility to EPA and implementing States to specify site-specific design, operating, and closure/post closure requirements for units used for land-based storage, or for treatment of wastes that are generated during cleanup at a RCRA facility. The CAMU regulations also specify requirements for units that are used as long-term repositories for cleanup wastes. The proposed remediation piles were intended to replace, to some extent, the flexibility that would be lost if the CAMU rule was withdrawn and the use of CAMUs was no longer available. However, as discussed more fully above, the Agency believes that, although CAMUs are retained in today's rule, staging piles will be a useful part of a remedial strategy in cases where waste is temporarily staged during remediation.

The staging piles provisions in today's rule will not affect current implementation of the AOC policy. The AOC policy is an interpretation of the statutory RCRA term, "land disposal" (section 3004(k)). The AOC policy, first elucidated in the March 8, 1990 "National Oil and Hazardous Substances Pollution Contingency Plan (NCP, 55 FR 8758–8760)," equates dispersed areas of contamination with RCRA landfills, and clarifies that hazardous wastes may be moved within the AOC without triggering LDRs.[25] The Agency anticipates that staging piles will aid in situations in which the AOC policy does not apply. For example, a staging pile will be a valuable option in cases where a site has non-contiguous areas of contaminated soil, and where waste is being staged in a pile within one of the areas prior to further management. A staging pile will allow for consolidation of remediation waste into the pile without triggering RCRA LDRs. In cases where a facility owner/operator would like to consolidate remediation waste within one area of contamination, this can be accomplished under the AOC policy, and therefore a staging pile would not be necessary.

VIII. Corrective Action Management Units (CAMUs) (§ 264.552)

This final rule retains the regulations for Corrective Action Management Units (CAMUs) promulgated on February 16, 1993 at § 264.552 (see 58 FR 8658).

The CAMU regulations allow EPA to impose site-specific standards for on-site units used to manage remediation wastes. As discussed in the preamble of that final rule, the CAMU regulations were adopted by EPA to provide remedial decision-makers with flexibility to expedite and improve remedial decisions by removing barriers to cleanup created by RCRA hazardous waste requirements—specifically, the LDRs in Part 268 and the MTRs in Parts 264 and 265 applicable to land-based units . As is discussed in the preamble to the CAMU rule, the Agency believed (and still believes) that these Subtitle C requirements, when applied to remediation wastes, can act as a disincentive to more protective remedies, and can limit the flexibility of a regulatory decision maker in choosing the most practicable remedy at a specific site (see 58 FR 8658 at 8660).

Under the final CAMU regulations, LDRs do not apply to CAMUs because placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous waste, and MTRs do not apply because consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to MTRs (see 58 FR 8658 at 8661). The purpose of the CAMU regulations is to provide for more and improved cleanup of wastes, thus, providing increased protection of human health and the environment (see 58 FR 8658 at 8659).

While the CAMU regulations provided some flexibility to address the problems described above, the April 29, 1996 HWIR-media proposal was intended to be a more comprehensive response to the problems faced when applying traditional RCRA Subtitle C standards to the management of remediation wastes. In developing the HWIR-media proposal, EPA evaluated the CAMU regulations in the context of the proposed provisions and recognized that the proposed revisions to Part 269 in the HWIR-media rule, if promulgated, would provide flexibility similar to that provided by the CAMU regulations. EPA considered that the CAMU regulations might not be necessary if the HWIR-media proposal was promulgated, and thus the Agency proposed to withdraw the CAMU regulations if the proposed revisions to Part 269 were promulgated. The Agency noted in that preamble, however, that it did not intend to withdraw the CAMU regulations without, at the same time, substituting one of the two major options proposed in the HWIR-media proposal in its stead. The preamble of the proposed HWIR-media rule made clear that the Agency believed the CAMU regulations provided needed flexibility to remediation sites, and that the Agency intended to withdraw the CAMU regulations only if the site-specific flexibility provided in the CAMU rule would be preserved by the final HWIR-media rule (see 61 FR 18780 at 18829).

When EPA promulgated the CAMU final regulations in 1993, the Agency explained that, in implementing CAMUs, the Agency would have a preference for "treatment-based remedies" and that "long-term reliability and protectiveness of remedial activities is directly tied to effective treatment of wastes that pose future release threats" (see 58 FR 8658 at 8670). In retaining the CAMU regulations, EPA does not alter that long-standing position and further notes that it is consistent with EPA's coordination and "principle of parity" between RCRA and CERCLA cleanup activities (see Memorandum from Steven A. Herman and Elliott P. Laws to RCRA/CERCLA Policy Managers,

[24] For more information see the September 1996 RCRA Public Participation Manual, Chapter 4, EPA530–R–96–007.

[25] For more information consult the March 13, 1996 Memorandum: "Use of the Area of Contamination (AOC) Concept During RCRA Cleanups," from Michael Shapiro, Director Office of Solid Waste, Stephen D. Luftig, Director, Office of Emergency and Remedial Response, and Jerry Clifford, Director, Office of Site Remediation Enforcement to RCRA Branch Chiefs and CERCLA Regional Managers.

September 24, 1996, entitled ''Coordination Between RCRA Corrective Action and Closure and CERCLA Site Activities''). EPA considers the CAMU requirements, and in particular § 264.552(c)(6), as the functional equivalents of CERCLA's expectation that treatment should be used, whenever practicable, to address principal threats posed by a site (see 40 CFR 300.430(a)(1)(iii)(A)). EPA continues to believe that the implementation of the CAMU regulations, as described above, enhances protection of human health and the environment.

While EPA recognized that the proposed HWIR-media rule would have provided flexibility similar to that provided by the CAMU regulations, EPA also recognized that the proposed rule applied to a more limited spectrum of waste—the proposed rule covered only contaminated media, whereas the CAMU regulations allowed all types of cleanup wastes to be managed. Thus, when it proposed to withdraw the CAMU regulations, the Agency also requested comment on what benefits might accrue if the CAMU rule were retained, and on what the ramifications might be if the final rule failed to provide the degree of relief that the CAMU rule has provided.

A majority of commenters favored the retention of the CAMU regulations. In many cases, commenters favored the retention of the CAMU regulations, even if EPA promulgated extensive regulatory reforms in this final rule. (Two commenters voiced their support for withdrawal of the CAMU rules, but did not explain their specific objections). Many commenters argued that EPA had failed to articulate a persuasive rationale for removing the CAMU regulations.

Many commenters on the proposal to withdraw the CAMU regulations believed that the CAMU regulations are important and should be retained because the proposed HWIR-media rule would have been limited to contaminated media. Commenters pointed out that contaminated debris, remediation sludges, and other waste generated as part of corrective action activities would not qualify for any site-specific flexibility that might be provided by the final HWIR-media rule. Without the CAMU regulations, commenters believed, the site decision makers would lose a large amount of flexibility (that is, LDR/MTR relief). One commenter pointed out that, because the HWIR-media proposal would only have applied to contaminated media, withdrawing the CAMU regulations would create a disincentive to remediation of non-media wastes. EPA agrees with these commenters.

This final rule does not include the extent of additional flexibility for remediation wastes that EPA anticipated when it proposed to withdraw the CAMU provisions. As is discussed in section II of this preamble, either the Bright Line or the Unitary approach of the proposed rule would have exempted certain remediation wastes from Subtitle C requirements (such as LDRs and MTRs), and subjected them, instead, to site-specific requirements. Neither of those options is promulgated in this final rule; thus, this type of flexibility is currently available only to remediation wastes managed in CAMUs. EPA believes this flexibility is vital to remove impediments to cleanup imposed by certain Subtitle C requirements. For these reasons, EPA is retaining the CAMU regulations in this final rule.

Since the promulgation of the CAMU regulations, just more than 30 CAMUs have been approved by the Agency. Though this small number might, on its face, appear to indicate that CAMUs have not proved useful to the regulated community, EPA believes, and commenters on the proposed HWIR-media rule verified, that this number is misleadingly low. EPA believes, and again commenters verified, that litigation on the CAMU regulations [26] has resulted in uncertainty about the future of CAMUs and, consequently, provides a disincentive to their use. Thus, despite the low number of CAMUs approved to date, EPA continues to believe that CAMUs provide a valuable tool to promote more and better cleanup of remediation wastes.[27] In fact, EPA expects that the use of CAMUs will increase as more corrective action sites move to the remedy selection phase, and the Agency strongly encourages States who are the major implementers of the corrective action program, to adopt and take advantage of this mechanism for cleanup.

IX. Dredged Material Exclusion (§ 261.4(g))

A. What Is the Dredged Material Exclusion?

Today's final rule contains an exclusion from the definition of hazardous waste for dredged material subject to a permit that has been issued under section 404 of the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977 (CWA) or under section 103 of the Marine Protection, Research, and Sanctuaries Act (MPRSA, also known as the Ocean Dumping Act).[28] EPA proposed this change to reduce potential overlaps between the CWA or MPRSA and RCRA regulation of dredged material disposal. At present, if dredged material proposed for disposal in the aquatic environment is contaminated or suspected of being contaminated with hazardous waste, the potential application of both RCRA Subtitle C regulations and dredged material regulations under CWA or MPRSA complicates efficient assessment and management of dredged material. Today's rule eliminates the overlap of RCRA Subtitle C with the CWA and MPRSA programs by excluding dredged material managed under a CWA or MPRSA permit from RCRA Subtitle C, while ensuring an accurate and environmentally sound evaluation of any potential impacts to the aquatic environment. This exclusion will not alter existing practice significantly, but it clarifies regulatory roles within EPA in an effort to avoid duplication of administrative efforts and is authorized under RCRA section 1006.

The U.S. Army Corps of Engineers (''Corps'') and other entities must dredge large volumes of sediment and other materials to maintain navigable waterways, ports and marinas. Dredged material can be mechanically or hydraulically dredged, and disposed of by barges or pipelines into river channels, lakes, and estuaries. Of the total amount of dredged material excavated, approximately one-fifth is disposed of in the ocean at designated sites in accordance with section 103 of the MPRSA. Most of the remaining dredged material is discharged into waters of the United States, either in open water, at confined disposal facilities (CDFs), or for beneficial uses, which are all regulated under the CWA. Any discharge of dredged material that

[26] On May 14, 1993, a petition for review of the final CAMU rule was filed with the U.S. Court of Appeals for the District of Columbia Circuit (see Environmental Defense Fund v. EPA No. 93–1316 (D.C. Cir.)). Petitioners challenged both the legal and policy basis for the final CAMU regulations. On October 27, 1994, the litigation was stayed pending EPA's publication of a final HWIR-media rule, to allow parties to determine whether the final rule would resolve issues raised in the petition for review.

[27] The October 27, 1994 stay of the CAMU litigation provided that within 91 days after the final HWIR-media rule is published in the **Federal Register**, the parties will inform the court whether they intend to dismiss the petitions for review, enter into settlement discussions, or proceed with the litigation. Thus, the litigation should be resolved in the near future, thereby removing the uncertainty surrounding implementation of the CAMU regulations.

[28] ''Permit'' also includes the administrative equivalent of a CWA or MPRSA permit for U.S. Army Corps of Engineers' civil works projects.

occurs in upland areas and has return flow to waters of the United States is regulated under the CWA. However, if upland-disposed dredged material were to have no return flow to waters of the United States, as defined by CWA section 404, that dredged material would not be regulated under the MPRSA or CWA, and is not, therefore, subject to the exclusion under today's rule.[29]

B. Regulation of Dredged Material Under CWA and MPRSA

Section 404 of the CWA establishes a permit program to regulate the discharge of dredged material into waters of the United States that is administered by the Corps and EPA. Proposed discharges must comply with the environmental criteria provided in 40 CFR part 230 to be authorized by a CWA 404 permit. The EPA and Corps regulations under section 404 define dredged material as ''material that is excavated or dredged from waters of the United States.'' In addition to such discharges as open water disposal from a barge, the section 404 regulations specifically identify the runoff or return flow from a contained land or water disposal area into waters of the United States as a discharge of dredged material. In most cases, this type of discharge occurs from a weir and outfall pipe to drain water from a confined disposal facility, including the water entrained with the solid portion of the dredged material discharged at the site and from rainwater runoff.

The MPRSA regulates the management of material, including dredged material, that will be dumped into ocean waters. Section 102 of the MPRSA requires that EPA, in consultation with the Corps, develop environmental criteria for reviewing and evaluating applications for ocean dumping permits. Section 103 of the MPRSA assigns to the Corps the responsibility for authorizing the ocean dumping of dredged material, subject to EPA review and concurrence. In evaluating proposed ocean dumping activities, the Corps is required to determine whether these proposals comply with EPA's ocean dumping criteria (40 CFR parts 220–228).

C. Dredged Material and RCRA Applicability

RCRA regulates the management of hazardous wastes at treatment, storage, and disposal facilities (TSDFs). Hazardous wastes are a subset of solid wastes. A solid waste is considered hazardous for regulatory purposes if it is listed as hazardous in RCRA regulations or exhibits any of four hazardous waste characteristics: ignitability, corrosivity, reactivity, or toxicity. Dredged material could trigger RCRA's Subtitle C requirements by exhibiting any of the four characteristics or by containing a listed hazardous waste. Environmental media (such as the sediments which make up dredged material) is not itself waste, but is sometimes contaminated with hazardous waste and must be managed as a hazardous waste when it exhibits a characteristic or ''contains'' a listed waste. These media would be subject to the RCRA requirements applicable to the contaminated waste. As a practical matter, naturally occurring sediments will not normally be associated with any specific industrial waste stream, so as to ''contain'' listed waste. Consequently, the most likely means by which dredged sediments could become subject to RCRA Subtitle C regulation is by failing one of the tests for characteristic hazardous waste. Given the nature of sediments, they would be most likely to become subject to RCRA Subtitle C if they fail toxicity testing (that is, Toxicity Characteristic Leaching Procedure, or TCLP). In fact, dredged sediments from navigational dredging projects very rarely, if ever, fail TCLP tests. In all but a very small number of cases, RCRA has not been applied in practice to proposed discharges of dredged material. Nevertheless, as asserted by the commenters, the potential applicability of RCRA Subtitle C requirements has been a concern at many dredging operations.

The Agency is confident that today's exclusion will promote efficient handling of dredged material since future use of the TCLP will not be necessary for dredged material subject to a permit issued under CWA Section 404 or MPRSA Section 103. Specifically, today's rule will eliminate the unnecessary expense and effort, currently borne by the Corps and other entities, of applying the TCLP to large volumes of dredged material. The Corps and other entities typically apply testing procedures under CWA and MPRSA that are better suited to the chemical and biological evaluation of dredged material disposed of in the aquatic environment, where the vast majority of dredged material is managed. These tests are specifically designed to evaluate effects such as the potential contaminant-related impacts associated with the discharge of dredged material into oceans and waterways of the United States. Thus it is appropriate to assess and manage dredged material under the aquatic testing and management protocols developed by the Corps and EPA under the MPRSA and CWA.

D. Determination of Regulatory Jurisdiction

Today's rule establishes an integrated approach to the regulation of dredged material disposal that will avoid duplicative regulatory processes while ensuring an accurate, appropriate, and environmentally sound evaluation of potential impacts to the environment. This approach is authorized under section 1006(b) of RCRA, which states that ''the Administrator * * * shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of * * * the Federal Water Pollution Control Act (CWA), * * * the Marine Protection, Research and Sanctuaries Act, * * *, and such other Acts of Congress as grant regulatory authority to the Administrator.'' Section 1006(b) of RCRA calls for the provisions of RCRA to be integrated with other statutes, including the CWA and the MPRSA, to avoid duplication when the integration ''can be done in a manner consistent with the goals and policies expressed'' in RCRA and the other Acts. Applying the RCRA Subtitle C program together with the CWA and MPRSA permitting programs can be redundant and unduly burdensome, and may cause unnecessary procedural difficulties (for example, by requiring duplicate permit applications and procedures). It is also possible that the duplicative nature of the programs could in fact increase environmental risks by causing delays in proper disposal. The Agency believes that today's rule is appropriate and consistent with the goals and policies in each of these statutes.

The Agency believes that the CWA and MPRSA permit programs protect human health and the environment from the consequences of dredged material disposal to an extent that is at least as protective as the RCRA Subtitle C program. These programs incorporate appropriate biological and chemical assessments to evaluate potential impacts on water column and benthic organisms, and the potential for human health impacts caused by food chain transfer of contaminants. As improved assessment methods are developed, they can be incorporated into these procedures. The programs also make available appropriate control measures (for example, 40 CFR 230.72) for addressing contamination in each of the relevant pathways.

The Agency believes that RCRA Subtitle C coverage of dredged material

[29] Ground water flow is not considered return flow under CWA section 404 unless there is a ''direct hydrogeological connection'' to a surface water body.

disposal in the aquatic environment, whether or not this disposal is considered to be ''land disposal'' under RCRA, is duplicative and unnecessary when considered alongside the CWA and MPRSA coverage of these activities. The overriding goal of each of the three statutory programs is to protect human health and the environment, and the CWA and MPRSA programs achieve this goal appropriately by addressing the proposed aquatic disposal of dredged material.

The exclusion also applies in the case of a Corps civil works project which receives the administrative equivalent of a CWA or MPRSA permit, as provided for in Corps regulations. This regulatory language refers to the fact that the Corps does not process and issue permits for its own activities, but authorizes its own discharges of dredged or fill material by applying the same applicable substantive legal requirements, including public notice, opportunity for public hearing, and application of the section 404(b)(1) guidelines or MPRSA criteria. EPA has the authority to develop environmental guidelines and the authority to prohibit or conduct further review of a proposed discharge by the Corps, in the same manner as it can with a private permit applicant. Thus, the exclusion in today's rule includes CWA and MPRSA permits, as well as their administrative equivalents in the case of Corps civil works projects.

E. Clarification of Future Practice

With the promulgation of today's rule, the regulation of dredged material will generally proceed in one of the following two ways, with the vast majority of activities expected to fall under the first example:

1. If the dredged material is subject to a permit that has been issued under CWA section 404 or MPRSA section 103, RCRA Subtitle C requirements do not apply.

2. If the dredged material disposal is not subject to a CWA section 404 or MPRSA section 103 permit, RCRA Subtitle C requirements may apply. (For example, if dredged material were to be disposed in upland facilities with no runoff or return flow to waters of the United States, this material would not be under the jurisdiction of the CWA or MPRSA and therefore would be subject to RCRA Subtitle C if it meets the definition of an RCRA hazardous waste.)

For dredged material covered by a CWA or MPRSA permit, the combination of statute, Federal regulations, and Regional guidance, along with the testing and management protocols that have been developed jointly by EPA and the Corps, will be adequate to address potential contaminant-related impacts in both ocean and inland waters. Examples of the existing testing and management protocols include: *Evaluation of Dredged Material Proposed for Discharge in Waters of the U.S.—Testing Manual* (EPA–823–B–98–004) and *Evaluation of Dredged Material Proposed for Ocean Dumping—Testing Manual* (EPA–503–B–91–001), which contain current procedures on implementing the dredged material testing requirements under the CWA and MPRSA respectively. The manuals contain tiered evaluation systems that include, as appropriate: physical analysis of sediment; chemical analysis of sediment, water, and tissue; bioassay tests; and bioaccumulation tests of contaminant impacts. EPA believes that CWA and MPRSA permits coupled with these testing manuals and relevant Regional guidance will ensure the protective management and discharge of dredged material.

F. Comments on the Dredged Material Exclusion

Comments from 18 sources mentioned the dredged material exclusion. These sources included various industries and trade groups, as well as federal and state agencies. These comments are included in the record and are available for review in the RCRA docket. Commenters generally supported the exclusion of dredged material from RCRA Subtitle C regulation when the discharge is covered by a permit issued under the CWA or MPRSA. There was also general concurrence among commenters that this exclusion would avoid current unnecessary and duplicative regulation under RCRA. The proposed dredged material exclusion received only one comment that could be considered adverse. The comment was from a state environmental agency and addressed only a portion of the exclusion. The commenter stated that dredged material disposed upland should not be excluded from RCRA Subtitle C requirements. EPA agrees with this concern when there would be no return flow to waters of the United States since, under these circumstances, CWA section 404 or MPRSA 103 permits would not be issued. However, for the reasons provided in today's rule, EPA does not agree with the commenter in cases where there is return flow to waters of the United States and the dredged material is subject to a permit under CWA section 404 or MPRSA section 103. Moreover, the commenter provides no rationale as to why dredged material disposed upland under a CWA section 404 or MPRSA section 103 permit should not be excluded from the definition of hazardous waste. Therefore, EPA has finalized the rule as proposed. In addition to this comment, several commenters raised further issues that are outlined and discussed below.

G. Dredged Material as a Solid Waste

The Agency proposed that the dredged material exclusion apply only to the hazardous waste requirements of RCRA Subtitle C and not to the solid waste requirements of RCRA Subtitle D. Today's final rule adopts this approach as proposed.

Some commenters noted that the context and wording of the proposed dredged material exclusion implied that all dredged material is solid waste. They were concerned that excluding dredged material from the definition of hazardous waste could be interpreted to mean that all dredged material is inherently a hazardous waste, and consequently, also a solid waste. They believe that is not the case, and asked EPA to clarify this matter in the final rule.

EPA agrees with these comments. Nothing in the proposal or in today's final rule is meant to imply that dredged material is always a solid waste. Dredged material, which is media, may or may not contain a RCRA solid or hazardous waste. Dredged material should not be assumed, a priori, to contain a solid waste and today's rule does not expand the scope of dredged material regulation under RCRA.

In cases where dredged material may be both a solid and a hazardous waste, today's rule excludes these materials from the hazardous waste requirements only. Two commenters requested that the dredged material exclusion extend to all aspects of RCRA (that is, that dredged material be excluded not only from hazardous waste requirements, but also from solid waste requirements). EPA has not adopted this suggestion. While EPA believes that excluding dredged sediments from Subtitle C regulation is appropriate, the Agency is not persuaded that these sediments should be excluded from all RCRA jurisdiction. It would be inappropriate to extend the exclusion to Subtitle D because, in certain circumstances, this exclusion would remove the ability of states to exercise authority over dredged material under their RCRA Subtitle D programs. (For example, in some States, State authorities preclude State regulations from being more stringent than Federal regulations.) Also, because there is no federal permit program for Subtitle D, state and local authorities have well-established regulatory discretion in the non-hazardous waste

arena, which the Agency does not wish to alter at this time. Consequently, today's rule does not alter the existing abilities of States and local authorities to regulate dredged material as a solid waste under RCRA.

Furthermore, although certain dredged materials will no longer be considered hazardous wastes under today's rule, this exclusion does not affect whether dredged materials are considered solid wastes for the purposes of RCRA section 7003. As advanced in the proposal, EPA may take action under RCRA section 7003 to address the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste that may present an imminent and substantial endangerment to human health or the environment. This authority remains intact, regardless of the Agency's decision to exclude dredged materials from RCRA's hazardous waste provisions. Thus, this rule does not diminish in any way the Administrator's authority to take action under section 7003 in connection with dredged material. EPA believes this authority provides an important backstop to the regulatory authorities of the CWA and MPRSA. Emergency powers under these other two statutes are different from and not co-extensive with RCRA section 7003 authority. Furthermore, many States have comparable authorities over non-hazardous waste, which EPA does not wish to undercut.

In sum, the status of dredged material as potentially a solid waste under RCRA is unchanged by today's rule. Where dredged material is (or contains) both a solid and a hazardous waste and is subject to a permit that has been issued under CWA section 404 or MPRSA section 103, today's rule excludes it from RCRA's hazardous waste requirements, but not from solid waste requirements.

H. Clarification of Terms Related to Dredged and Fill Material

Two commenters stated that transferring the term ''discharge of dredged material'' from CWA section 404 regulations into the dredged material exclusion regulation, as was done in the proposal, would complicate the exclusion unnecessarily. EPA agrees with these comments. The term ''discharge of dredged material,'' which was incorporated into the proposed exclusion, is defined in 40 CFR 232.2 (and the Corps' 33 CFR 323.2) and includes descriptions of the scope of these discharges. The definition also describes discharges that do not require a section 404 permit. Confusion could have resulted, for example, over whether dredged sediments should be removed from RCRA regulation when they are within the scope of a section 404 permit exclusion. The references to this term and its definition have been removed from the rule to avoid confusion and misinterpretation, and only the term ''dredged material'' (which is defined in 40 CFR 232.2 as ''material that is excavated or dredged from the waters of the United States'') is used in the final rule.

Similarly, EPA stated that the exclusion did not address ''fill material''. The Agency's goal is to ensure that upland-derived fill material is not eligible for the exclusion, but the language in the proposal did not distinguish between dredged material used as fill and fill material not excavated from waters of the U.S. The ''fill material'' that is not included in the exclusion is any material that does not meet the definition of dredged material. For example, dredged material can be used as fill under a CWA 404 permit for beneficial purposes, such as the creation of an underwater berm for erosion control. EPA sees no reason to differentiate between dredged material that is discharged for disposal and dredged material that is used as fill, as long as both are subject to the CWA or MPRSA dredged material permitting requirements.

As a result, as in the case of the term ''discharge of dredged material,'' ''discharge of fill material'' and ''fill material'' are not terms pertinent to the dredged material exclusion and therefore are not included in today's regulatory language.

I. Normal Dredging Operations and the Exclusion

Two commenters recommended extending the exclusion to normal dredging operations for navigation or flood control that are subject to some form of federal regulation other than CWA or MPRSA permitting, in particular when the dredged material would be disposed in upland facilities with no return flow. EPA was asked to interpret RCRA section 1006(b) expansively to avoid regulatory duplication with the Rivers and Harbors Act of 1899 (RHA, 33 U.S.C. 403) which regulates normal dredging operations. However, section 1006(b) of RCRA requires EPA to avoid duplication with Acts of Congress that grant regulatory authority to the Administrator, and RHA does not grant regulatory authority to the Administrator. Furthermore, the proposed rule's exclusion for dredged material was premised only on the applicability of CWA or MPRSA permitting, and the proposal did not request comments on expanding the exclusion from RCRA Subtitle C for dredged material that is not subject to CWA or MPRSA permits. Therefore, the Agency will limit the scope of the exclusion to dredged material subject to a permit that has been issued under CWA section 404 or MPRSA section 103, as proposed.

J. The Exclusion and Nationwide Permits

One commenter asked whether the proposed exclusion would not only apply to project-specific individual permits issued by the Corps, but also to general permits.[30] The proposed rule and the preamble implied to this commenter that the scope of the exclusion includes only individually-issued permits. Although under today's rule the exclusion applies to any dredged material subject to a section 404 permit and, therefore, would technically extend to Corps general permits (those which allow for certain dredging activities without requiring an individual application), it is important to note that it is very unlikely that any dredged material suspected of being contaminated would be authorized under a general permit. General permits may not authorize discharges where contaminant-related impacts are expected to be more than minimal, evaluated separately, as well as cumulatively. However, in the unlikely event that these discharges are authorized under a general permit, both the Corps and the appropriate state regulatory agency retain the authority to impose individual permit requirements or deny a permit to avoid impacts of concern. Therefore, EPA believes that it is appropriate, and in keeping with the logic of the proposal, to retain dredged material managed under CWA section 404 general permits within the exclusion from RCRA Subtitle C.

X. State Authority (§ 271.1(j))

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA Subtitle C program within the State. Following authorization, EPA retains independent enforcement authority under sections 3008, 3013, and 7003 of RCRA to initiate an action, although authorized States have primary enforcement responsibility. The

[30] The Agency notes that there are no nationwide permits under MPRSA that are applicable to dredged material, so the following discussion is in the context of CWA section 404.

standards and requirements for authorization are found in 40 CFR part 271.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a State with final authorization administered its hazardous waste program instead of EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any facilities that the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obliged to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

In contrast, under RCRA section 3006(g), (42 U.S.C. 6926(g)), new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time that they take effect in unauthorized States. Although the States are still required to update their hazardous waste programs to remain equivalent to the Federal program, EPA is directed to carry out HSWA requirements and prohibitions in authorized States, including the issuance of permits implementing those requirements, until the State is granted authorization to do so.

Authorized States are required to modify their programs only when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program. See also, 40 CFR 271.1(i). Therefore, authorized States can, but are not required to, adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent. Less stringent regulations, both HSWA and non-HSWA, do not go into effect in authorized States until those States adopt them and are authorized to implement them.

B. Effect on State Authorization

Today's rule is promulgated, in part, pursuant to non-HSWA authority and, in part, pursuant to HSWA. Requirements applicable to Remedial Action Plans (RAPs) and the dredged material exclusion are promulgated pursuant to non-HSWA authority. Therefore, these requirements are effective on the effective date of this rule only in those States without final authorization. They will become effective in States with final authorization once the State has amended its regulations and the amended regulations are authorized by EPA.

The requirements for staging piles are promulgated pursuant to HSWA. Specifically, as discussed in the HWIR-media proposal (see 61 FR 18830–18831), the requirements relating to staging piles are based on an interpretation of RCRA sections 3004(k) and (o). (See below for details regarding implementation in authorized States.) Also, the provisions exempting remediation waste only management sites from the requirements in RCRA section 3004(u), namely §§ 264.1(j) and 264.101(d), are promulgated under HSWA authority. The Agency is adding these requirements to Table 1 in § 271.1(j), which identifies rulemakings that are promulgated pursuant to HSWA.

As noted above, authorized States are only required to modify their program when EPA promulgates Federal standards that are more stringent or broader in scope than the existing Federal standards. The standards promulgated today (including those promulgated under HSWA authority) are less stringent than the existing Federal standards. Therefore, States are not required to modify their programs to adopt today's rulemaking. However, EPA strongly encourages States to adopt the provisions promulgated today, as the Agency believes that they will increase the pace and efficiency of hazardous waste cleanups. The swift authorization of States that have adopted provisions equivalent to those promulgated today is a high priority for EPA.

1. Staging Piles

The implementation of the provisions regarding staging piles will vary, depending on the authorization status of a particular State. Although these provisions are promulgated under HSWA authority, they are less stringent than the existing Federal provisions, namely the Land Disposal Restrictions (LDR) and Minimum Technology Requirements (MTR) that apply to waste piles. Thus, if a State is authorized for the LDR and MTR provisions, EPA will not implement the provisions regarding staging piles in that State, even where it is conducting a corrective action. In some cases, however, a State that has LDR and MTR authorization and has adopted the staging pile provision, but is not yet authorized for staging piles may be able to implement its staging pile provisions if, under State law, it has a waiver authority comparable to the Federal authorities under RCRA section 7003 and CERCLA section 121(e). (A State's waiver authority is discussed further below.) If, prior to authorization for staging piles, the State exercises this authority in a way that is consistent with today's provisions regarding staging piles, EPA would not consider the State's program to be less stringent than the Federal program. These approaches should be used only to cover the transition period during which the State amends its regulations and obtains formal authorization for the staging pile provisions.

In those States that do not have authorization for the LDR and MTR rules, EPA is responsible for implementing the provisions regarding staging piles, because they are part of the Federal RCRA program operating in these States. EPA will use the Federal procedures for the implementation of the staging pile. For example, if the facility at which the staging pile is to be located holds a RCRA permit, EPA will modify the HSWA portion of the permit using the Federal permit modification procedures. However, EPA will not implement the staging pile provisions if this implementation is in conflict with a State's hazardous waste program. In some cases, States may have adopted the LDR or MTR provisions in their regulations, but may not have received authorization from EPA. Thus, these provisions may be effective under State law, preventing the implementation of the staging pile provisions. To address this situation, to the extent permitted by EPA regulations, EPA may modify its action so it is consistent with State law, or structure its action to mirror existing State requirements which allow waiver of the authorized State LDR and MTR provisions. Alternately, the State may use an authority under its own laws to provide a waiver.

C. Authorization for Today's Rule

In today's rule (as described later in the preamble), EPA establishes streamlined procedures for authorizing States for routine or minor program revisions of RCRA requirements. Streamlined authorization procedures were a major feature of the HWIR-media proposal, as well as several other recent regulatory proposals, and they are a key feature of EPA's program to reinvent the RCRA State authorization process.

The specific substantive provisions of today's rule, however, are not eligible for these streamlined procedures. This is because EPA considers today's rule to be fairly complex, and not part of a series of routine rulemakings. For these reasons EPA disagrees with the several commenters who wanted the abbreviated authorization procedures promulgated today to apply to the authorization of the HWIR-media rule.

At the same time, EPA is placing a high priority on authorization of States who seek to implement today's rule. The success of the regulatory reforms in today's rule depends on its rapid adoption by the program implementers, that is, the States. Furthermore, EPA intends to use its existing discretion under 40 CFR 271.21(b), to follow the streamlined procedure for the authorization of States which only adopt § 264.101(d) of today's rule. This provision eliminates § 264.101 facility-wide requirements from RCRA permits or RAPs issued to facilities not otherwise subject to facility-wide corrective action. The streamlined authorization procedure and EPA's existing discretion are discussed below.

Although today's HWIR-media rule is not eligible for the streamlined authorization procedures, EPA believes that in most cases, the authorization of States for this rule should be straightforward. Today's rule, for the most part, does not change the current regulatory standards for waste management, but merely streamlines procedures for a particular category of waste (that is, remediation waste). Any State currently authorized to implement RCRA hazardous waste regulations, particularly those States authorized for the LDR program and for corrective action, should have little difficulty becoming authorized for today's rule, as long as the State adopts a program that meets the minimum standards in today's rule.

EPA particularly emphasizes that, in authorizing States for the RAP part of today's rule, it will not be judging the adequacy, the stringency, or the resources of State clean-up programs. This is because today's rule does not modify or alter in any way clean-up requirements, but simply streamlines the permitting process for management of hazardous remediation wastes.

EPA will be reviewing the State's regulations and program for managing hazardous remediation waste to determine whether they are equivalent to the standards promulgated in today's rule. If a State program is already authorized to regulate hazardous waste under the base RCRA program, there is every reason to presume it can adequately regulate that same waste under a RAP or in a staging pile. The main task for EPA will be to ensure that States, in providing relief for remediation waste, meet the national minimum standards. EPA anticipates that, in most cases, this will be a clear and simple standard for States to meet, and authorization will be correspondingly expedited.

EPA also emphasizes that State programs seeking authorization must be equivalent to and no less stringent than the program EPA will be administering under today's rule. State programs, however, do not need to be identical to the federal program. EPA included considerable detail on procedural requirements in today's rule, because it will be implementing the rule in unauthorized States. Thus, the Agency needed to spell out permitting procedures, information requirements, and similar provisions explicitly and in detail. Although some States may choose to adopt these requirements verbatim or by reference, EPA expects that other States will prefer to establish different procedures (e.g., for RAP issuance or revisions, appeal rights, computation of time periods, and similar requirements), analogous to the situation regarding 40 CFR part 124 requirements such as administrative permit appeals that States are not required to adopt for authorization (see §§ 270.155, 270.190, and 270.215). EPA stresses that State programs will be eligible for authorization, as long as they comply with the statutory minimum in areas like public participation, their requirements apply equivalent (or more rigorous) procedures, they provide for adequate enforcement, and they meet the substantive standards of the federal regulations.

D. Authorization of State Non-RCRA RAP Authorities

In some instances, States may want to use as RAPs, enforceable documents issued by a State program other than the State's authorized RCRA program (see section IV of today's preamble for further discussion). Enforceable documents containing hazardous remediation waste management requirements that are not specifically issued through EPA's or an authorized State's RCRA program are not considered to be RAPs (this is, RCRA permits). Where a State wishes to use enforceable documents issued under authorities other than State RCRA authorities to implement hazardous waste remediation requirements, this will require specific authorization review to determine whether the State has the requisite implementation and enforcement authority and whether the provisions are consistent and equivalent to those promulgated today. In order to provide EPA with a basis for its authorization determination, during the authorization process for this rule, the State should specifically identify the enforceable documents it intends to use as RAPs, as well as the State authorities under which they are issued. If EPA approves the authorization, then the enforceable documents become a part of the RCRA program and the State will have the discretion to use such documents as RAPs. As part of RCRA, the RAP portion (i.e., hazardous remediation waste requirements and conditions) of the enforceable document is enforceable pursuant to the State RCRA enforcement authorities and by EPA pursuant to its independent RCRA enforcement authority.[31]

Elsewhere in this preamble, EPA discusses the appropriate level of public involvement in site cleanups, given the need for flexibility to do what makes sense in a given situation. Thus, States need to ensure in particular, that any enforceable documents to be used as RAPs will be developed through procedures that meet the public participation requirements in § 270.145; otherwise they will not meet the standards for authorization. Further, the authorities used to issue these documents must also ensure that hazardous waste is managed under the appropriate standards of the hazardous waste program.

As noted earlier, nothing in today's rule limits or expands the authorities States may already have to waive RCRA permit requirements, consistent with EPA's authority in section 7003 of RCRA or section 121(e) of CERCLA. RCRA section 7003 allows EPA to order response actions in the case of imminent and substantial endangerment to health or the environment, ''notwithstanding any other provision in this Act.'' An authorized State may use a comparable authority to authorize activities consistent with today's rule. Similarly, where comparable authority exists under a State Superfund program, the State may use that authority. As explained in EPA guidance, the two preconditions to allowing the use of this authority are that: ''(1) the State has the authority under its own statutes or regulations to grant permit waivers; and (2) the State waiver authority is used in no less stringent a manner than allowed under Federal permit waiver authority, for example, section 7003 of RCRA or section 121(e) of CERCLA.'' (See the Memorandum, ''RCRA Permit Requirements for State Superfund Actions'', from J. Winston Porter to Regional Administrators, Region I–X (Nov. 16, 1987) (OSWER Dir. No. 9522.00–2).) A State cannot, however, waive applicable Federal requirements. Thus, if a State is not authorized to

[31] Nothing in either the State's authorized ''enforceable document'' or in the State's law can restrict EPA's independent authority to enforce the authorized RCRA program.

implement a portion of the RCRA program in that State, the exercise of the State's waiver authority does not waive the Federal portion of the RCRA requirements. Also, EPA recognizes that many States have enforcement authorities allowing them to compel corrective action at interim status facilities comparable to EPA's section 3008(h) authority. States with appropriate regulatory and enforcement authority would be able to use these authorities in the same way EPA uses its section 3008(h) authority, for example, to approve the use of a staging pile outside the context of a RAP. As long as the authorized State acted in a way that was consistent with Federal requirements, its program would be considered to be as stringent as the Federal program.

XI. Abbreviated Authorization Procedures (§ 271.21(h))

EPA and States have recognized the need to improve the RCRA State authorization procedures for many years. For example, in the 1990 RCRA Implementation Study, the authorization process was identified as being too slow and cumbersome. In response to these longstanding concerns, the practices used by EPA and States have evolved over the years. The purpose of these attempts has been to make the authorization process operate more smoothly. Further, because Federal regulatory revisions promulgated under non-HSWA statutory authority do not go into effect until States have adopted them and received authorization, a more speedy authorization process will enhance environmental protection.

In several notices published during the past three years, EPA has proposed abbreviated authorization procedures intended to expedite the review and approval of revisions to authorized State programs. In the August 22, 1995, Land Disposal Restrictions (LDR) Phase IV proposal, EPA proposed a procedure (subsequently called Category 1) for authorizing minor or routine rules (see 60 FR 43654). This abbreviated procedure would require an application that was reduced in scope and composed of a statement from the State that its laws provide authority that is equivalent to and no less stringent than EPA's regulations, and a copy of those State statutes and regulations. After a complete application was submitted, EPA would then conduct a speedy review, and within 60 days after receiving an acceptable application, finish its action by publishing a **Federal Register** notice. With this notice and the associated public comment period, EPA would provide notice to the public of authorization decisions in the same fashion as is currently done. This procedure was proposed to apply to certain minor amendments to the LDR program that had become a routine part of the LDR program. EPA also requested comment on the future applicability of this procedure.

EPA modified this proposal in the January 25, 1996, LDR Phase IV supplemental proposal (see 61 FR 2338). EPA also proposed streamlined procedures for the authorization of more significant rules in the April 29, 1996, HWIR-media proposal (see 61 FR 18818). This proposed procedure was known as Category 2.

However, after carefully evaluating the comments received on these proposals, as well as the Agency's goal of speeding up the State authorization process, EPA has decided to promulgate abbreviated authorization procedures based on the procedures proposed in the August 22, 1995, LDR Phase IV notice. Thus, EPA is not promulgating the more extensive proposed Category 2 procedures from the HWIR-media proposal and the modifications to the proposed Category 1 procedures outlined in the January 25, 1996 LDR supplemental proposal. This preamble explains the details of today's abbreviated procedures, and discusses EPA's overall approach towards streamlining and improving the authorization process for all State authorization revisions.

A. Existing Authorization Process

During the past 15 years, EPA has frequently amended the Federal RCRA program by promulgating rulemakings to reflect statutory mandates, court decisions, and technical and scientific progress. EPA Regions and States have worked together to incorporate these regulatory amendments into revised State hazardous waste programs. This has been accomplished through the State adoption of rules equivalent to the Federal rulemakings, and the subsequent authorization of States. The existing regulations regarding the revision of a State's authorized program are located in 40 CFR 271.21.

Authorization revision applications generally consist of a copy of the State regulations, a revised Attorney General's (AG) statement, a revised Program Description (PD), a revised Memorandum of Agreement (MOA), or other documents EPA determines to be necessary (see 40 CFR 271.21(b)(1)). This provision does provide EPA with flexibility regarding the content of authorization applications. However, all of these components are generally submitted to EPA because the State applications often cover Federal rulemakings promulgated during a period of one to several years and therefore address significant Federal rulemakings. This practice is based on provisions located in 40 CFR 271.21(e). These provisions set forth the concept of ''clustering'' rules, and established deadlines for State submission of applications. Because State applications address Federal rulemakings promulgated during a set period of time, it is common that these applications contain analogous State rules that are both very minor and quite significant.

Although the regulations in § 271.21 contain only general provisions regarding the EPA review and approval process, over time EPA Regions and States have developed practices for the development and review of State applications that vary according to the content of the application, method of State adoption, and the individual approaches of State and EPA staff. Of course, all of these practices are based on the standards for review set forth in the RCRA statute, along with other sections of 40 CFR part 271, and the content and nature of the individual applications. Typically, the State provides a draft of its application, including draft or proposed State regulations, to the EPA Region for review and comment. After the Region submits comments back to the State, the State addresses the comments, and prepares and sends a final application to the EPA Region for review, comment if necessary, and in most cases, approval through notice in the **Federal Register** as an immediate final rule, also known as a direct final rule (see 40 CFR 271.21(b)(3)).

The authorization revision process as implemented does not incorporate formal deadlines or time lines. Many factors have contributed to the duration of the entire process, which EPA and States have often characterized as being too lengthy. One factor is the size and complexity of many revision applications. Another factor is the time necessary for a State to conduct rulemakings to revise its regulations, and to put together a complete application. Allowing EPA review of draft or proposed State regulations may also lengthen the process, even though it is particularly recommended in cases where States find it difficult to amend regulations after they are first promulgated.

B. Summary of Comments on the August 22, 1995 Proposal

EPA did not receive any adverse comments regarding the abbreviated

authorization procedures that were proposed in the August 22, 1995 notice. Some of these commenters wanted these procedures to apply to the authorization of States for all Federal RCRA rulemakings, and not just to rules that are minor in nature. Other commenters thought that the procedures were appropriate for the authorization of minor rules that would be promulgated in the future, or were already promulgated by EPA. One commenter maintained that the procedures should not be applied to authorizations involving rules that are significant, since the necessary EPA review may involve State enforcement and technical capability.

C. Basis and Rationale for Today's New Procedures

EPA has determined that, while the authorization processes that are currently employed may be appropriate for the authorization of significant changes to the RCRA program, a process that does not include all the possible components of the application, and that provides deadlines for certain actions is better suited for routine or minor changes. As discussed in the August 22, 1995 proposal, routine or minor rulemakings are those EPA rulemakings that do not change the basic structure of the RCRA hazardous waste program, or expand the program into significant new areas or jurisdictions. For example, a new waste listing which amends 40 CFR part 261, a technical correction to a previously promulgated rulemaking, or a rulemaking that is part of a series of rulemakings where the basic regulatory authority has already been established (and remains largely the same), could be considered a minor or routine rulemaking and appropriate for the abbreviated authorization process.

As already discussed, these rules would have a limited impact on the implementation and scope of the RCRA program and therefore, the minor or routine rulemakings do not significantly expand or change the nature of existing State authorized regulatory authority. Further, such rules have a negligible effect on the resources necessary to implement the RCRA program, and do not have an effect on the intergovernmental relationship between EPA and States. Thus, it is appropriate to have an abbreviated authorization process for minor or routine rules to be used by States that have already received authorization for the significant parts of the RCRA program that are being revised, since those States have demonstrated capability in both the administration and implementation of those aspects of the program.

Additionally, an abbreviated authorization process is appropriate since certain components of the normally submitted authorization application (such as the MOA and PD) are affected only rarely by minor or routine revisions. Rather, revisions to these components are usually required in the authorization revision application for a set of rules because of the presence of significant rulemakings, not the minor or routine rules. Likewise, much of the time and effort expended on reviewing and revising authorization applications is due to the extensive changes to the RCRA regulations caused by significant rulemakings.

Further, revisions to the PD or MOA should not be necessary because, as already mentioned above, the minor or routine rules to which today's new, abbreviated procedures apply do not have any significant impact on the States' capability to implement the RCRA program, and do not present any new issues for EPA-State coordination. Also, due to the nature of these minor or routine rules, they should not have an effect on State program consistency and the adequacy of a State's enforcement program. Thus, EPA believes that today's procedure will expedite the implementation of many minor or routine rulemakings, and will enable EPA Regions and States, including the State Attorney General's Office, to devote their resources towards efficient authorization of more significant rules.

EPA has always had the discretion to implement authorization procedures similar to those promulgated today without promulgating regulations. For example, § 271.21(b)(1) allows EPA to determine what documents are necessary in a revision application, according to the circumstances presented by each particular rule. Nonetheless, EPA believes that this codification of procedures is useful for two reasons. First, a codification will provide a consistent procedure for States and EPA to use when processing an application for minor or routine rules. Second, since these procedures will be included in the CFR, all parties involved in the authorization process, including States and the general public, will be aware of this alternative procedure.

Section 3006(b) of RCRA establishes the legal standard for State program approval. As detailed below, the application required in today's procedure includes a statement that the State's regulations for which the State is seeking authorization are equivalent to the Federal regulations. EPA has concluded that this statement, coupled with the review EPA conducts on these minor or routine rules as part of the authorization process, will provide an adequate basis for EPA to make its required findings and grant approval of a program revision under 40 CFR part 271.

D. Rule Listed in Table 1 to § 271.21 to Which the Abbreviated Procedure Applies

In new Table 1 to 40 CFR 271.21, EPA has listed the first rule for which the new abbreviated procedure may be used. This rule is the Universal Treatment Standards (UTS) in §§ 268.40 and 268.48 that were promulgated in the Phase II LDR rule (see 59 FR 47982, September 19, 1994). Note that States are not required to use the new procedures in 40 CFR 271.21(h) when they seek authorization for this rule and other rules that may be placed in Table 1 in the future.

Note that the August 22, 1995, notice proposed to use the abbreviated procedures for the authorization of other LDR rules. These rules were portions of the proposed Phase III LDR rule, and the Phase IV LDR rule (which was split up into two final rules). These LDR proposals have since been finalized (see 61 FR 15660, April 8, 1996, for the Phase III LDR rule; 62 FR 26040, May 12, 1997 for the LDR rule) on wood preserving wastes (part of the Phase IV; and 63 FR, 28556, May 26, 1998 for the Phase IV LDR rule). EPA has decided not to use today's abbreviated procedures in 40 CFR 271.21(h) for the authorization of these final rules. This is because these rules, in addition to the routine modifications and additions to the LDR treatment standards, made changes to the definition of solid waste and other aspects of the RCRA program which affected its scope in a more significant manner.

Today's HWIR-media final rule is also not listed in Table 1 and therefore, as explained earlier, the abbreviated authorization process will not be used for its authorization. EPA considers today's HWIR-media rule to be a significant rule because, for example, it provides for a new type of permit mechanism and a new type of waste management unit. Although EPA believes that today's rule will have many environmentally beneficial effects, it involves several complex regulatory concepts, and thus EPA believes the abbreviated procedures are not appropriate for its authorization.

In the future, as EPA proposes rulemakings under RCRA, EPA will also propose to list additional minor or routine rules in Table 1 to 40 CFR 271.21, to ensure that today's procedure

can be used for their authorization. These future proposed additions to Table 1 will generally be in the same notice as the proposed minor or routine rule. This action was supported by commenters to the August 22, 1995 proposal. Once public comment is received on the proposed listing in Table 1, EPA will promulgate it as appropriate.

In the August 22, 1995 proposed rule, EPA discussed and requested comment on the rules a State must be authorized for to use the abbreviated process. In particular, EPA suggested that States should be authorized for the LDR Third Third rule (see 55 FR 22520, June 1, 1990) to use the new procedure for the LDR Phase II, III and IV rules, or the designated parts of them. Based on the comments, EPA has concluded that the proposed approach was reasonable. However, the prerequisite has been modified so that it is more generally applicable, and easier to understand and implement. Therefore, today's rule simply requires that States be authorized for the part of the program that the routine rule is amending. One example is a revision to an existing rule. Another example is a new waste listing, which amends the list of hazardous wastes in 40 CFR part 261. This prerequisite requirement is located in § 271.21(h)(5).

E. Use of Today's Abbreviated Procedure for the Authorization of Previously Promulgated Rules

In today's rule, EPA explicitly identifies a portion of the Phase II LDR rule as subject to the abbreviated authorization procedures. However, EPA considers the development and review of an authorization application that contains only this rule to be inefficient, and not justified by the administrative resources that EPA and States would expend to develop and review such a small application. This situation would render today's new procedures largely ineffective in accomplishing the goal of making the authorization process more efficient, considering that authorization applications generally cover a large number of Federal rulemakings, ranging in size from about 20 to 100 rules. Further, EPA does not believe that it should treat the authorization of minor or routine rules in a different manner based solely on when the rule was promulgated.

Section 271.21(b)(1) provides the Agency with the flexibility to tailor the contents of a State's application to revise its authorization. Thus, under this provision, EPA could require the same information that is required to be in the State application under the new requirements in § 271. 21(h)(1). EPA also has the discretion to review authorization applications in the same manner as promulgated in today's abbreviated procedures. EPA has always had the ability to commit to an expedited review of State applications. For example, EPA has committed to conducting a speedy review of State applications for several recent rules.

Since today's procedure continues to meet the review requirements set forth in the RCRA statute and existing regulations, and EPA has discretion under 40 CFR 271.21(b)(1) to appropriately tailor the authorization application requirements and review schedules, EPA intends to use the timetables and application requirements in today's procedure for previously promulgated rules, as long as those rules are minor or routine in nature and scope. EPA is developing guidance to enable States and Regions to make speedy and proper decisions regarding which previously promulgated rules should be included in an authorization application that uses the abbreviated procedures. This guidance will identify those previous rulemakings which EPA considers to be minor or routine in nature. It will also identify those rules that are not minor or routine, and for which the abbreviated procedures will not be used. One example of such a rule is the Boilers and Industrial Furnace rule, which establishes authority over a new and complex area. This guidance will take into account the criteria EPA will use to propose to list a new rule in Table 1, the considerations discussed in the section regarding basis and rationale in today's preamble, and EPA's previous experience in authorizing these existing rules. This guidance will also consider how EPA's checklist guidance that is contained in the annual State Program Advisories treats these rules, since the guidance is widely used in those States that do not incorporate the Federal regulations by reference. Copies of the checklist guidance for all existing rules as well as other authorization related guidance are located on the Internet (at: http://www.epa.gov/epaoswer/hazwaste/state/index.htm). For example, many technical corrections to significant rules, which on their own would be considered minor, are included on the same checklist as the original major rule. EPA does not think that States which use the checklist guidance would separate out these technical corrections into a second application because doing so would be difficult and inefficient. Thus, these corrections would not be listed as minor in the guidance. (However, if a State had already been authorized for the major rule, and would prefer to seek an abbreviated process for the subsequent technical corrections, EPA has the discretion to process it accordingly.) EPA encourages States to discuss and coordinate upcoming authorization applications with EPA Regions to determine the most efficient approach to take regarding the submission of revision applications in light of today's rulemaking.

It is important to note that this abbreviated process for the authorization of minor or routine rules only addresses the procedures for processing certain State authorization applications. Today's procedure does not affect the continued responsibility of States to inform EPA of changes to its basic statutory or regulatory authority under 40 CFR 271.21(a). Likewise, today's rule does not affect EPA's ability under 40 CFR 271.21(d) to request a supplemental Attorney General's statement, program description, or other documents or information as necessary.

Occasionally, EPA requests additional information from a State under 40 CFR 271.21(d). A prime example is when a State uses non-RCRA authorities to implement rule requirements. If a State were to use alternative authorities to seek authorization for a rule that is considered to be minor or routine, EPA would probably request additional information from the State Attorney General. Further, where a rulemaking would have a significant impact on the size of a State's universe of regulated facilities, EPA may ask for a revised Program Description and/or a revised MOA. Although EPA does not believe that situations such as this will be common, States should be aware of these and work with the EPA Region before an application is submitted, so that issues regarding the contents and review requirements for an application may be resolved.

F. Final Abbreviated Authorization Procedures

Today's rule amends 40 CFR 271.21 to create a new authorization procedure in paragraph (h) of § 271.21 that consists of an abbreviated application and an expedited process. Note that this procedure was originally proposed in a new § 271.28, but then paragraph (h) of § 271.21 was reserved for this procedure in the April 29, 1996, HWIR-media proposal. Likewise, in the proposal, the rules for which this authorization procedure would be used were listed in 40 CFR 271.28(a), but are now listed in new Table 1 to § 271.21. EPA believes

that this table format is easier to read than the proposed listing.

G. Authorization Application Requirements

The requirements for a State's abbreviated application are located at 40 CFR 271.21(h)(1). These application requirements are essentially unchanged from the August 22, 1995 proposal. This abbreviated application does not require a revised Program Description, Memorandum of Agreement, or Attorney General's Statement. Instead, the application must include a statement from the State that the laws and regulations of the State provide authorities that are equivalent to, and no less stringent than the Federal authorities for which the State is seeking authorization. The certification must include appropriate citations to the specific statutes, administrative regulations and where appropriate, judicial decisions. It must also include a copy of the applicable State laws and regulations. The cited State statutes and regulations must be lawfully adopted at the time the certification is signed and fully effective by the time the program revisions are approved. This statement may be signed by the signatory of the State application. Although the Attorney General may sign this statement, the signature of the Attorney General is not necessary for the authorization of the minor rules subject to today's procedures. These minor or routine rules do not affect the previously authorized legal authority of the State to carry out its hazardous waste program. This requirement is consistent with the provisions of the proposed rule, which did not require the Attorney General to sign the statement. EPA did not receive any negative comments on this aspect of the proposed rule.

H. Procedures for Reviewing and Approving Applications

EPA expects that a concerted effort from both the EPA Regions and States will be essential to meet the deadlines specified in new § 271.21(h). Thus, the Agencies should coordinate their efforts before and after the State application is submitted. EPA encourages States to submit applications in draft form where feasible. This will make it easier for the State to incorporate any changes to its application, and will reduce the frequency of errors in the final application. States should note that high level signatures, such as from the State Director, are not required for a draft application. Further, to make the Regional review more efficient, States should provide clear explanations regarding changes they have made to the Federal regulations and provide a crosswalk between State and Federal regulations.

Once the State submits an application to EPA, the Agency will conduct an expedited review of the State's regulations. This review will consist primarily of a check for completeness and errors within the State regulations, such as LDR treatment levels that are above the Federal levels (and thus are less stringent). EPA anticipates that these errors will be rare because the rulemakings eligible for this abbreviated procedure are not complex, and are easily adopted by the State. This review will constitute the finding of equivalency required by section 3006 of RCRA. Note that this procedure does not affect in any way a State's ability to promulgate regulations more stringent than the Federal regulations under section 3009 of RCRA.

Under § 271.21(h)(2), EPA is required to notify the State within 30 days of receipt of the application if EPA determines that the application, including the statement, is not complete or contains errors. The reasons why EPA can determine that an application is not complete are specified in § 271.21(h)(3). These reasons are: (1) Copies of applicable statutes or regulations are not included; (2) the statutes or regulations relied on by the State to implement the program revisions are not lawfully adopted or effective by the time the program revisions are approved; (3) in the statement, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete; and (4) the State is not authorized to implement the prerequisite RCRA rules as specified in § 271.21(h)(5). If EPA does find that an application is incomplete or contains errors, EPA will summarize the deficiencies in the completeness notice sent to the State under § 271.21(h)(2).

After the State submits an application to the Region (either in draft or final form), the EPA Region should discuss any questions and concerns with State staff. One purpose of these discussions is to seek clarification regarding the State's application, and to attempt to resolve these questions and concerns. Thus, if EPA's questions and concerns are resolved through these discussions, a completeness notice may not be necessary since there would be no outstanding issues. EPA Regions also should commit to conduct additional reviews only on application components that are new or have changed since the previous submission. EPA Regions will prioritize any comments submitted to the States regarding a draft or final application, and will make distinctions between those errors that cause a State's regulations to be less stringent and need to be changed before the application can be approved, and those that may be made at a State's discretion, such as typographical errors. After addressing EPA comments, if any, the State will then resubmit the application to EPA as a final application. Of course, EPA encourages the States to seek clarification regarding any of the Regional comments so they can be properly resolved before resubmitting an application.

Under § 271.21(h)(4), EPA will publish an immediate final rule in accordance with the requirements in § 271.21(b)(3), within 60 days of receiving a complete final application under paragraph (h)(2). Thus, if EPA does not find any deficiencies in a State's final application, this notice will be published within 30 days after EPA completes its check. Likewise, if EPA finds deficiencies in a State's application, this notice will be published within 60 days after receipt of a new corrected application. This immediate final rule is the same promulgation procedure used for other revision authorization decisions, which provides the public the ability to comment on tentative EPA authorization decisions before they become effective. The notice would provide for a 30-day public comment period, and would normally go into effect 60 days after publication unless an adverse comment is received by EPA.

I. EPA's Decision To Not Promulgate Proposed Category 1 and 2 Procedures

In comments on the proposed Category 2 procedures, most commenters supported the concept of improving the authorization procedures. However, many commenters did not support the specific procedural changes that would apply to the authorization of significant rules. These commenters maintained that the proposed Category 2 procedures were too complex and cumbersome, and did not address the underlying interactions between EPA and States within the process. In addition, the proposed procedures would not have affected the authorization process for the dozens of previously promulgated rules for which States are not authorized. Other commenters believed that the proposed Category 2 procedures would amend the EPA review process and standard of review in a way that was not consistent with the RCRA statutory requirements. As a result of these comments, EPA has

further evaluated the existing barriers to accomplishing the goals of the proposals. EPA has concluded that many of the barriers to the authorization of significant rules involve the process of communication and coordination between EPA and States that is more appropriately addressed through guidance and other non-regulatory means. Therefore, EPA is not finalizing the Category 2 procedures proposed in the HWIR-media proposal. EPA is also not finalizing the modifications to the proposed Category 1 procedures that were proposed in the January 25, 1996 notice (see 61 FR 2338). These modifications were opposed by commenters.

J. Improvements to the Existing Authorization Process

EPA believes that the abbreviated procedures promulgated today will help make the State authorization program more efficient. However, most of the authorization work that confronts EPA and States will continue to involve rules that are considered to be significant rules, which are not affected by today's procedure. Examples of these rules include the Boiler and Industrial Furnace rule, the Used Oil rule, and today's HWIR-media rule. EPA believes that many of the coordination and communication activities recommended for today's abbreviated process should be applied to the development and review of all other authorization applications. One example is the prioritization of Regional comments that may be submitted to the State. Further, EPA recommends that EPA Regions and States hold discussions throughout the authorization process to foster closer coordination between the agencies. For example, before a State develops an application, the agencies should discuss what revisions to the MOA and PD may be necessary, and any major changes to the regulations planned by the State. These discussions can be used to produce an authorization process time line that satisfies the needs of both agencies. This time line should contain commitments by both the Region and State to provide expeditious turn-around of comments on applications, revisions to applications, and other correspondence. To meet these commitments, Regions should set internal deadlines for review based on the size of the application and the method a State uses to adopt the Federal regulations. Finally, to avoid numerous submissions of the same document, Regions should help the State develop acceptable language when appropriate or desired by the State.

XII. Conforming Changes (§§ 265.1(b), 268.2(c), 268.50(g), 270.11(d), and 270.42 Appendix I)

Section 265.1(b), which discusses the applicability of part 265 and other standards at interim status facilities, is amended in today's rule to incorporate 40 CFR 264.554 (staging piles requirements) into the list of standards that apply to interim status facilities. Because today's rule for staging piles includes part 264 requirements for staging piles, but not part 265 requirements, EPA wanted to make this conforming change to make it clear that staging piles can be used at interim status facilities. The same conforming change was made in the February 16, 1993 CAMU rule to incorporate CAMUs and temporary units into the same provision for the same reason. The CAMU rule stated, ''heretofore, technical requirements for interim status facilities were specified only under part 265. Therefore conforming changes are necessary * * *''. The CAMU, temporary unit and staging pile provisions are the only part 264 standards that apply to interim status facilities. The CAMU rule also made a similar conforming change to § 264.3; however that change used the phrase ''40 CFR part 264 Subpart S,'' which includes the provisions for staging piles, so no additional conforming changes to § 264.3 are necessary.

The conforming change to § 268.2(c) is a change to the definition of land disposal. Because placement in a staging pile does not constitute land disposal, it is necessary to make that clear in the definition of land disposal. EPA made the same change for CAMUs in the February 16, 1993 CAMU rule. The new language changes the definition to read that ''land disposal means placement in or on the land, except in a corrective action management unit or staging pile.'' For further discussion of the applicability of land disposal restrictions to staging piles, see the staging piles of today's preamble.

The conforming change to § 268.50(g) makes it clear that storage in a staging pile is not prohibited under the part 268 Subpart E prohibitions on storage. A full discussion of this change can be found in the staging piles of today's preamble.

The changes to § 270.11(d) in today's rule offer an alternative certification for land owners applying for a RAP at a remediation waste management site. A full discussion of this change can be found in the preamble discussion of § 270.82(a) in today's preamble.

The changes to Appendix I of § 270.42 specify which type (Class 1, 2, or 3) of permit modification is necessary for using staging piles at closing facilities and for approval of staging piles or operating term extensions at corrective action facilities. Both of these activities require a Class 2 permit modification. This decision is discussed further in the staging pile of today's preamble.

XIII. How Does Today's Rule Relate to Other EPA Regulations, Initiatives and Programs?

A. Subpart S Initiative

EPA expects today's rule to complement activities being done under the Subpart S Initiative. The Subpart S initiative is an effort to identify and implement broad-based improvements to the corrective action program, drawing upon more than ten years of experience in program implementation. The Subpart S Initiative addresses such issues as corrective action program priorities, use of administrative flexibility in implementing corrective action, and development of guidance and regulations for setting site-specific conditions in permits and orders for investigating and remediating releases. The May 1, 1996 Advance Notice of Proposed Rulemaking (61 FR 19432) describes the Subpart S Initiative in detail. Because the HWIR-media regulations specifically address the management of remediation waste during site clean up, they complement the broader Subpart S Initiative.

B. Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris

EPA had hoped that the more comprehensive reforms proposed in the HWIR-media proposal would sufficiently address the issues raised in the ''Suspension of the Toxicity Characteristic for Non-UST Petroleum Contaminated Media and Debris'' proposal. This proposal, generally referred to as the ''Non-UST TC Suspension,'' was published on December 24, 1992 (57 FR 61542). EPA never finalized the Non-UST Suspension, but stated in the HWIR-media proposal that finalization would not likely be necessary because a final HWIR-media rule would solve the problems that the Non-UST TC Suspension was intended to address. However, especially in light of the more limited changes included in today's final rule, EPA recognizes that additional reform may be needed for the cleanup of non-UST petroleum contaminated media and debris.

States have developed petroleum response programs to respond to petroleum contamination including contaminated media and debris.

However, as stated by many States with these programs, if the wastes must be managed as RCRA hazardous because they fail the TCLP test for benzene (as is sometimes the case), then the applicable Subtitle C requirements such as LDR, MTR and permitting delay the response actions, significantly increase costs, and in some cases may act as a disincentive to full cleanup. If remediation wastes, including petroleum contaminated media and debris, had been excluded under either the Bright Line or Unitary Approaches proposed in the HWIR-media proposal, then those State programs may have been able to conduct responses as they had planned, and the Non-UST TC Suspension may have no longer been needed. However, today's HWIR-media rule does not exclude any wastes from Subtitle C requirements, and although EPA is streamlining the permitting process, it is still time consuming in comparison to the fast response times needed by these State petroleum response programs. EPA will continue to review the issues addressed in the Non-UST TC Suspension proposal (and subsequently raised in comments received on the proposed HWIR-media rule); however, the Agency is not taking final action today on that proposal.

C. Deferral of Petroleum-Contaminated Media and Debris from Underground Storage Tank Corrective Actions

Today's rule does not affect the temporary deferral from certain portions of EPA's hazardous waste regulations of petroleum-contaminated media and debris that are generated from underground storage tank corrective actions that are subject to Subtitle I of RCRA. This UST deferral was published on March 29, 1990 (55 FR 11862), and amended later on June 29, 1990 (55 FR 26986). The deferral appears at 40 CFR part 261.4(b)(10).

D. Hazardous Waste Identification Rule (HWIR-waste) (May 20, 1992, and December 21, 1995)

Although today's rule and the HWIR-waste rule are often discussed together, they are two separate rulemaking efforts on separate schedules. Today's rule does not address, in any way, the key issue of the HWIR-waste rule, which is at what point wastes and media should exit the Subtitle C regulatory system. EPA will sign a new proposal for HWIR-waste by October 31, 1999 and a final rule by April 30, 2001.

E. CERCLA

EPA expects that the provisions in today's rule applicable to staging piles will provide the CERCLA program with more flexibility at CERCLA sites where these provisions are ARARs. EPA does not expect the new RAP provisions to have any effect on CERCLA sites, because CERCLA sites do not require permits for on-site management of remediation wastes. Likewise, because the dredged sediments exclusion will not alter current practice significantly, EPA does not expect significant impact from the new dredged material provisions on the CERCLA program. Finally, today's streamlined State authorization procedures will have no effect on the CERCLA program. In summary, EPA anticipates some positive effect on the CERCLA programs from staging piles, but little or no effect on the CERCLA program from the other provisions of HWIR-media.

F. Legislative Reforms

While EPA believes today's rule will improve remediation waste management and expedite cleanups, the Agency also recognizes that additional reform is needed, especially for management of non-media remediation wastes, such as remedial sludges, and to provide for more tailored land disposal requirements, minimum technological requirements, and address certain statutory permitting requirements. The Agency considers today's rule to be a partial step, rather than a full solution to the problems raised by the application of RCRA Subtitle C requirements to remediation wastes. The Agency will continue to participate in discussions on potential legislation to promote this additional needed reform. If legislation is not forthcoming, the Agency may reexamine its approach to remediation waste management and may take additional administrative action.

G. Brownfields

Today's rule complements EPA's continuing efforts to address Brownfields properties. The Agency defines Brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. In February 1995, EPA announced its Brownfields Action Agenda, launching the first Federal effort of its kind designed to empower States, tribes, communities, and other parties to safely clean up, reuse, and return Brownfields to productive use. In 1997, to broaden the mandate of the original agenda, EPA initiated the Brownfields National Partnership Agenda, involving nearly 20 other Federal agencies in Brownfields cleanup and reuse. Since the 1995 announcement, EPA has funded Brownfield pilots and reduced barriers to cleanup and redevelopment by clarifying environmental liability issues, developing partnerships with interested stakeholders, and stressing the importance of environmental workforce training.

As the Agency's Brownfield activities have increased, EPA and stakeholders have recognized that the statutory and regulatory hazardous waste management and permitting requirements under RCRA can render the cleanup and reuse of Brownfields properties cost and time prohibitive. In particular, certain RCRA requirements, written with ''end of pipe'' wastes in mind, may be unnecessarily burdensome when applied to Brownfield cleanups. By streamlining the permitting process and removing the requirement for facility-wide corrective action at remediation-only facilities, today's rule should facilitate cleanup activities. Reducing RCRA impediments to cleanup activities not only addresses existing Brownfield sites by facilitating cleanups at these sites, but also helps prevent the creation of future Brownfields by encouraging proactive responses to site contamination during the productive life of a facility.

H. Land Disposal Restrictions (Part 268)

EPA proposed revisions to the treatment standards for hazardous contaminated soils first in the Phase II LDR rule, ''Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soils,'' 58 FR 48092, and again in the April 29, 1996 HWIR-media proposal, 61 FR 18780. EPA finalized the soil treatment standards in the final LDR Phase IV rule (63 FR 28556 (May 26, 1998).

XIV. When Will the Final HWIR-media Rule Become Effective?

Today's rule will become effective June 1, 1999.

XV. Regulatory Requirements

A. Assessment of Potential Costs and Benefits

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether any proposed or final regulatory action is ''significant'' and therefore, subject to Office of Management and Budget (OMB) review and the requirements in the Executive Order. The order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(a) 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;

(b) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) 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 has determined that today's final rule is a ''significant regulatory action'' because it raises ''novel legal or policy issues'' as specified in (d) above. OPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record for this rulemaking (*see* Docket # F–98–MHWF–FFFFF). The Agency has prepared an economic assessment background document in support of today's final rule which provides much greater detail than this preamble discussion on the analysis of today's standards (''Economic Assessment of the Final Hazardous Waste Identification Rule for Contaminated Media''). A copy of that document can be found in the docket for today's rule; a summary of this assessment is presented below.

2. Background

Today's rule addresses three main issues: dredged material exclusion, staging piles, and remedial action plans (RAPs). Although still believing there is a need for comprehensive regulatory reform of remediation waste management requirements, the Agency has decided not to go forward with the comprehensive regulatory changes which were proposed in the April 29, 1996 HWIR-media Proposed Rule (61 FR 18780). (Please see section II.E. for a full discussion of the basis for the Agency's decision.) The economic assessment prepared in support of today's rule addresses only the three main issues covered in the rule, none of which were analyzed in the proposed rule economic assessment due to their relatively small scale impacts compared with the other proposed rule provisions. The response to comments document for today's rule responds to comments received on the proposed rule economic assessment, and is available in the docket for today's rule.

3. Need for Regulation

Today's rule provides relief from existing regulatory requirements in three specific cases dealing with remediation and management of wastes. The dredged material exclusion excludes from RCRA requirements a portion of dredged material handled under CWA and MPRSA permits, and thus provides clarity of regulatory jurisdiction and removes the potential for duplicative effort. The staging pile provision allows for temporary storage of remediation wastes in preparation for future management. This temporary relief from the traditional requirements for land placement provides potential cost savings and encourages remediation of wastes. Additionally, the RAP provision allows for remedial activities to occur under an expedited vehicle instead of the customary RCRA permit requirements. Furthermore, use of this vehicle does not invoke RCRA 3004(u) facility-wide corrective action obligations; those facilities already under facility-wide corrective action requirements which employ a RAP remain under these requirements. Thus, today's rule represents a modest reform of the remediation waste requirements, while maintaining protection of human health and the environment.

4. Assessment of Potential Regulatory Costs

The economic assessment examines the cost impacts of the provisions of today's rule. Benefits of the rule, in the form of human health and environmental risk impacts, are not examined in this assessment. The Agency believes, however, that these provisions will tend toward greater protection of human health and the environment by promoting more cleanups. Economic impacts to industries affected by today's rule have not been estimated, as the rule provides an overall cost savings.

a. Methodology and Results for Estimating Regulatory Costs

i. Dredged Material Exclusion

The Agency did not assess impacts from the dredged material exclusion in the proposed rule economic assessment, and provided a qualitative assessment of the cost savings for this provision in the final rule.

The Agency believes that this exclusion will result in minor reductions of compliance costs with respect to current practices of dredged material management. The Agency did not collect volume data on dredged material management under RCRA. Therefore, no estimate of the cost savings has been developed, although it is not expected to be significant. In addition to the minor cost savings associated with this provision, the exclusion may also decrease the potential for procedural delays (caused by multiple permit applications) that delay timely waste disposal.

ii. Staging Piles

The Agency did not assess the impacts of remediation piles (the predecessor of staging piles in the proposed rule) in the proposed rule economic assessment, and has not quantified the impacts from this provision in today's final rule economic impact assessment. Because of the narrow scope of the staging pile provisions and their significant overlap with existing CAMU, temporary unit, and AOC provisions, the Agency believes that this portion of the rule will likely have only minor cost savings and economic impacts. As discussed earlier, in some cases, staging piles may facilitate the short-term accumulation of remediation wastes until a sufficient volume can be shipped to a treatment or disposal facility or accumulated to implement cost-effective on-site management. In these situations, the new provisions will result in cost savings. The Agency, however, does not expect that the use of staging piles will provide significant quantifiable cost savings, and any savings realized must be evaluated in light of the costs associated with obtaining staging pile approval (either through an RCRA permit or a RAP). The staging pile provisions will, however, not result in any increase in cost because their use is voluntary.

One alternative which the Agency has determined not to adopt in today's final rule is to allow treatment in staging piles. Allowing treatment would potentially increase the use of staging piles, making them more beneficial in certain cases where a CAMU is not necessary for disposal and a temporary unit does not provide enough management flexibility. However, the Agency believes that these cases would be relatively few, and that treatment is more appropriate in a CAMU, which has design and operating standards to fit the requirements surrounding treatment in a unit.

iii. Remediation Action Plans (RAPs)

This section of the preamble summarizes the methodology and results for the cost assessment performed on the RAP provisions in today's final rule. The Agency estimates

a total cost savings of between $5 million and $35 million per year for the RAP provision. The Agency did not assess the impacts of RAPs in the proposed rule economic assessment.

To evaluate this new provision, the Agency performed a quantitative analysis focusing on the cost saving opportunities provided by RAPs to unpermitted facilities which excavate contaminated media and send it off-site for treatment. An additional savings is estimated to occur at unpermitted facilities which are not currently undertaking remediation due to requirements involved in RCRA permitting; however, this savings has not been quantified.

Facilities permitted under RCRA, as well as interim status facilities, are already under facility-wide corrective action obligations, and would therefore be much less likely to shift to use of RAPs given the relatively minor incremental savings of using a RAP over obtaining a permit modification. Therefore, unpermitted facilities, mainly from State and voluntary cleanups, were examined for a cost savings impact from the RAP provisions. To calculate this savings, the Agency: (1) Estimated the total number of unpermitted facilities currently sending remediation waste off site in the baseline; (2) determined the number of facilities in this group which will shift current practices to take advantage of the RAP provision (that is, will shift to on-site treatment); (3) projected an incremental cost savings for this shift; and (4) applied it to the number of facilities determined to shift to estimate the total cost savings for that group. The cost savings was quantified as the reduction in transportation costs for facilities which are estimated to no longer ship waste off-site for treatment, and the reduction in treatment costs for those facilities projected to shift from off-site ex-situ treatment in the baseline to on-site in-situ treatment in the post-regulatory case. The Agency estimated the number of States which already have permit-waiver authority, and thus where the RAP provision is less likely to have a significant impact; this figure was employed in determining the number of facilities likely to be impacted.

The total number of facilities estimated to shift to use of RAPs is between seven and 66 facilities, all of which currently (in the baseline) treat excavated contaminated media off-site. The total cost savings estimated for this group is between $5 million and $35 million per year.

B. Executive Order 12898: Environmental Justice

Under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' as well as through EPA's April 1995, ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report,'' and National Environmental Justice Advisory Council, EPA has undertaken incorporation of environmental justice into its policies and programs. 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 effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. To address this goal, EPA considered the impacts of the HWIR-media final rule on low-income populations and minority populations.

EPA has concluded that today's final rule will potentially advance environmental justice causes. The HWIR-media final rule will potentially assist in expediting site cleanups across the nation by reducing the need for time-consuming permitting of on-site cleanup activities, increasing the flexibility of decision-makers to respond to site-specific conditions, and lessening administrative and regulatory complications and delays. This may free remediation resources to address additional sites. By encouraging excavation of contaminated media, the HWIR-media final rule will expedite the restoration of sites and lead to their beneficial use, which may result in new jobs and increased economic activity in low-income or minority communities. This economic activity could take the form of increased employment of local community members at the cleanup sites; the sale and redevelopment of sites for new economic activities; and new beneficial uses for remediated properties, such as parks, transportation facilities, and even hospitals.

C. Unfunded Mandates Reform Act

The Agency also evaluated the final HWIR-media rule for compliance with the Unfunded Mandates Reform Act of 1995. Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, Local, and Tribal governments and the private sector. 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 one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, Local, or Tribal governments or the private sector because the UMRA generally excludes from the definition of ''Federal intergovernmental mandate'' duties that arise from participation in a voluntary Federal program. HWIR-media is a voluntary program as it applies to State, Local, and Tribal governments. In addition, promulgation of the HWIR-media rule, because it is considered less stringent than current requirements, is not expected to result in mandated costs estimated at $100 million or more to any State, Local, or Tribal governments, in any one year. Thus, today's proposal is not subject to the requirements in sections 202 and 205 of the UMRA. Finally, EPA has determined that the proposed HWIR-media rule contains no regulatory

requirements that might significantly or uniquely affect small governments, and thus is not subject to the requirements in section 203 of the UMRA. Specifically, the program is generally less stringent than the existing program and makes no distinctions between small governments and any potentially regulated party.

D. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. It provides more flexibility for States to implement already-existing requirements.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) at the time the Agency publishes a proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis that describes the effect of the rule on small entities. However, no regulatory flexibility analysis is required if the Administrator certifies the rule will not have a significant adverse impact on a substantial number of small entities. The following discussion explains EPA's determination.

The Agency has determined that today's final rule will not have a significant adverse economic impact on a substantial number of small entities, because the rule is estimated to provide regulatory relief, and will not impose any costs on the regulated community. (For the analysis of impacts showing the relief nature of today's rule, see the above economic assessment.) Therefore, no RFA has been prepared. Based on the foregoing discussion, I hereby certify that this rule will not have a significant adverse economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. *1775.02*) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460, by e-mail at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at http://www.epa.gov/icr. The information requirements are not effective until OMB approves them.

The Agency has estimated the burden associated with complying with the requirements in this proposed rule. Included in the ICR are the burden estimates for the following requirements for industry respondents: reading the regulations; for staging piles, applying, keeping records, requesting extensions, closing, and incorporating into permits; for general facility standards for remediation waste management sites, obtaining an EPA identification number, performing waste analysis, demonstrations for locating units in floodplains, and contingency and emergency plans; for RAPs at permitted facilities, the permit modification procedures; and finally, for RAP applicants, the data in the RAP application, transfer of facility ownership, and recordkeeping. Included also are the burden estimates for State respondents for applying for abbreviated State authorization.

The Agency has determined that all of this information is necessary to ensure compliance with today's rule. Specifically, the information for staging piles is required to ensure that the design and operating of staging piles will comply with all applicable regulations and will be protective of human health and the environment, to ensure that staging piles are operated within the two year limit, to ensure that any requested extensions are necessary and will not threaten human health and the environment, to ensure that staging piles are closed according to the applicable regulations, and finally, to ensure that permits are modified appropriately. The information for general facility standards is necessary to ensure consistent and coordinated identification of the site, to have adequate knowledge of the waste being managed to ensure the appropriate waste management requirements are complied with, and to be adequately prepared for contingencies and emergencies. The information for RAPs is necessary to determine whether the remediation waste management activities will comply with the applicable regulatory requirements, to ensure smooth transfer of facility ownership, and to ensure that facility owners and operators have access to all relevant information regarding their RAP application. The information for State respondents seeking authorization is necessary to verify legal authorities and confirm that the State requirements are no less stringent than Federal law.

All of the information required under today's rule is required only when the respondent wishes to obtain a benefit such as a staging pile, a RAP, or State authorization. Provisions already exist, such as other units in part 264, and traditional RCRA permits whereby respondents could perform the same functions allowed in staging piles and RAPs, except that staging piles and RAPs may be more desirable because they are more flexible and more appropriate for the cleanup scenario, so respondents may voluntarily choose to obtain staging piles and RAPs instead of other options, but they are not required to. Also, because today's rule is less stringent than the existing RCRA regulations, it is optional for States to adopt and seek authorization for this rule. Therefore, States could choose not to adopt today's rule.

Section 3007(b) of RCRA and 40 CFR part 2, Subpart B, which define EPA's general policy on the public disclosure of information, contain provisions for confidentiality and apply to today's rulemaking.

EPA has tried to minimize the burden of this collection of information in respondents. The universe of respondents is expected to be sites conducting cleanup under State and Federal cleanup programs. EPA expects that the industries most likely to be affected by these requirements will be associated with the following SIC codes:

SIC Code	Industry
2491	Wood preserving
2812	Alkalies and chlorine
2819, 2869	Industrial organic chemicals

2821 Plastics materials and resins
2879 Agricultural chemicals
2899 Chemical preparations
2911 Petroleum refining
3000 Rubber and miscellaneous plastics products
3089 Plastics products
3229 Pressed and blown glass
3316 Cold finishing of steel shapes
3339 Primary nonferrous metals
3341 Secondary nonferrous metals
3470 Metal services
3480, 3489 Ordnance and accessories
3482 Small arms ammunition
3568 General industrial machinery
3662 Communications equipment
3674 Semiconductors and related devices
3691 Storage batteries
3728 Aircraft parts and equipment
3764 Space propulsion units and parts
3792 Travel trailers and campers
3820 Measuring and controlling devices
3840 Medical instruments and supplies
4230 Trucking terminal facilities
4581 Airports, flying fields, and services
4953 Refuse systems
7210 Laundry, cleaning, and garment services
8221 Colleges and universities
9711 National security

EPA estimates the projected annual hour burden for industry respondents will be 33,733 hours, and cost of $1,967,699. Total estimates over three years are 101,199 hours and $5,903,097. EPA estimates that State agency respondent will incur a total annual burden of 886 hours and $22,410, which over three years would be 2,658 hours and $67,230. EPA estimates that the annual Agency burden will be 5,726 hours and $176,899, which over three years would be 17,178 hours and $530,697. As subsets of the above total costs, EPA estimates no annual capital costs, and annual operation and maintenance costs for staging piles and RAPs of $49,902, and for State authorization of $54. As a subset of operation and maintenance, EPA estimates $750 each time a responder purchases services for waste analysis, for a total of $65,472. This is the only area where EPA expects purchase of services.

For complying with the requirements in the HWIR-media rule, industry respondents are expected to spend an average of 13.7 hours per year on recordkeeping requirements and 5.0 hours per year on reporting requirements. State agency respondents are expected to spend no time on recordkeeping, as there are no recordkeeping requirements for the States, and 16.4 hours per year on reporting requirements.

EPA estimates that 1,805 sites are eligible for RAPs and staging piles, and are assumed by EPA to be the universe of potential responders. These 1,805 potential responders are expected to read the regulations. EPA estimates that 90 responders per year will use staging piles, and 66 responders per year will use RAPs. EPA estimates that 18 States per year will apply for authorization. Responders will only need to respond once for each activity for staging piles, RAPs, or State authorization.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Comments are requested by December 30, 1998. Include the ICR number in any correspondence.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is directed 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 (for example, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using these standards.

EPA is not proposing any new test methods or other technical standards as part of today's final rule. Thus, the Agency has no need to consider the use of voluntary consensus standards in developing this proposed rule.

H. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

I. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (*see* 62 FR 19885, April 23, 1997) applies to any rule that EPA determines: (1) is ''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.

J. 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified 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. In addition, this rule imposes no new requirements on owners and operators, but rather, allow flexibility to regulators to implement requirements already in place. Accordingly, the requirements in 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Parts 264 and 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business administration, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: 42 U.S.C. 6912(a), 6921, 6924, 6926, and 6927.

Dated: November 2, 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:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.10 is amended by revising the introductory text; by removing the definition for ''Corrective action management unit or CAMU'; by revising the definitions for ''Miscellaneous unit'' and ''Remediation waste''; by adding paragraph (3) to the definition of ''Facility''; and by adding definitions in alphabetical order for ''Corrective action management unit (CAMU),'' ''Remediation waste management site'' and ''Staging pile'' to read as follows:

§ 260.10 Definitions.

When used in parts 260 through 273 of this chapter, the following terms have the meanings given below:

* * * * *

Corrective action management unit (CAMU) means an area within a facility that is used only for managing remediation wastes for implementing corrective action or cleanup at the facility.

* * * * *

Facility * * *

(3) Notwithstanding paragraph (2) of this definition, a remediation waste management site is not a facility that is subject to 40 CFR 264.101, but is subject to corrective action requirements if the site is located within such a facility.

* * * * *

Miscellaneous unit means a hazardous waste management unit where hazardous waste is treated, stored, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under part 146 of this chapter, containment building, corrective action management unit, unit eligible for a research, development, and demonstration permit under 40 CFR 270.65, or staging pile.

* * * * *

Remediation waste means all solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris that contain listed hazardous wastes or that themselves exhibit a hazardous characteristic and are managed for implementing cleanup.

Remediation waste management site means a facility where an owner or operator is or will be treating, storing or disposing of hazardous remediation wastes. A remediation waste management site is not a facility that is subject to corrective action under 40 CFR 264.101, but is subject to corrective action requirements if the site is located in such a facility.

* * * * *

Staging pile means an accumulation of solid, non-flowing remediation waste (as defined in this section) that is not a containment building and that is used only during remedial operations for temporary storage at a facility. Staging piles must be designated by the Director according to the requirements of 40 CFR 264.554.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

4. Section 261.4 is amended by adding paragraph (g) to read as follows:

§ 261.4 Exclusions.

* * * * *

(g) *Dredged material that is not a hazardous waste.* Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C.1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term *dredged material* has the same meaning as defined in 40 CFR 232.2;

(2) The term *permit* means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or an approved State under section 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344);

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs (g)(2)(i) and (ii) of this section, as provided for in Corps regulations (for example, see 33 CFR 336.1, 336.2, and 337.6).

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

6. Section 264.1 is amended by adding new paragraph (j) to read as follows:

§ 264.1 Purpose, scope and applicability.

* * * * *

(j) The requirements of subparts B, C, and D of this part and § 264.101 do not apply to remediation waste management sites. (However, some remediation waste management sites may be a part of a facility that is subject to a traditional RCRA permit because the facility is also treating, storing or disposing of hazardous wastes that are not remediation wastes. In these cases, Subparts B, C, and D of this part, and § 264.101 do apply to the facility subject to the traditional RCRA permit.) Instead of the requirements of subparts B, C, and D of this part, owners or operators of remediation waste management sites must:

(1) Obtain an EPA identification number by applying to the Administrator using EPA Form 8700–12;

(2) Obtain a detailed chemical and physical analysis of a representative sample of the hazardous remediation wastes to be managed at the site. At a minimum, the analysis must contain all of the information which must be known to treat, store or dispose of the waste according to this part and part 268 of this chapter, and must be kept accurate and up to date;

(3) Prevent people who are unaware of the danger from entering, and minimize the possibility for unauthorized people or livestock to enter onto the active portion of the remediation waste management site, unless the owner or operator can demonstrate to the Director that:

(i) Physical contact with the waste, structures, or equipment within the active portion of the remediation waste management site will not injure people or livestock who may enter the active portion of the remediation waste management site; and

(ii) Disturbance of the waste or equipment by people or livestock who enter onto the active portion of the remediation waste management site, will not cause a violation of the requirements of this part;

(4) Inspect the remediation waste management site for malfunctions, deterioration, operator errors, and discharges that may be causing, or may lead to, a release of hazardous waste constituents to the environment, or a threat to human health. The owner or operator must conduct these inspections often enough to identify problems in time to correct them before they harm human health or the environment, and must remedy the problem before it leads to a human health or environmental hazard. Where a hazard is imminent or has already occurred, the owner/operator must take remedial action immediately;

(5) Provide personnel with classroom or on-the-job training on how to perform their duties in a way that ensures the remediation waste management site complies with the requirements of this part, and on how to respond effectively to emergencies;

(6) Take precautions to prevent accidental ignition or reaction of ignitable or reactive waste, and prevent threats to human health and the environment from ignitable, reactive and incompatible waste;

(7) For remediation waste management sites subject to regulation under subparts I through O and subpart X of this part, the owner/operator must design, construct, operate, and maintain a unit within a 100-year floodplain to prevent washout of any hazardous waste by a 100-year flood, unless the owner/operator can meet the demonstration of § 264.18(b);

(8) Not place any non-containerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave;

(9) Develop and maintain a construction quality assurance program for all surface impoundments, waste piles and landfill units that are required to comply with §§ 264.221(c) and (d), 264.251(c) and (d), and 264.301(c) and (d) at the remediation waste management site, according to the requirements of § 264.19;

(10) Develop and maintain procedures to prevent accidents and a contingency and emergency plan to control accidents that occur. These procedures must address proper design, construction, maintenance, and operation of remediation waste management units at the site. The goal of the plan must be to minimize the possibility of, and the hazards from a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water that could threaten human health or the environment. The plan must explain specifically how to treat, store and dispose of the hazardous remediation waste in question, and must be implemented immediately whenever a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment;

(11) Designate at least one employee, either on the facility premises or on call (that is, available to respond to an emergency by reaching the facility quickly), to coordinate all emergency response measures. This emergency coordinator must be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristics of waste handled, the location of all records within the facility, and the facility layout. In addition, this person must have the authority to commit the resources needed to carry out the contingency plan;

(12) Develop, maintain and implement a plan to meet the requirements in paragraphs (j)(2) through (j)(6) and (j)(9) through (j)(10) of this section; and

(13) Maintain records documenting compliance with paragraphs (j)(1) through (j)(12) of this section.

7. Section 264.73 is amended by adding paragraph (b)(17) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(17) Any records required under § 264.1(j)(13).

8. Section 264.101 is amended by adding paragraph (d) to read as follows:

§ 264.101 Corrective action for solid waste management units.

* * * * *

(d) This does not apply to remediation waste management sites unless they are part of a facility subject to a permit for treating, storing or disposing of hazardous wastes that are not remediation wastes.

9. Section 264.552 is amended by revising paragraph (a) to read as follows:

§ 264.552 Corrective Action Management Units (CAMU).

(a) To implement remedies under § 264.101 or RCRA 3008(h), or to implement remedies at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate an area at the facility as a corrective action management unit, as defined in § 260.10, under the requirements in this section. A CAMU must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the CAMU originated. One or more CAMUs may be designated at a facility.

(1) Placement of remediation wastes into or within a CAMU does not constitute land disposal of hazardous wastes.

(2) Consolidation or placement of remediation wastes into or within a CAMU does not constitute creation of a unit subject to minimum technology requirements.

* * * * *

10. Section 264.553 is amended by revising paragraph (a) to read as follows:

§ 264.553 Temporary Units (TU).

(a) For temporary tanks and container storage areas used to treat or store hazardous remediation wastes during remedial activities required under § 264.101 or RCRA 3008(h), or at a permitted facility that is not subject to § 264.101, the Regional Administrator may designate a unit at the facility, as a temporary unit. A temporary unit must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the temporary unit originated. For temporary units, the Regional Administrator may replace the design, operating, or closure standard applicable to these units under this part 264 or part 265 of this chapter with alternative requirements which protect human health and the environment.

* * * * *

11. New § 264.554 is added to subpart S to read as follows:

§ 264.554 Staging piles.

This section is written in a special format to make it easier to understand the regulatory requirements. Like other Environmental Protection Agency (EPA) regulations, this establishes enforceable legal requirements. For this ''I'' and ''you'' refer to the owner/operator.

(a) *What is a staging pile?* A staging pile is an accumulation of solid, non-flowing remediation waste (as defined in § 260.10 of this chapter) that is not a containment building and is used only during remedial operations for temporary storage at a facility. A staging pile must be located within the contiguous property under the control of the owner/operator where the wastes to be managed in the staging pile originated. Staging piles must be designated by the Director in according to the requirements in this section.

(b) *When may I use a staging pile?* You may use a staging pile to store hazardous remediation waste (or remediation waste otherwise subject to land disposal restrictions) only if you follow the standards and design criteria the Director has designated for that staging pile. The Director must designate the staging pile in a permit or, at an interim status facility, in a closure plan or order (consistent with § 270.72(a)(5) and (b)(5) of this chapter). The Director must establish conditions in the permit, closure plan, or order that comply with paragraphs (d) through (k) of this section.

(c) *What information must I provide to get a staging pile designated?* When seeking a staging pile designation, you must provide:

(1) Sufficient and accurate information to enable the Director to impose standards and design criteria for your staging pile according to paragraphs (d) through (k) of this section;

(2) Certification by an independent, qualified, registered professional engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

(3) Any additional information the Director determines is necessary to protect human health and the environment.

(d) *What performance criteria must a staging pile satisfy?* The Director must establish the standards and design criteria for the staging pile in the permit, closure plan, or order.

(1) The standards and design criteria must comply with the following:

(i) The staging pile must facilitate a reliable, effective and protective remedy;

(ii) The staging pile must be designed so as to prevent or minimize releases of hazardous wastes and hazardous constituents into the environment, and minimize or adequately control cross-media transfer, as necessary to protect human health and the environment (for example, through the use of liners, covers, run-off/run-on controls, as appropriate); and

(iii) The staging pile must not operate for more than two years, except when the Director grants an operating term extension under paragraph (i) of this section (entitled ''May I receive an operating extension for a staging pile?''). You must measure the two-year limit, or other operating term specified by the Director in the permit, closure plan, or order, from the first time you place remediation waste into a staging pile. You must maintain a record of the date when you first placed remediation waste into the staging pile for the life of the permit, closure plan, or order, or for three years, whichever is longer.

(2) In setting the standards and design criteria, the Director must consider the following factors:

(i) Length of time the pile will be in operation;

(ii) Volumes of wastes you intend to store in the pile;

(iii) Physical and chemical characteristics of the wastes to be stored in the unit;

(iv) Potential for releases from the unit;

(v) Hydrogeological and other relevant environmental conditions at the facility that may influence the migration of any potential releases; and

(vi) Potential for human and environmental exposure to potential releases from the unit;

(e) *May a staging pile receive ignitable or reactive remediation waste?* You must not place ignitable or reactive remediation waste in a staging pile unless:

(1) You have treated, rendered or mixed the remediation waste before you placed it in the staging pile so that:

(i) The remediation waste no longer meets the definition of ignitable or reactive under § 261.21 or § 261.23 of this chapter; and

(ii) You have complied with § 264.17(b); or

(2) You manage the remediation waste to protect it from exposure to any material or condition that may cause it to ignite or react.

(f) *How do I handle incompatible remediation wastes in a staging pile?* The term ''incompatible waste'' is defined in § 260.10 of this chapter. You must comply with the following requirements for incompatible wastes in staging piles:

(1) You must not place incompatible remediation wastes in the same staging pile unless you have complied with § 264.17(b);

(2) If remediation waste in a staging pile is incompatible with any waste or material stored nearby in containers,

other piles, open tanks or land disposal units (for example, surface impoundments), you must separate the incompatible materials, or protect them from one another by using a dike, berm, wall or other device; and

(3) You must not pile remediation waste on the same base where incompatible wastes or materials were previously piled, unless the base has been decontaminated sufficiently to comply with § 264.17(b).

(g) *Are staging piles subject to Land Disposal Restrictions (LDR) and Minimum Technological Requirements (MTR)?* No. Placing hazardous remediation wastes into a staging pile does not constitute land disposal of hazardous wastes or create a unit that is subject to the minimum technological requirements of RCRA 3004(o).

(h) *How long may I operate a staging pile?* The Director may allow a staging pile to operate for up to two years after hazardous remediation waste is first placed into the pile. You must use a staging pile no longer than the length of time designated by the Director in the permit, closure plan, or order (the ''operating term''), except as provided in paragraph (i) of this section.

(i) *May I receive an operating extension for a staging pile?* (1) The Director may grant one operating term extension of up to 180 days beyond the operating term limit contained in the permit, closure plan, or order (see paragraph (l) of this section for modification procedures). To justify to the Director the need for an extension, you must provide sufficient and accurate information to enable the Director to determine that continued operation of the staging pile:

(i) Will not pose a threat to human health and the environment; and

(ii) Is necessary to ensure timely and efficient implementation of remedial actions at the facility.

(2) The Director may, as a condition of the extension, specify further standards and design criteria in the permit, closure plan, or order, as necessary, to ensure protection of human health and the environment.

(j) *What is the closure requirement for a staging pile located in a previously contaminated area?* (1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in a previously contaminated area of the site by removing or decontaminating all:

(i) Remediation waste;

(ii) Contaminated containment system components; and

(iii) Structures and equipment contaminated with waste and leachate.

(2) You must also decontaminate contaminated subsoils in a manner and according to a schedule that the Director determines will protect human health and the environment.

(3) The Director must include the above requirements in the permit, closure plan, or order in which the staging pile is designated.

(k) *What is the closure requirement for a staging pile located in an uncontaminated area?* (1) Within 180 days after the operating term of the staging pile expires, you must close a staging pile located in an uncontaminated area of the site according to §§ 264.258(a) and 264.111; or according to §§ 265.258(a) and 265.111 of this chapter.

(2) The Director must include the above requirement in the permit, closure plan, or order in which the staging pile is designated.

(l) *How may my existing permit (for example, RAP), closure plan, or order be modified to allow me to use a staging pile?* (1) To modify a permit, other than a RAP, to incorporate a staging pile or staging pile operating term extension, either:

(i) The Director must approve the modification under the procedures for Agency-initiated permit modifications in § 270.41 of this chapter; or

(ii) You must request a Class 2 modification under § 270.42 of this chapter.

(2) To modify a RAP to incorporate a staging pile or staging pile operating term extension, you must comply with the RAP modification requirements under §§ 270.170 and 270.175 of this chapter.

(3) To modify a closure plan to incorporate a staging pile or staging pile operating term extension, you must follow the applicable requirements under § 264.112(c) or § 265.112(c) of this chapter.

(4) To modify an order to incorporate a staging pile or staging pile operating term extension, you must follow the terms of the order and the applicable provisions of § 270.72(a)(5) or (b)(5) of this chapter.

(m) *Is information about the staging pile available to the public?* The Director must document the rationale for designating a staging pile or staging pile operating term extension and make this documentation available to the public.

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

12. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936 and 6937, unless otherwise noted.

§ 265.1 [Amended]

13. Section 265.1(b) is amended in the first sentence by revising '', and of 40 CFR 264.552 and 40 CFR 264.553,'' to read '', and of 40 CFR 264.552, 264.553, and 264.554,''.

PART 268—LAND DISPOSAL RESTRICTIONS

14. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

15. Section 268.2 is amended by revising paragraph (c) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(c) *Land disposal* means placement in or on the land, except in a corrective action management unit or staging pile, and includes, but is not limited to, placement in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, underground mine or cave, or placement in a concrete vault, or bunker intended for disposal purposes.

* * * * *

16. Section 268.50 is amended by adding new paragraph (g) to read as follows:

§ 268.50 Prohibitions on storage of restricted wastes.

* * * * *

(g) The prohibition and requirements in this do not apply to hazardous remediation wastes stored in a staging pile approved pursuant to § 264.554 of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

17. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

18. Section 270.2 is amended by adding a definition for ''Remedial

Action Plan (RAP)'' in alphabetical order to read as follows:

§ 270.2 Definitions.

* * * * *

Remedial Action Plan (RAP) means a special form of RCRA permit that a facility owner or operator may obtain instead of a permit issued under §§ 270.3 through 270.66, to authorize the treatment, storage or disposal of hazardous remediation waste (as defined in § 260.10 of this chapter) at a remediation waste management site.

* * * * *

Subpart B—Permit Application

19. Section 270.11 is amended by revising paragraph (d) to read as follows:

§ 270.11 Signatories to permit applications and reports.

* * * * *

(d)(1) Any person signing a document under paragraph (a) or (b) of this must make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision according to a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

(2) For remedial action plans (RAPs) under subpart H of this part, if the operator certifies according to paragraph (d)(1) of this section, then the owner may choose to make the following certification instead of the certification in paragraph (d)(1) of this section:

Based on my knowledge of the conditions of the property described in the RAP and my inquiry of the person or persons who manage the system referenced in the operator's certification, or those persons directly responsible for gathering the information, the information submitted is, upon information and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Subpart D—Changes to Permits

20. Appendix I to § 270.42 is amended by adding new modification D.3.g. and new modification N.3. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

Modifications	Class
* * * * *	
D. Closure	
* * * * *	
3. Addition of the following new units to be used temporarily for closure activities:	
* * * * *	
g. Staging piles	2
* * * * *	
N. Corrective Action:	
* * * * *	
3. Approval of a staging pile or staging pile operating term extension pursuant to § 264.554 ...	2

Subpart F—Special Forms of Permits

21. A new § 270.68 is added to subpart F to read as follows:

§ 270.68 Remedial Action Plans (RAPs).

Remedial Action Plans (RAPs) are special forms of permits that are regulated under subpart H of this part.

Subpart G—Interim Status

22. Section 270.73 is amended by revising paragraph (a) to read as follows:

§ 270.73 Termination of interim status.

* * * * *

(a) Final administrative disposition of a permit application, except an application for a remedial action plan (RAP) under subpart H of this part, is made.

* * * * *

23–24. A new Subpart H is added to Part 270 to read as follows:

Subpart H—Remedial Action Plans (RAPs)

Sec.

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How May My RAP be Modified, Revoked and Reissued, or Terminated?

270.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?
270.175 For what reasons may the Director choose to modify my final RAP?
270.180 For what reasons may the Director choose to revoke and reissue my final RAP?
270.185 For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?
270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?
270.195 When will my RAP expire?
270.200 How may I renew my RAP if it is expiring?
270.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?

Operating Under Your RAP

270.210 What records must I maintain concerning my RAP?
270.215 How are time periods in the requirements in this Subpart and my RAP computed?
270.220 How may I transfer my RAP to a new owner or operator?
270.225 What must the State or EPA Region report about noncompliance with RAPs?

Obtaining a RAP for an Off-site Location

270.230 May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?

Subpart H—Remedial Action Plans (RAPs)

§ 270.79 Why is this subpart written in a special format?

This subpart is written in a special format to make it easier to understand the regulatory requirements. Like other

Environmental Protection Agency (EPA) regulations, this establishes enforceable legal requirements. For this Subpart, ''I'' and ''you'' refer to the owner/operator.

General Information

§ 270.80 What is a RAP?

(a) A RAP is a special form of RCRA permit that you, as an owner or operator, may obtain, instead of a permit issued under §§ 270.3 through 270.66, to authorize you to treat, store, or dispose of hazardous remediation waste (as defined in § 260.10 of this chapter) at a remediation waste management site. A RAP may only be issued for the area of contamination where the remediation wastes to be managed under the RAP originated, or areas in close proximity to the contaminated area, except as allowed in limited circumstances under § 270.230.

(b) The requirements in §§ 270.3 through 270.66 do not apply to RAPs unless those requirements for traditional RCRA permits are specifically required under §§ 270.80 through 270.230. The definitions in § 270.2 apply to RAPs.

(c) Notwithstanding any other provision of this part or part 124 of this chapter, any document that meets the requirements in this section constitutes a RCRA permit under RCRA section 3005(c).

(d) A RAP may be:

(1) A stand-alone document that includes only the information and conditions required by this subpart; or

(2) Part (or parts) of another document that includes information and/or conditions for other activities at the remediation waste management site, in addition to the information and conditions required by this subpart.

(e) If you are treating, storing, or disposing of hazardous remediation wastes as part of a cleanup compelled by Federal or State cleanup authorities, your RAP does not affect your obligations under those authorities in any way.

(f) If you receive a RAP at a facility operating under interim status, the RAP does not terminate your interim status.

§ 270.85 When do I need a RAP?

(a) Whenever you treat, store, or dispose of hazardous remediation wastes in a manner that requires a RCRA permit under § 270.1, you must either obtain:

(1) A RCRA permit according to §§ 270.3 through 270.66; or

(2) A RAP according to this subpart.

(b) Treatment units that use combustion of hazardous remediation wastes at a remediation waste management site are not eligible for RAPs under this Subpart.

(c) You may obtain a RAP for managing hazardous remediation waste at an already permitted RCRA facility. You must have these RAPs approved as a modification to your existing permit according to the requirements of § 270.41 or § 270.42 instead of the requirements in this Subpart. When you submit an application for such a modification, however, the information requirements in § 270.42(a)(1)(i), (b)(1)(iv), and (c)(1)(iv) do not apply; instead, you must submit the information required under § 270.110. When your permit is modified the RAP becomes part of the RCRA permit. Therefore when your permit (including the RAP portion) is modified, revoked and reissued, terminated or when it expires, it will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 270.43, terminated according to the applicable requirements in § 270.43, and expire according to the applicable requirements in §§ 270.50 and 270.51.

§ 270.90 Does my RAP grant me any rights or relieve me of any obligations?

The provisions of § 270.4 apply to RAPs. (**NOTE:** The provisions of § 270.4(a) provide you assurance that, as long as you comply with your RAP, EPA will consider you in compliance with Subtitle C of RCRA, and will not take enforcement actions against you. However, you should be aware of four exceptions to this provision that are listed in § 270.4.)

Applying for a RAP

§ 270.95 How do I apply for a RAP?

To apply for a RAP, you must complete an application, sign it, and submit it to the Director according to the requirements in this subpart.

§ 270.100 Who must obtain a RAP?

When a facility or remediation waste management site is owned by one person, but the treatment, storage or disposal activities are operated by another person, it is the operator's duty to obtain a RAP, except that the owner must also sign the RAP application.

§ 270.105 Who must sign the application and any required reports for a RAP?

Both the owner and the operator must sign the RAP application and any required reports according to § 270.11(a), (b), and (c). In the application, both the owner and the operator must also make the certification required under § 270.11(d)(1). However, the owner may choose the alternative certification under § 270.11(d)(2) if the operator certifies under § 270.11(d)(1).

§ 270.110 What must I include in my application for a RAP?

You must include the following information in your application for a RAP:

(a) The name, address, and EPA identification number of the remediation waste management site;

(b) The name, address, and telephone number of the owner and operator;

(c) The latitude and longitude of the site;

(d) The United States Geological Survey (USGS) or county map showing the location of the remediation waste management site;

(e) A scaled drawing of the remediation waste management site showing:

(1) The remediation waste management site boundaries;

(2) Any significant physical structures; and

(3) The boundary of all areas on-site where remediation waste is to be treated, stored or disposed;

(f) A specification of the hazardous remediation waste to be treated, stored or disposed of at the facility or remediation waste management site. This must include information on:

(1) Constituent concentrations and other properties of the hazardous remediation wastes that may affect how such materials should be treated and/or otherwise managed;

(2) An estimate of the quantity of these wastes; and

(3) A description of the processes you will use to treat, store, or dispose of this waste including technologies, handling systems, design and operating parameters you will use to treat hazardous remediation wastes before disposing of them according to the LDR standards of part 268 of this chapter, as applicable;

(g) Enough information to demonstrate that operations that follow the provisions in your RAP application will ensure compliance with applicable requirements of parts 264, 266, and 268 of this chapter;

(h) Such information as may be necessary to enable the Regional Administrator to carry out his duties under other Federal laws as is required for traditional RCRA permits under § 270.14(b)(20);

(i) Any other information the Director decides is necessary for demonstrating compliance with this subpart or for determining any additional RAP conditions that are necessary to protect human health and the environment.

§ 270.115 What if I want to keep this information confidential?

Part 2 (Public Information) of this chapter allows you to claim as confidential any or all of the information you submit to EPA under this subpart. You must assert any such claim at the time that you submit your RAP application or other submissions by stamping the words ''confidential business information'' on each page containing such information. If you do assert a claim at the time you submit the information, EPA will treat the information according to the procedures in part 2 of this chapter. If you do not assert a claim at the time you submit the information, EPA may make the information available to the public without further notice to you. EPA will deny any requests for confidentiality of your name and/or address.

§ 270.120 To whom must I submit my RAP application?

You must submit your application for a RAP to the Director for approval.

§ 270.125 If I submit my RAP application as part of another document, what must I do?

If you submit your application for a RAP as a part of another document, you must clearly identify the components of that document that constitute your RAP application.

Getting a RAP Approved

§ 270.130 What is the process for approving or denying my application for a RAP?

(a) If the Director tentatively finds that your RAP application includes all of the information required by § 270.110 and that your proposed remediation waste management activities meet the regulatory standards, the Director will make a tentative decision to approve your RAP application. The Director will then prepare a draft RAP and provide an opportunity for public comment before making a final decision on your RAP application, according to this subpart.

(b) If the Director tentatively finds that your RAP application does not include all of the information required by § 270.110 or that your proposed remediation waste management activities do not meet the regulatory standards, the Director may request additional information from you or ask you to correct deficiencies in your application. If you fail or refuse to provide any additional information the Director requests, or to correct any deficiencies in your RAP application, the Director may make a tentative decision to deny your RAP application. After making this tentative decision, the Director will prepare a notice of intent to deny your RAP application (''notice of intent to deny'') and provide an opportunity for public comment before making a final decision on your RAP application, according to the requirements in this Subpart. The Director may deny the RAP application either in its entirety or in part.

§ 270.135 What must the Director include in a draft RAP?

If the Director prepares a draft RAP, it must include the:

(a) Information required under § 270.110(a) through (f);

(b) The following terms and conditions:

(1) Terms and conditions necessary to ensure that the operating requirements specified in your RAP comply with applicable requirements of parts 264, 266, and 268 of this chapter (including any recordkeeping and reporting requirements). In satisfying this provision, the Director may incorporate, expressly or by reference, applicable requirements of parts 264, 266, and 268 of this chapter into the RAP or establish site-specific conditions as required or allowed by parts 264, 266, and 268 of this chapter;

(2) Terms and conditions in § 270.30;

(3) Terms and conditions for modifying, revoking and reissuing, and terminating your RAP, as provided in § 270.170; and

(4) Any additional terms or conditions that the Director determines are necessary to protect human health and the environment, including any terms and conditions necessary to respond to spills and leaks during use of any units permitted under the RAP; and

(c) If the draft RAP is part of another document, as described in § 270.80(d)(2), the Director must clearly identify the components of that document that constitute the draft RAP.

§ 270.140 What else must the Director prepare in addition to the draft RAP or notice of intent to deny?

Once the Director has prepared the draft RAP or notice of intent to deny, he must then:

(a) Prepare a statement of basis that briefly describes the derivation of the conditions of the draft RAP and the reasons for them, or the rationale for the notice of intent to deny;

(b) Compile an administrative record, including:

(1) The RAP application, and any supporting data furnished by the applicant;

(2) The draft RAP or notice of intent to deny;

(3) The statement of basis and all documents cited therein (material readily available at the issuing Regional office or published material that is generally available need not be physically included with the rest of the record, as long as it is specifically referred to in the statement of basis); and

(4) Any other documents that support the decision to approve or deny the RAP; and

(c) Make information contained in the administrative record available for review by the public upon request.

§ 270.145 What are the procedures for public comment on the draft RAP or notice of intent to deny?

(a) The Director must:

(1) Send notice to you of his intention to approve or deny your RAP application, and send you a copy of the statement of basis;

(2) Publish a notice of his intention to approve or deny your RAP application in a major local newspaper of general circulation;

(3) Broadcast his intention to approve or deny your RAP application over a local radio station; and

(4) Send a notice of his intention to approve or deny your RAP application to each unit of local government having jurisdiction over the area in which your site is located, and to each State agency having any authority under State law with respect to any construction or operations at the site.

(b) The notice required by paragraph (a) of this section must provide an opportunity for the public to submit written comments on the draft RAP or notice of intent to deny within at least 45 days.

(c) The notice required by paragraph (a) of this section must include:

(1) The name and address of the office processing the RAP application;

(2) The name and address of the RAP applicant, and if different, the remediation waste management site or activity the RAP will regulate;

(3) A brief description of the activity the RAP will regulate;

(4) The name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft RAP or notice of intent to deny, statement of basis, and the RAP application;

(5) A brief description of the comment procedures in this section, and any other procedures by which the public may participate in the RAP decision;

(6) If a hearing is scheduled, the date, time, location and purpose of the hearing;

(7) If a hearing is not scheduled, a statement of procedures to request a hearing;

(8) The location of the administrative record, and times when it will be open for public inspection; and

(9) Any additional information the Director considers necessary or proper.

(d) If, within the comment period, the Director receives written notice of opposition to his intention to approve or deny your RAP application and a request for a hearing, the Director must hold an informal public hearing to discuss issues relating to the approval or denial of your RAP application. The Director may also determine on his own initiative that an informal hearing is appropriate. The hearing must include an opportunity for any person to present written or oral comments. Whenever possible, the Director must schedule this hearing at a location convenient to the nearest population center to the remediation waste management site and give notice according to the requirements in paragraph (a) of this section. This notice must, at a minimum, include the information required by paragraph (c) of this section and:

(1) Reference to the date of any previous public notices relating to the RAP application;

(2) The date, time and place of the hearing; and

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures.

§ 270.150 How will the Director make a final decision on my RAP application?

(a) The Director must consider and respond to any significant comments raised during the public comment period, or during any hearing on the draft RAP or notice of intent to deny, and revise your draft RAP based on those comments, as appropriate.

(b) If the Director determines that your RAP includes the information and terms and conditions required in § 270.135, then he will issue a final decision approving your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been approved.

(c) If the Director determines that your RAP does not include the information required in § 270.135, then he will issue a final decision denying your RAP and, in writing, notify you and all commenters on your draft RAP that your RAP application has been denied.

(d) If the Director's final decision is that the tentative decision to deny the RAP application was incorrect, he will withdraw the notice of intent to deny and proceed to prepare a draft RAP, according to the requirements in this subpart.

(e) When the Director issues his final RAP decision, he must refer to the procedures for appealing the decision under § 270.155.

(f) Before issuing the final RAP decision, the Director must compile an administrative record. Material readily available at the issuing Regional office or published materials which are generally available and which are included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the statement of basis or the response to comments. The administrative record for the final RAP must include information in the administrative record for the draft RAP (see § 270.140(b)) and:

(1) All comments received during the public comment period;

(2) Tapes or transcripts of any hearings;

(3) Any written materials submitted at these hearings;

(4) The responses to comments;

(5) Any new material placed in the record since the draft RAP was issued;

(6) Any other documents supporting the RAP; and (7) A copy of the final RAP.

(g) The Director must make information contained in the administrative record available for review by the public upon request.

§ 270.155 May the decision to approve or deny my RAP application be administratively appealed?

(a) Any commenter on the draft RAP or notice of intent to deny, or any participant in any public hearing(s) on the draft RAP, may appeal the Director's decision to approve or deny your RAP application to EPA's Environmental Appeals Board under § 124.19 of this chapter. Any person who did not file comments, or did not participate in any public hearing(s) on the draft RAP, may petition for administrative review only to the extent of the changes from the draft to the final RAP decision. Appeals of RAPs may be made to the same extent as for final permit decisions under § 124.15 of this chapter (or a decision under § 270.29 to deny a permit for the active life of a RCRA hazardous waste management facility or unit). Instead of the notice required under §§ 124.19(c) and 124.10 of this chapter, the Director will give public notice of any grant of review of RAPs by the Environmental Appeals Board through the same means used to provide notice under § 270.145. The notice will include:

(1) The briefing schedule for the appeal as provided by the Board;

(2) A statement that any interested person may file an amicus brief with the Board; and

(3) The information specified in § 270.145(c), as appropriate.

(b) This appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.160 When does my RAP become effective?

Your RAP becomes effective 30 days after the Director notifies you and all commenters that your RAP is approved unless:

(a) The Director specifies a later effective date in his decision;

(b) You or another person has appealed your RAP under § 270.155 (if your RAP is appealed, and the request for review is granted under § 270.155, conditions of your RAP are stayed according to § 124.16 of this chapter); or

(c) No commenters requested a change in the draft RAP, in which case the RAP becomes effective immediately when it is issued.

§ 270.165 When may I begin physical construction of new units permitted under the RAP?

You must not begin physical construction of new units permitted under the RAP for treating, storing or disposing of hazardous remediation waste before receiving a finally effective RAP.

How May my RAP be Modified, Revoked and Reissued, or Terminated?

§ 270.170 After my RAP is issued, how may it be modified, revoked and reissued, or terminated?

In your RAP, the Director must specify, either directly or by reference, procedures for future modifications, revocations and reissuance, or terminations of your RAP. These procedures must provide adequate opportunities for public review and comment on any modification, revocation and reissuance, or termination that would significantly change your management of your remediation waste, or that otherwise merits public review and comment. If your RAP has been incorporated into a traditional RCRA permit, as allowed under § 270.85(c), then the RAP will be modified according to the applicable requirements in §§ 270.40 through 270.42, revoked and reissued according to the applicable requirements in §§ 270.41 and 270.43, or terminated according to the applicable requirements of § 270.43.

§ 270.175 For what reasons may the Director choose to modify my final RAP?

(a) The Director may modify your final RAP on his own initiative only if one or more of the following reasons listed in this section exist(s). If one or

more of these reasons do not exist, then the Director will not modify your final RAP, except at your request. Reasons for modification are:

(1) You made material and substantial alterations or additions to the activity that justify applying different conditions;

(2) The Director finds new information that was not available at the time of RAP issuance and would have justified applying different RAP conditions at the time of issuance;

(3) The standards or regulations on which the RAP was based have changed because of new or amended statutes, standards or regulations, or by judicial decision after the RAP was issued;

(4) If your RAP includes any schedules of compliance, the Director may find reasons to modify your compliance schedule, such as an act of God, strike, flood, or materials shortage or other events over which you as the owner/operator have little or no control and for which there is no reasonably available remedy;

(5) You are not in compliance with conditions of your RAP;

(6) You failed in the application or during the RAP issuance process to disclose fully all relevant facts, or you misrepresented any relevant facts at the time;

(7) The Director has determined that the activity authorized by your RAP endangers human health or the environment and can only be remedied by modifying; or

(8) You have notified the Director (as required in the RAP under § 270.30(l)(3)) of a proposed transfer of a RAP.

(b) Notwithstanding any other provision in this section, when the Director reviews a RAP for a land disposal facility under § 270.195, he may modify the permit as necessary to assure that the facility continues to comply with the currently applicable requirements in parts 124, 260 through 266 and 270 of this chapter.

(c) The Director will not reevaluate the suitability of the facility location at the time of RAP modification unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 270.180 For what reasons may the Director choose to revoke and reissue my final RAP?

(a) The Director may revoke and reissue your final RAP on his own initiative only if one or more reasons for revocation and reissuance exist(s). If one or more reasons do not exist, then the Director will not modify or revoke and reissue your final RAP, except at your request. Reasons for modification or revocation and reissuance are the same as the reasons listed for RAP modifications in § 270.175(a)(5) through (8) if the Director determines that revocation and reissuance of your RAP is appropriate.

(b) The Director will not reevaluate the suitability of the facility location at the time of RAP revocation and reissuance, unless new information or standards indicate that a threat to human health or the environment exists that was unknown when the RAP was issued.

§ 270.185 For what reasons may the Director choose to terminate my final RAP, or deny my renewal application?

The Director may terminate your final RAP on his own initiative, or deny your renewal application for the same reasons as those listed for RAP modifications in § 270.175(a)(5) through (7) if the Director determines that termination of your RAP or denial of your RAP renewal application is appropriate.

§ 270.190 May the decision to approve or deny a modification, revocation and reissuance, or termination of my RAP be administratively appealed?

(a) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may appeal the Director's decision to approve a modification, revocation and reissuance, or termination of your RAP, according to § 270.155. Any person who did not file comments or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination, may petition for administrative review only of the changes from the draft to the final RAP decision.

(b) Any commenter on the modification, revocation and reissuance or termination, or any person who participated in any hearing(s) on these actions, may informally appeal the Director's decision to deny a request for modification, revocation and reissuance, or termination to EPA's Environmental Appeals Board. Any person who did not file comments, or did not participate in any public hearing(s) on the modification, revocation and reissuance or termination may petition for administrative review only of the changes from the draft to the final RAP decision.

(c) The process for informal appeals of RAPs is as follows:

(1) The person appealing the decision must send a letter to the Environmental Appeals Board. The letter must briefly set forth the relevant facts.

(2) The Environmental Appeals Board has 60 days after receiving the letter to act on it.

(3) If the Environmental Appeals Board does not take action on the letter within 60 days after receiving it, the appeal shall be considered denied.

(d) This informal appeal is a prerequisite to seeking judicial review of these EPA actions.

§ 270.195 When will my RAP expire?

RAPs must be issued for a fixed term, not to exceed 10 years, although they may be renewed upon approval by the Director in fixed increments of no more than ten years. In addition, the Director must review any RAP for hazardous waste land disposal five years after the date of issuance or reissuance and you or the Director must follow the requirements for modifying your RAP as necessary to assure that you continue to comply with currently applicable requirements in RCRA sections 3004 and 3005.

§ 270.200 How may I renew my RAP if it is expiring?

If you wish to renew your expiring RAP, you must follow the process for application for and issuance of RAPs in this subpart.

§ 270.205 What happens if I have applied correctly for a RAP renewal but have not received approval by the time my old RAP expires?

If you have submitted a timely and complete application for a RAP renewal, but the Director, through no fault of yours, has not issued a new RAP with an effective date on or before the expiration date of your previous RAP, your previous RAP conditions continue in force until the effective date of your new RAP or RAP denial.

Operating Under Your RAP

§ 270.210 What records must I maintain concerning my RAP?

You are required to keep records of:

(a) All data used to complete RAP applications and any supplemental information that you submit for a period of at least 3 years from the date the application is signed; and

(b) Any operating and/or other records the Director requires you to maintain as a condition of your RAP.

§ 270.215 How are time periods in the requirements in this subpart and my RAP computed?

(a) Any time period scheduled to begin on the occurrence of an act or event must begin on the day after the act or event. (For example, if your RAP

specifies that you must close a staging pile within 180 days after the operating term for that staging pile expires, and the operating term expires on June 1, then June 2 counts as day one of your 180 days, and you would have to complete closure by November 28.)

(b) Any time period scheduled to begin before the occurrence of an act or event must be computed so that the period ends on the day before the act or event. (For example, if you are transferring ownership or operational control of your site, and wish to transfer your RAP, the new owner or operator must submit a revised RAP application no later than 90 days before the scheduled change. Therefore, if you plan to change ownership on January 1, the new owner/operator must submit the revised RAP application no later than October 3, so that the 90th day would be December 31.)

(c) If the final day of any time period falls on a weekend or legal holiday, the time period must be extended to the next working day. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. If the 30th day falls on Sunday, then you may submit your appeal by the Monday after. If the 30th day falls on July 4th, then you may submit your appeal by July 5th.)

(d) Whenever a party or interested person has the right to or is required to act within a prescribed period after the service of notice or other paper upon him by mail, 3 days must be added to the prescribed term. (For example, if you wish to appeal the Director's decision to modify your RAP, then you must petition the Environmental Appeals Board within 30 days after the Director has issued the final RAP decision. However, if the Director notifies you of his decision by mail, then you may have 33 days to petition the Environmental Appeals Board.)

§ 270.220 How may I transfer my RAP to a new owner or operator?

(a) If you wish to transfer your RAP to a new owner or operator, you must follow the requirements specified in your RAP for RAP modification to identify the new owner or operator, and incorporate any other necessary requirements. These modifications do not constitute ''significant'' modifications for purposes of § 270.170. The new owner/operator must submit a revised RAP application no later than 90 days before the scheduled change along with a written agreement containing a specific date for transfer of RAP responsibility between you and the new permittees.

(b) When a transfer of ownership or operational control occurs, you as the old owner or operator must comply with the applicable requirements in part 264, subpart H (Financial Requirements), of this chapter until the new owner or operator has demonstrated that he is complying with the requirements in that subpart. The new owner or operator must demonstrate compliance with part 264, subpart H, of this chapter within six months of the date of the change in ownership or operational control of the facility or remediation waste management site. When the new owner/operator demonstrates compliance with part 264, subpart H, of this chapter to the Director, the Director will notify you that you no longer need to comply with part 264, subpart H, of this chapter as of the date of demonstration.

§ 270.225 What must the State or EPA Region report about noncompliance with RAPs?

The State or EPA Region must report noncompliance with RAPs according to the provisions of § 270.5.

Obtaining a RAP for an Off-Site Location

§ 270.230 May I perform remediation waste management activities under a RAP at a location removed from the area where the remediation wastes originated?

(a) You may request a RAP for remediation waste management activities at a location removed from the area where the remediation wastes originated if you believe such a location would be more protective than the contaminated area or areas in close proximity.

(b) If the Director determines that an alternative location, removed from the area where the remediation waste originated, is more protective than managing remediation waste at the area of contamination or areas in close proximity, then the Director may approve a RAP for this alternative location.

(c) You must request the RAP, and the Director will approve or deny the RAP, according to the procedures and requirements in this subpart.

(d) A RAP for an alternative location must also meet the following requirements, which the Director must include in the RAP for such locations:

(1) The RAP for the alternative location must be issued to the person responsible for the cleanup from which the remediation wastes originated;

(2) The RAP is subject to the expanded public participation requirements in §§ 124.31, 124.32, and 124.33 of this chapter;

(3) The RAP is subject to the public notice requirements in § 124.10(c) of this chapter;

(4) The site permitted in the RAP may not be located within 61 meters or 200 feet of a fault which has had displacement in the Holocene time (you must demonstrate compliance with this standard through the requirements in § 270.14(b)(11)) (See definitions of terms in § 264.18(a) of this chapter);

Note to paragraph (d)(4): Sites located in political jurisdictions other than those listed in Appendix VI of Part 264 of this chapter, are assumed to be in compliance with this requirement.

(e) These alternative locations are remediation waste management sites, and retain the following benefits of remediation waste management sites:

(1) Exclusion from facility-wide corrective action under § 264.101 of this chapter; and

(2) Application of § 264.1(j) of this chapter in lieu of part 264, subparts B, C, and D, of this chapter.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

25. The authority citation for Part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

26. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * *	* *	* *	*
November 30, 1998	Hazardous Remediation Waste Management Requirements[5].	[Insert FR page numbers]	June 1, 1999.
* * *	* *	* *	*

[5] These regulations implement HSWA only to the extent that they apply to the standards for staging piles and to §§ 264.1(j) and 264.101(d) of this chapter.

27. Section 271.21 is amended by adding paragraph (h) and table 1 to the end of the section to read as follows:

§ 271.21 Procedures for revision of State programs.

* * * * *

(h) Abbreviated authorization revisions. This abbreviated procedure applies to State Program revisions for the Federal rulemakings listed in Table 1 of this section. The abbreviated procedures are as follows:

(1) An application for a revision of a State's program for the rulemakings listed in Table 1 of this section shall consist of:

(i) A statement from the State that its laws and regulations provide authority that is equivalent to, and no less stringent than, the designated minor rules or parts of rules specified in Table 1 of this section, and which includes references to the specific statutes, administrative regulations and where appropriate, judicial decisions. State statutes and regulations cited in the statement shall be lawfully adopted at the time the statement is signed and fully effective by the time the program revisions are approved; and

(ii) Copies of all applicable State statutes and regulations.

(2) Within 30 days of receipt by EPA of a State's application for final authorization to implement a rule specified in Table 1 of this section, if the Administrator determines that the application is not complete or contains errors, the Administrator shall notify the State. This notice will include a concise statement of the deficiencies which form the basis for this determination. The State will address all deficiencies and resubmit the application to EPA for review.

(3) For purposes of this section an application is considered incomplete when:

(i) Copies of applicable statutes or regulations were not included;

(ii) The statutes or regulations relied on by the State to implement the program revisions are not lawfully adopted at the time the statement is signed or fully effective by the time the program revisions are approved;

(iii) In the statement, the citations to the specific statutes, administrative regulations and where appropriate, judicial decisions are not included or incomplete; or

(iv) The State is not authorized to implement the prerequisite RCRA rules as specified in paragraph (h)(5) of this section.

(4) Within 60 days after receipt of a complete final application from a State for final authorization to implement a rule or rules specified in Table 1 of this section, the Administrator shall publish a notice of the decision to grant final authorization in accordance with the procedures for immediate final publication in paragraph (b)(3) of this section.

(5) To be eligible to use the procedure in this paragraph (h), a State must be authorized for the provisions which the rule listed in Table 1 to this section amends.

TABLE 1 TO § 271.21

Title of regulation	Promulgation date	Federal Register reference
Land Disposal Restrictions Phase II—the Universal Treatment Standards in §§ 268.40 and 268.48 of this chapter only.	September 19, 1994.	59 FR 47982

[FR Doc. 98–30269 Filed 11–27–98; 8:45 am]

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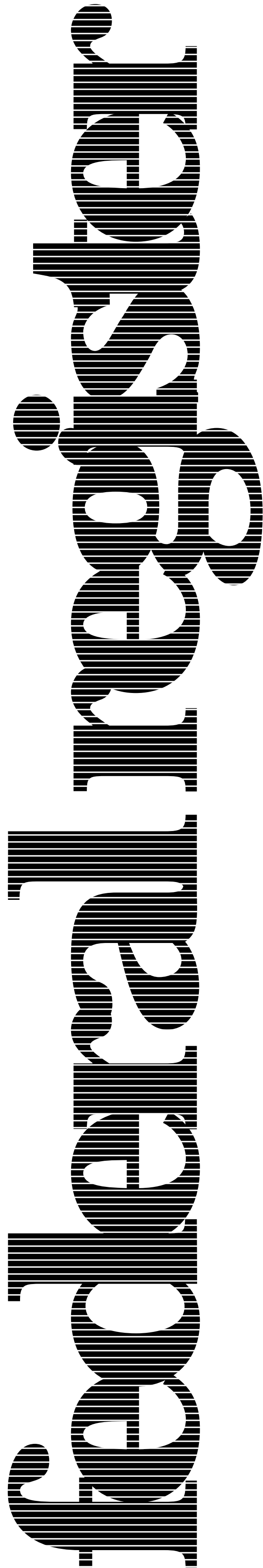


Monday
November 30, 1998

Part IV

Department of Agriculture

Forest Service

36 CFR Part 251

Special Uses; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

RIN 0596–AB35

Special Uses

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting amendments to regulations governing the use and occupancy of National Forest System lands to streamline and make more efficient the process for obtaining special use authorizations, to provide for the use of one-time payments for easements as presently used in the market place, to limit certain liability requirements to amounts determined by a risk assessment, to clarify definitions of certain terms, and to clarify requirements related to renewal of existing special use authorizations. The intent is to improve service and reduce costs to proponents and applicants for and holders of National Forest System special use authorizations, to expedite decisionmaking, and to permit more ''user-friendly'' administration of such authorizations by removing certain requirements deemed unnecessary and outdated.

EFFECTIVE DATE: This rule is effective December 30, 1998.

FOR FURTHER INFORMATION CONTACT: Randall Karstaedt, Lands Staff, (202) 205–1256, or Ken Karkula, Recreation, Heritage, and Wilderness Resources Management Staff, (202) 205–1426, Forest Service, USDA.

SUPPLEMENTARY INFORMATION:

Background

Approximately 72,000 special use authorizations are in effect on National Forest System lands. These uses cover a variety of activities, ranging from individual private uses to large-scale commercial facilities, and public services. Examples of authorized land uses include road rights-of-way serving private residences, apiaries, domestic water supply conveyance systems, telephone and electric service rights-of-way, oil and gas pipeline rights-of-way, hydroelectric power generating facilities, ski areas, resorts, marinas, municipal sewage treatment plants, and public parks and playgrounds. The agency receives about 6,000 applications for special use authorizations each year. These applications are subjected to a rigorous, time-consuming, and costly review and decisionmaking process in determining whether to approve or reject them.

There are 14 statutes authorizing special uses on National Forest System lands. These authorities, which are listed at 36 CFR 251.53, include statutes of broad application, such as the Mineral Leasing Act of 1920, the Federal Land Policy and Management Act of 1976, and the Bankhead-Jones Farm Tenant Act of 1937, as well as statutes focusing on a specific use of Federal lands, such as the National Forest Ski Area Permit Act. The basic authority of the Secretary of Agriculture to regulate the occupancy and use of National Forest System lands is the Act of June 4, 1897 (16 U.S.C. 551).

Additionally, the Independent Offices Appropriations Act of 1952, as amended, (31 U.S.C 9701) and the Office of Management and Budget (OMB) Circular A–25 require holders of authorizations to pay for the use of the Federal land. The Federal Land Policy and Management Act of 1976 requires holders of rights-of-way authorizations to pay annually, in advance, the fair market value of the use of the Federal land and its resources. The 1976 Act also provides that fees may be waived, in whole or in part, under specified conditions when equitable and in the public interest.

Requirements of the National Environmental Policy Act, the Wilderness Act of 1964, the Endangered Species Act, the Archaeological Resources Protection Act of 1979, additional requirements of the Federal Land Policy and Management Act of 1976, and Executive Order Nos. 11990 (Floodplains) and 11998 (Wetlands) also bear directly on the issuance of special use authorizations. These directives and statutory authorities require extensive analysis and documentation of the impacts of use and occupancy on a wide array of environmental, cultural, and historical resources. The practical effect of these requirements has been to greatly lengthen the time required and the costs involved in processing applications for special use authorizations or reissuing authorizations for existing uses. The time and cost impacts weigh on both the Forest Service and applicants and holders of authorizations. The significance of these impacts has been a principal factor in the development of these amendments to the special use regulations.

On August 14, 1992, the Forest Service published a proposed rule (57 FR 36618) and sought public comment to amend regulations governing the use and occupancy of National Forest System lands at 36 CFR Part 251, subpart B. Such use and occupancy is authorized by ''special use authorizations,'' which include permits, term permits, easements, licenses, and leases. The proposed revisions had several purposes: to (1) streamline the application process for special use authorizations, (2) enhance efficiency of review of special use proposals, (3) authorize one-time payments of rental fees for certain types of special use authorizations, (4) limit certain liability requirements, (5) clarify certain definitions, and (6) clarify direction on renewal of special use authorizations.

A total of 25 responses were received on the proposed rule. Identity of the respondents is as follows:

Respondent category	Number	Percent
Individuals	3	12
Electric Utilities	6	24
Oil & Gas Companies	4	16
Telephone Company	1	4
Permit Holder Associations	8	32
Government Agencies	3	12
Total	25	100

Readers are advised that a major revision to this subpart was made subsequent to the August 14, 1992, proposed rule. On August 30, 1995, the agency adopted a final rule revising those portions of subpart B governing noncommercial group uses and noncommercial distribution of printed material within the National Forest System (60 FR 45293). The 1995 revisions, referred to in this rulemaking as the ''noncommercial group use regulations,'' ensure that the authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion. They did not directly impact the concurrent effort to streamline and make more efficient the process for obtaining special use authorizations. However, the 1995 revisions added new provisions and revised existing text which required redesignation of several sections and paragraphs throughout the subpart. In the narrative which follows, the terms ''current rules'' or ''current regulations'' refer to the regulations at 36 CFR part 251, subpart B, as published in the current volume of Title 36 of the Code of Federal Regulations, revised as of July 1, 1997.

General Comments

Respondents to the 1992 streamlining proposed rule generally supported the Forest Service's effort to streamline the permit application process and to make the administration of special use

authorizations more user friendly, although most asked that the final rule clarify that the revisions apply to new permits only. These respondents felt that the proposed regulations would reduce unnecessary paperwork burdens on applicants and, thereby, reduce costs for both the applicant and the agency. Indicating that the proposed revisions would improve the agency's performance, a number of respondents cited examples of the poor quality of service, the lack of experienced field personnel, and the length of time taken by the agency's field offices in responding to and processing special use permit applications. Further, these respondents urged the agency to quickly adopt final regulations that implement statutory authorities that have been available to the agency for several years, particularly amendments made to the Federal Land Policy and Management Act of 1976 by the Act of October 27, 1986.

Several respondents suggested that the agency institute a land and resource planning procedure or incorporate into its Forest planning activity a process that would pre-authorize certain types of land uses and thus avoid or minimize time consuming and costly analysis of individual applications for authorizations. These respondents suggested the process could be built around standards and guidelines in a national forest's land and resource management plan (forest plan). One respondent suggested the U.S. Army Corps of Engineers Nationwide Permit Program could serve as a model for this process. The types of special uses that would be subject to this pre-authorization process are described by the respondents as routine activities serving the public, such as electric and telephone rights-of-way.

Three respondents expressed concern that the agency's efforts to improve its administration of special use authorizations and make those regulations more user friendly will not be successful unless and until funding for this activity is dramatically improved. These respondents pointed out that the lack of adequate funding at the field office level is the biggest single factor responsible for poor service and delays in processing applications experienced by permit applicants.

The Department of the Interior (DOI) urged that Forest Service regulations for permitting and administering uses on National Forest System lands be more compatible with those of the land-managing agencies in the Department of the Interior, particularly the Bureau of Land Management (BLM). Because both the Forest Service and the BLM derive much of their authority for administering land uses from the Federal Land Policy and Management Act of 1976, the DOI believes any regulations of the two agencies should be very similar. Further, the DOI urged a coordinated effort to review and revise regulations promulgated under the 1976 Act.

The DOI also expressed concern that the proposed delay in consideration of the environmental effects of the proposed use could result in environmentally unsound projects passing screens only to be rejected in later stages of development after substantial time and investment have been made by the agency and the proponent. In the same context, the DOI suggested that notification of adjacent land-managing agencies should be made earlier in the application review process so that the concerns of the affected agencies could be made known sooner.

The U.S. Small Business Administration advised the Forest Service that the proposed rule was not in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612). That Act requires Federal Government agencies promulgating rules to describe the impact of the rulemaking on small entities through preparation of a regulatory flexibility analysis. Despite the agency's acknowledgment that the proposed rule would have a beneficial impact on a substantial number of small entities, the U.S. Small Business Administration stated that the aforementioned analysis must nevertheless be prepared.

Response to the General Comments. The Forest Service and the Department are pleased that most respondents generally viewed the proposed rule as a positive step toward improving the administration of special use authorizations. The agency is aware that its performance in responding to applications and administering existing authorizations often is inadequate and its service to permit applicants and holders—its "customers"—needs to be significantly improved. The Department is also mindful of the President's direction to improve service to the public. Executive Order No. 12866, dated September 30, 1993, directed agencies to reform and make more efficient their regulatory processes. The Forest Service initiated this effort with the goal of streamlining and making more user friendly its special use regulations and will, through the adoption of a final rule, ensure that this goal is met in part. Since beginning this particular rulemaking, the Forest Service has undertaken a major project to re-engineer special uses administration. A team of agency employees is currently at work to implement the re-engineering recommendations, which are focused on agency procedures. Implementation of these recommendations may lead to further changes in rules and will certainly result in additional revisions in agency directives governing special uses administration. Any revisions to rules or directives will be fully coordinated with the revisions made by these final rules.

The agency agrees with the suggestion that broad guidance for considering applications for special use authorizations be made a part of its land and resource planning processes. This guidance would allow decisions to be made on routine permit activities without further analysis. Such a procedure would require that the requisite environmental documentation be made in the Forest plan and that the documentation be specific enough to cover the proposed use.

However, the agency believes that such a procedure can be implemented without additional regulatory guidance. The forest planning process described in the agency's administrative manual (Forest Service Manual, Chapter 1920) prescribes the format and content of each Forest plan. The initial plans were completed in the early to mid 1980's and currently remain in effect. Almost without exception, these plans lack any detail regarding authorizations for use and occupancy of National Forest System lands. The life of these plans is generally 10–15 years and most of the plans for the 123 National Forest planning units of the agency are now or soon will be undergoing revision. The Forest Service recognizes the need to address land use and occupancy generally in the forest plans. The forest plan revision process offers the opportunity for units to consider the need for more specific guidance on land uses. The Department further notes that public participation is a fundamental ingredient in the preparation and revision of Forest plans. Thus, this will allow holders of or applicants for authorizations to participate directly in the development of the plan and, thereby, identify specific opportunities for addressing land use authorizations at the Forest level.

The Department fully agrees with respondents' concerns that sufficient funding for administration of special use authorizations must be considered along with revisions to the regulations. The Forest Service is addressing this matter in a variety of ways. However, the Department must emphasize that the budgeting and appropriation process

takes a much larger view of the management of National Forest System lands, balancing the funding of a wide variety of Forest Service programs and activities in the context of constraints imposed on the Department of Agriculture and the Federal Government as a whole. Thus, while the Department agrees that improving funding for this activity is desirable, it cannot unilaterally support respondents' urging of greater funding for the administration of special use authorizations. Instead, the Forest Service will seek recognition in its budget requests of the importance of efficient and cost-effective administration of land use authorizations and service to its customers.

The Forest Service concurs with the DOI suggestion that regulations governing administration of land uses on Federal lands should be more consistent. The Forest Service and the BLM are taking actions to bring their regulations into closer agreement, albeit in the context of individual uses. The two agencies have agreed that more comprehensive action is needed and are undertaking joint examination and coordination of regulations. While this action was prompted in part by the publication of the proposed special use regulations, additional motivation has been provided by the National Performance Review effort and Executive Order No. 12866. To the extent that statutory authorities permit, the two agencies have embarked on a course to adopt common regulatory approaches to land use and occupancy.

The Department acknowledges the DOI concern that the effort to streamline the permit application process may allow environmentally unsound projects to be initially considered, only to be rejected later after substantial investment of time and money by proponents and the agency. The Forest Service has examined the ''screening'' process set forth in the proposed regulations (§ 251.54(a)) and made appropriate revisions to respond to the DOI concern.

With regard to the DOI's suggestion that Federal agencies managing lands adjacent to the National Forest System land being considered for a land use authorization be notified sooner in the application process so that those agencies' views can be made known, the Department suggests that such notification may counteract the intent to streamline the application process by inserting a step that is unnecessary. Analysis of an application generally requires, as part of environmental documentation, a ''scoping'' of the proposal to learn of the concerns of other agencies and the public. This process of advising the public and affected parties of a proposal provides timely notice to adjacent landowners, whether public or private, and allows those landowners to bring forth any concerns.

The Department's response to the U.S. Small Business Administration's advice that a regulatory flexibility analysis be prepared is found at the conclusion of this supplementary information statement.

Specific Comments on Proposed Rule and Response

The following analysis of and response to comments on the proposed rule is organized by the section of the current special use regulations.

Section 251.51 Definitions. The proposed rule combined definitions found in other sections of the current regulations into this section and added four new definitions intended to improve the implementation of the regulations.

Comment. Three respondents were concerned that the proposed definition for ''termination'' would be confusing, because the new definition is a reversal of past usage and incorporates the expiration of a permit and ending of a permitted use. They noted that termination of a permit occurred by the direct action of the authorized officer and not by the expiration of a stated period of time.

Response. New definitions for revocation and termination are proposed because over the years the two terms have come to be used interchangeably, even though they have distinctly different usages. This lack of precision has caused confusion among holders of permits and agency personnel. The purpose in adding these two definitions to the regulations is to differentiate between cessation of a special use permit by action of an authorized officer (revocation) and cessation of a special use permit under its own terms without any action by an authorized officer (termination). Terms of a permit which would result in termination could include: (1) Expiration of the term authorized, and (2) transfer of the improvement to another party. Nothing further is intended. Adoption of these definitions will in no way bear upon reissuance of a permit. There will be no change in policy for reissuing a permit that terminates as a result of the application of these definitions. Consequently, the definition of ''termination'' will remain as defined in the proposed rule, but it has been clarified by listing examples of permit terms and conditions that would cause a permit to terminate.

Comment. Three respondents commented that the revised definition for ''revocation'' must be revised to limit use of the ''reasons in the public interest'' standard to special use permits only, not to easements, for consistency with existing laws and regulations.

Response. Provisions for termination, revocation, and suspension of an easement are contained in § 251.60 (g) and (h). Therefore, the Department has not included easements under the revocation and suspension provisions in § 251.60(a)(2)(i). Moreover, the Department disagrees with the respondents concerning leases. Leases may be revoked for reasons that are in the public interest, and leases are compensable according to their terms as defined in § 251.51. Therefore, leases are not exempted from revocation and suspension criteria in § 251.60(a)(2)(i). To avoid redundancy in the regulations, the definition does not repeat criteria for revoking an authorization that are listed in § 251.60(a)(2)(i), but the provision has been amended to require that revocation in the public interest must be for reasons that are ''specific and compelling.''

Comment. One respondent suggested that the definition of ''sound business management principle'' be expanded to include ''an accepted *industry* practice or method * * *,'' as this would clarify that one individual's or company's practice or method is not necessarily more correct than others.

Response. The Department agrees with this suggestion and has made this change in the final rule.

Other Changes. In preparing this final rule, the Department discovered that the proposed definition of the word ''lease'' was not consistent with the use of that word in the private rental market, and as proposed could have led to confusion when applied in the field. Specifically, a lease conveys a conditional and limited interest in land that may be revocable and compensable according to its terms. Accordingly, the final rule reflects this clarification in the definition of the word ''lease.''

In analyzing the comments on and the adequacy of the definitions included in § 251.51, the Department considered whether or not to include a definition for the word ''license.'' This term is often used in connection with the word ''permit'' and may be confused with the words ''easement'' and ''lease.'' A separate definition could imply the two terms have separate meaning and, thus, that separate rights in the land may be conveyed, when, in fact, both permits and licenses convey only a privilege to

use and occupy the land, rather than an interest in the land. Therefore, a definition of the term ''license'' is not included in the final rule.

In preparing this final rule, the Department also concluded that the goal of clarifying when environmental analysis is conducted on proposals for special use authorizations would be enhanced by defining the term ''NEPA procedures'' as used in several places in the rule. Thus, the term has been added to the definitions included in § 251.51 and refers to the agency's written compliance with the National Environmental Policy Act.

Section 251.54 Special use application procedure and authorization. This section of the current regulations describes the procedures by which the agency accepts and acts upon applications for special use authorizations. This section includes direction on holding advance discussions with a proponent before an application is submitted, where to submit applications, the content of applications, and agency response to applications. The current regulations make it difficult to deny an application for a special use authorization that does not meet certain minimum requirements imposed by law or regulation as they lack specific direction guiding the consideration of and decision on applications for authorizations. The current regulations also result in unnecessary paperwork and expense being imposed on both the proponent and the agency.

The proposed rule would expand this section, adding step-by-step procedures that enumerate required activities and outcomes through the proposal, application, and authorization phases. Specifically, the proposed rule would establish a two-level screening process before a formal application is accepted by the agency.

This section of the proposed rule received the most attention from respondents, and consideration of these responses has resulted in extensive revision of this section in the final rule.

General Comments. Several respondents expressed concern that the new procedures described in this section could be interpreted to apply to reissuance of authorizations for existing uses as well as to issuance of new authorizations. While endorsing the initial screening process, several respondents also cautioned that any efficiencies that might be gained through this process could be lost, unless the agency imposed a time limit on itself, such as 30 days, in which to complete the proposed screening process and respond to the proponent.

Some respondents observed that the organization of this section was difficult to follow in the proposed rule, noting that the sequence of events described by the rule did not seem to correspond with the actions taken by the agency's field officers when receiving and processing requests for special use authorizations.

Response. This section applies only to applications for new or substantially changed uses. Renewal of special use authorizations is covered in § 251.64. To remove the confusion, the title of this section has been revised in the final rule to read ''Proposal and application requirements and procedures.''

The Department agrees that the initial screening process should be completed as expeditiously as possible. However, because of the number, variety, and complexity of special use proposals, it does not believe a specified time limit should be imposed on the screening process. The Forest Service policy on customer service in combination with proponent expression of interest should provide necessary encouragement to field offices to act promptly on proposals. Thus, the final rule does not specify a time limit on the proposal screening process.

The Department agrees with those respondents who found the organization of this section hard to follow. In considering the respondents' comments, and in revising the section to respond to those comments and to its own concerns, the Department determined that an overall reorganization of the section was needed. The intent of the reorganization is to make the process that defines the agency's consideration of proposals and applications more logical and sequential, and fully consistent with regulations implementing the procedural provisions of the National Environmental Policy Act at 40 CFR Parts 1500–1508 and guidance issued by the Council of Environmental Quality.

Readers are advised that the reorganization of this section requires that a clearer distinction be made between actions by proponents and actions by the agency during the process by which a request for an authorization is considered. Hence, a ''proponent'' makes a ''proposal'' for a special use authorization. That proposal is subjected to the screening processes described in paragraph (e). Upon meeting the criteria in the initial and second-level screenings, the proposal becomes an ''application'' and the proponent becomes an ''applicant.''

Because of the extensiveness of the revisions to the proposed rule, readers are advised that § 251.54 has been presented in the final rule in its entirety, thus including provisions not revised in the proposed rule. Presentation of the entire section, therefore, includes amendments made by the adoption in 1995 of the noncommercial group use regulations. The following table displays the provisions of § 251.54 in the final rule with the same provisions as located in the proposed rule:

Final rule	Proposed rule
(a) Early notice	(a)(1) (Untitled).
(b) Filing proposals	(b) Filing applications.
(c) Rights of proponents	(d) Rights of applicants.
(d) Proposal content	(e) Application content.
(1) Proponent identification	(1) Applicant identification.
(2) Required information.	
(i) Noncommercial group uses.	
(ii) All other special uses.	
(3) Technical and financial capability	(2) Technical and financial capability.
(4) Project description	(3) Project description.
(5) Additional information	(4) Additional information.
(e) Pre-application actions	(f) Receipt and denial of applications for uses.
(1) Initial screening	(a) Initial screening.
(2) Results of initial screening.	
(3) Guidance and information to proponents	(a)(3) (Untitled).
(4) Confidentiality	(a)(4) (Untitled).
(5) Second-level screening of proposed uses	(i) Response to applications for all other special uses.

Final rule	Proposed rule
(6) NEPA compliance for second-level screening process.	
(f) Special requirements for certain proposals	(h) Special application procedures.
(1) Oil and gas pipeline rights-of-way	(1) Oil and gas pipeline rights-of-way.
(2) Electric power transmission lines 66 KV or over	(2) Electric power transmission lines 66 KV or over.
(3) Major development	(3) Major resort development.
(g) Application processing and response.	
(1) Acceptance of applications	(f)(1).
(2) Processing applications	(g) Processing applications, and (c) Coordination of applications.
(3) Response to applications for non-commercial group uses.	
(4) Response to all other applications	(j) Action taken on accepted applications.
(5) Authorization of a special use	(k) Authorization and reauthorization of a special use.

Comments on specific provisions of § 251.54 as proposed and the Departmental response follow.

Section 251.54, Paragraph (a)—Initial screening. In a general comment on this paragraph of the proposed rule, a number of respondents stated a concern that the initial screening process would add another step to the already lengthy process of evaluating an application, which would place an additional burden on the applicant. Respondents suggested that paragraph (a)(1) should make clear that the initial screening begins only with a *written* notice or application.

Response. The Department does not agree that the screening process would impose additional burdens on a proponent. In fact, the screening process is expected to reduce the burden by preventing unsuitable or inconsistent projects from proceeding to full-scale applications. The screening process would require only a very simple abstract of the proposed use and would not require a lengthy analysis by the authorized officer. The purpose of the screening is to eliminate those proposed uses which are obviously unsuitable on National Forest System (NFS) lands. The initial screening process appears as paragraph (e)(1) of § 251.54 in the final rule.

The Department also does not agree that any proposal for use of NFS lands that would trigger the screening process must be in writing. Currently, many requests to use National Forest System lands begin with a verbal request by a proponent to the District Ranger's staff. The final rule has been clarified to state that a written notice is not required until a proposal has cleared the initial and second-level screening processes and is ready to be considered as an application for a special use authorization. However, for more complex special use proposals, proponents may be advised to prepare a brief written summary to ensure that the Forest Service has a full understanding of the scope of the proposal.

Readers are also advised that the final rule makes a technical modification to language adopted by the noncommercial group use amendments to this subpart on August 30, 1995, to ensure consistency with the overall intent of this revision to subpart B. The proposed rule would have established nine minimum requirements (or criteria) to be applied at the initial screening stage. These were listed in paragraph (a)(1) of the proposed rule. Comments received on these requirements and the Department's response follow.

Minimum requirement (i). A suggestion was made that this criterion, requiring all special uses to be consistent with laws, regulations, orders, and policies, should state that the agency has an obligation to protect the environmental integrity of the area proposed for a special use. Another respondent commented that under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) determines whether proposed hydroelectric uses on NFS lands are consistent and that FERC's authority should not be prejudiced by the agency authorizing official.

Response. The Forest Service obligation to protect the environment is adequately covered, since laws pertaining to environmental protection are included in the laws, regulations, and policies referred to in this criterion. All special uses must comply with environmental law. Thus, this suggested revision has not been adopted in the final rule.

FERC does not have sole responsibility for determining the consistency of hydroelectric uses on NFS lands. As part of its responsibility under Section 4(e) of the Federal Power Act, the Forest Service must make a consistency determination on proposed hydroelectric uses. The FERC determines whether the proposed hydroelectric project should be licensed, based in part on the consistency determination by the Forest Service. That consistency determination is based on the direction found in the applicable forest plan, as set forth in minimum requirement (ii). Therefore, the text of this requirement (a)(1)(i) is unchanged in the final rule, but now appears at paragraph (e)(1)(i).

Minimum requirement (ii). No comments were received recommending revision or change to this criterion, which would require the proposed use to be consistent with the applicable forest plan for the area. The intent of this requirement is to capture the provision in section 6(i) of the National Forest Management Act of 1976 (90 Stat. 2955). The agency did streamline the language of this requirement from that in the proposed rule but made no substantive change in the text of the requirement, which now appears at paragraph (e)(1)(ii) in the final rule.

Minimum requirement (iii). A respondent suggested that this criterion, which would require that the proposed use not pose a serious or substantial risk to public health and safety, include a list of examples which are considered acceptable from a health and safety standpoint.

Response. The Department agrees that examples would clarify the intent of this criterion, but believes that it would be more appropriate to include such examples in the Forest Service's internal procedural handbooks. This possibility will be explored following adoption of this final rule. Further, the agency believes that the phrase "serious and substantial risk" will limit the discretion of the authorized officer to findings of genuine risk to public health and safety. Therefore, no changes were made to this requirement in the final rule, which appears at paragraph (e)(1)(iii).

Minimum requirement (iv). Several respondents stated that utility companies seeking rights-of-way across NFS lands should be exempted from this criterion, which would cause rejection of a proposed use if it created an exclusive or perpetual right of use or occupancy. The respondents contended

that a perpetual right of use is the basis under which all utility service is provided. Another respondent asked that the language be revised to ensure that applications for permanent easements, such as those authorized by the Forest Roads and Trails Act of 1964, would be accepted. Finally, a respondent suggested that the language of the proposed rule could be interpreted to mean that a proponent, after having an application approved and expending capital to implement the use, would not have an exclusive right to receive the proceeds resulting from the use.

Response. The Department recognizes the concerns of these respondents but rejects the suggestions that utility companies should be exempted from this criterion because they must have an exclusive and perpetual use of Federal land. To grant such use would, in effect, grant fee title to Federal land to an authorization holder. Longstanding Congressional and Executive Branch policy dictates that authorizations to use NFS lands cannot grant a permit holder an exclusive or perpetual right of occupancy in lands owned by the public. The direction contained in this requirement is no different from that contained in the current regulations at § 251.55(b). Similarly, the respondent's assertion that a proponent without exclusive right would not have the exclusive right to receive the proceeds from the use is without merit since such rights are provided by the terms of an easement or lease. Accordingly, the recommendation that the criterion allow automatic acceptance of an application for a permanent road easement is not adopted. Such applications should be subjected to the same screening as all other applications. The language of this requirement remains unchanged in the final rule and appears at paragraph (e)(1)(iv).

Minimum requirement (v). Three comments were received on this criterion, which would prohibit approval of proposed uses that would unreasonably conflict or interfere with administrative use by the agency, with other existing uses, or with use of adjacent non-NFS lands. These respondents were concerned that this criterion was overly broad and would lead to abuses by local agency officials when reviewing applications and recommended that clarifying guidelines be added. Additionally, the respondents suggested that proposals that may have an effect on adjacent non-NFS lands, whether unreasonable or not, should prompt local Forest Service officials to inform adjacent landowners, including land-managing government agencies, of the proposal and possible impacts on adjoining lands.

Response. The criterion is limited to unreasonable conflicts or interference; some conflict or interference with existing uses would still be allowed. Therefore, the Department does not agree that additional guidance is needed in the rule and has retained the text of this requirement in the final rule (paragraph (e)(1)(v)) without change. The appropriate place for more detailed, cautionary guidance is in the agency's administrative Manual and Handbooks. Upon adoption of this final rule, the applicable Manual and Handbooks will be reviewed to determine if there is a need for additional guidance to prevent overly broad application of this requirement.

Minimum requirement (vi). This criterion stated that proposals will not be considered if the proponent has outstanding debts owed to the Forest Service under a prior authorization. Seven respondents suggested that an exception to this criterion be allowed if the delinquent debt is the result of an administrative appeal decision, a fee review, or similar legal or administrative process. By contrast, another respondent suggested that the authorized officer check with the BLM to determine if a proponent owes any debts to that agency. Finally, a respondent suggested that the criterion not be interpreted to include obligations of a proponent who is a cooperator with the agency through a road cost-share and use agreement.

Response. Without this requirement, a proponent's bad faith under a prior authorization could not be used to disqualify the applicant from receiving another authorization. To reward an applicant with a delinquent debt with a new authorization is not a prudent management practice and would be unacceptable on privately owned lands. The Department agrees with the suggestion that debts owed the Government as a result of an administrative appeal or similar legal process, including that involving a review of annual rental fees, should not be considered in applying this criterion and has revised the rule to specify that debts owed as a result of decisions in administrative appeals or fee reviews will not be included under this criterion. However, such debts must be current and the proponent in good standing on a payment schedule.

While the Department agrees that debts owed other Federal agencies are important, requiring authorized officers to check with other agencies could lengthen the time involved in the initial screening process. Indebtedness in general, and delinquent debts owed to the Federal government in particular, should be revealed at the second-level screening process.

Finally, road cost-share and use agreements are not special use authorizations; outstanding obligations existing under these agreements are not considered debts for the purpose of applying this criterion. Therefore, this requirement does not need to be revised to respond to this concern. For this reason, no changes were made to this provision in the final rule, which appears as paragraph (e)(1)(vi).

Minimum requirement (vii). This criterion would prohibit consideration of a proposed use that involves gambling or providing sexually oriented services. No comments were received on this requirement which has been long-standing agency administrative policy. It is retained in the final rule without change as paragraph (e)(1)(vii).

Minimum requirement (viii). This criterion would codify longstanding agency policy to prohibit consideration of a proposed use if it involves military or paramilitary training or exercises by private organizations or individuals, unless the training is federally funded. No comments were received on this criterion, and it is retained without change in the final rule as paragraph (e)(1)(viii).

Minimum requirement (ix). This criterion would prohibit consideration of a proposed use if it involves disposal of solid waste or storage or disposal of radioactive or other hazardous material. Two responses were received on this criterion. One respondent suggested that the term "hazardous material" be changed to "hazardous substances" to conform to the definitions in the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act. The other respondent suggested that the reference to "storage" of hazardous materials be deleted because it would prohibit storage at an authorized use area of crude oil and chemicals necessary to maintain oil and gas production.

Response. The Department agrees that the terms used in this rule should conform to definitions set forth in other Federal statutes and has, therefore, revised the wording of this requirement in the final rule. The Department also agrees that materials to be used in conducting activities at the use area, even though considered hazardous, should not be cause to reject a proposed use. Since controls prescribed by other Federal statutes should ensure that proper care is taken, the term "storage" has not been included in this

requirement in the final rule, which appears as paragraph (e)(1)(ix) in the final rule.

Other Changes. No comments were received on paragraphs (a)(2) and (3) of § 251.54 of the proposed rule.

Paragraph (a)(2) stated that if a proposed use did not meet all the minimum requirements, as set forth in paragraphs (a)(1)(i)–(ix), it would not be considered further and the applicant would be notified of this action in writing. Paragraph (a)(2) does not appear in the current regulation. The text of paragraph (a)(2) is included in the final rule as paragraph (e)(2) and it has been revised to state that the authorized officer would not have to notify in writing a proponent who makes an oral request that the proposal will not receive further consideration. Requests for special use authorizations are frequently made orally to local agency officials, and, as such, would not require a written response.

Paragraph (a)(3) of the proposed rule stated that if a proposed use appears to meet the minimum requirements, the authorized officer would provide the applicant with information relevant to obtaining a special use authorization. The content of paragraph (a)(3) of the proposed rule was unchanged from that already in effect, § 251.54(a)(1)–(8). However, when reviewing paragraph (a)(3) of the proposed rule in the context of the overall public review and comment, the Department determined that the phrase ''appear to'' might suggest the possibility of arbitrary action and, therefore, removed the words in the final rule. This material appears at paragraphs (e)(3)(i)–(viii) in the final rule.

In addition, minor editing changes have been made to paragraphs (e)(2) and (3) in the final rule for clarity and to incorporate changed terminology.

Section 251.54, Paragraph (a)(4). This paragraph of the proposed rule would have directed the agency, if requested by the proponent, and to the extent reasonable and authorized by law, not to disclose project and program information revealed during pre-application consideration and screening. Respondents stated their concern that this provision could prevent public scrutiny of a proposal, particularly one involving large commercial projects, thus giving the proponent an inside track on approval.

Response. The Department disagrees that maintaining confidentiality, to the extent reasonable and authorized by law, at the pre-application stage of a proposal having commercial application would preclude public scrutiny. Confidentiality would be maintained only prior to the agency's acceptance of a formal written application that has cleared the screening processes, and only to the extent it is reasonable and authorized by law. Once an application is accepted and initial review determines that an environmental assessment or environmental impact statement must be prepared, law and agency policy require public disclosure in the review and approval process. Applications for relatively minor proposals which a review indicates can be categorically excluded from documentation in an environmental assessment or environmental impact statement under current rules, generally do not include the public review and disclosure of information envisioned by this paragraph.

This paragraph appears in the final rule at paragraph (e)(4) under the heading ''Confidentiality.'' The text has been revised in the final rule to substitute the word ''shall'' for ''will'' in the direction regarding the disclosure of project and program information, and the paragraph has also been edited to improve clarity of the provision's intent.

Section 251.54,Paragraph (b)—Filing applications. Paragraph (b) of current § 251.54 gives direction on where and with whom applications for authorizations should be filed. This paragraph appears at § 251.54(b), entitled ''Filing proposals,'' in this final rule. The text has been revised to conform to changed terminology; namely, to change ''application'' to ''proposal'' and ''applicant'' to ''proponent,'' or the plural forms of these words.

Section 251.54, Paragraph (c)—Coordination of applications. The proposed change to this paragraph would have eliminated the requirement that proponents of projects requiring use of National Forest System (NFS) lands who must obtain a license or permit from a State, county, or other Federal agencies for that project must simultaneously file an application with the Forest Service. The proposed rule stated that the Forest Service may require in its authorization that the applicant obtain licenses, permits, certificates, or similar approval documents from other entities or agencies.

Comment. Four respondents suggested that this provision describes a requirement in an authorization and thus should not be included in this section describing the proposal and application process. Instead, the respondents recommended that the provision be placed in § 251.56(a).

Response. The Department agrees that revision and relocation of this provision is appropriate and has placed it at § 251.56(a)(2) in the final rule. This action will benefit the applicant by not requiring that other approval documents be obtained until a decision is made on the application to use NFS lands. However, the provision has been revised in the final rule to make clear to holders that such licenses, permits, certificates, or other approval documents must be obtained prior to commencement of any activities on NFS lands.

No revision was proposed to paragraph (d), ''Rights of applicants,'' of section 251.54 of the regulations. While the text remains unchanged, this paragraph has been redesignated as paragraph (c), ''Rights of proponents,'' in the final rule.

Section 251.54, Paragraph (e)—Application content. This paragraph of the proposed rule defined the minimum content of an application for a special use authorization. In the proposed rule, the agency proposed revising paragraph (e)(3), ''Project description,'' to make it consistent with the proposed addition which addresses the issuance of planning permits for major commercial developments. Paragraph (e)(4) in the current rules also required an applicant to describe the impact of the proposed use on the environment. However, to streamline the proposal/application process, the proposed rule would have moved this requirement to paragraph (j), which described actions to be taken by the agency after an application has been accepted.

Comment. Some respondents were concerned with the removal from paragraph (e)(3) of the requirement that applicants address the proposed uses's impact on the environment, and with a companion provision in paragraph (e)(5) that the application include a plan for protection and rehabilitation of the environment during the life of the proposed project. These respondents believe early consideration of environmental effects is essential to ensure that environmentally unacceptable projects do not proceed to the application stage and recommended that all of the provisions in paragraphs (e)(3) and (4) be retained.

Response. Paragraph (e) was extensively revised by the noncommercial group use amendments of August 30, 1995 (60 FR 45294). As revised by those amendments, this paragraph distinguishes between noncommercial group uses (paragraph (e)(2)(i)) and all other special uses (paragraph (e)(2)(ii)), in describing the information required for an application for a special use authorization. This final rule redesignates this paragraph as (d), retitles it as ''Proposal content,'' and

makes additional changes. Changes in terminology are made throughout paragraph (d) to be consistent with changes made earlier in this section. Paragraph (e)(3), ''Technical and financial capability,'' is redesignated as (d)(3), but is unchanged in the final rule. Paragraph (e)(4), ''Project description,'' has been redesignated as (d)(4) in the final rule and revised to make the exception in the first sentence applicable to all major developments, rather than just to ''major resort development.'' This revision is consistent with the revision to paragraph (f)(3) of the final rule which describes the requirements for requesting authorizations for major developments.

The Department recognizes respondents' concern with paragraph (e)(5), ''Environmental protection plan.'' It emphasizes that it does not seek to avoid consideration of environmental effects when evaluating proposals. However, the removal of environmental analysis requirements in this paragraph is consistent with the overall objective of streamlining the regulation. It will save the proponent and the agency the time and expense of conducting an environmental analysis on proposals that would be rejected on other grounds. For example, the agency has found that applications often are not approved because the proponent lacks sufficient technical or financial capability to operate the proposal successfully, or because the Forest plan for the area precludes the proposed use. Readers are reminded that the procedure proposed in the rule to screen proposals is intended to screen out those proposals which do not meet minimum requirements/criteria before they become proposals as defined by the National Environmental Policy Act (NEPA) and its implementing regulations, which would require environmental analysis and documentation. Once an application has been accepted by the agency, analysis of the proposed use's environmental effects must be considered (§ 251.54(g)(2) of the final rule).

Section 251.54, Paragraph (f)—Receipt and denial of applications for special uses. This paragraph of the proposed regulation, which has been paragraph (i) in the previous regulations describing agency response to applications, would mark the point in processing requests for special use authorizations at which the proposal is considered received by the agency.

Comment. Respondents suggested that a time limit be set for completion of the application analysis set forth in paragraph (f)(2): 30 days was suggested. One respondent stated that proposals for hydroelectric projects, which are also governed by the Federal Power Act, would not be subject to the criteria listed in paragraph (f)(2), since the ultimate approval of these projects lies with the FERC. A respondent suggested that subjecting an application for reissuance of an authorization for an existing use to this second-level screening seemed unfair and inconsistent with due process requirements.

Response. The Department does not agree that a rigid time limit should be applied to analysis of applications. The wide variation in scope and complexity of applications requires flexibility in response time. Thus, while the Department recognizes the appropriateness of prompt action, it will not impose time limits on its decisionmaking responsibility. Also, the Forest Service has affirmative responsibility with respect to applications for hydroelectric projects. Section 4(e) of the Federal Power Act requires the agency to provide the FERC a determination of whether the project is consistent with the purpose for which the National Forest is established. This statutory requirement, coupled with the agency's internal policy on hydroelectric projects, serves as sufficient guidance in recognizing the unique actions necessary for these projects.

The screening/analysis process described in paragraph (f)(2) (now (e)(5) in the final rule) is tiered to the initial screening process and thus applies only to applications for new authorizations, not renewals for existing uses, which are covered by § 251.64. Therefore, the criteria in proposed paragraph (f)(2) have been retained in the final rule as paragraph (e)(5)(i)–(v) since this second-level screening is intended to apply to proposals that have met the criteria of the initial screening and which would be subjected to additional scrutiny and consideration. This shift presents the agency's process for considering requests for special use authorizations in a more logical sequence than that of the proposed rule.

No comments were received on proposed paragraphs (f)(1) and (3) of this section of the proposed rule. Proposed paragraph (f)(1) of the proposed rule was a new provision stating that an application that passes the initial screening set forth in paragraph (a) would be received but not accepted by the agency for consideration. The paragraph appears in the final rule as (g)(1), ''Acceptance of applications,'' but has been revised to state that a proposal meeting the criteria of both the initial and second-level screening processes (paragraphs (e)(1) and (e)(5)) would be accepted by the agency as a formal application for the use. If the request does not meet the criteria for the screening processes, it is not accepted as a formal application. Proposed paragraph (f)(3), also a new provision, stated that the decision to deny a special use application based on the factors listed in paragraph (f)(2) would not constitute a ''proposal'' as defined by Council on Environmental Quality regulations and thus would not require the agency to conduct an environmental analysis. This paragraph applies to proposals which have been screened under the second-level screening process. It is retained as paragraph (e)(6) in the final rule, but edited to clarify its intent.

Other comments relevant to Section 251.54(f).

Four respondents objected to the removal of an unnumbered paragraph which has been at the end of § 251.54(i) requiring the authorized officer, when denying an application under two conditions, to offer the applicant an alternative site or time for the proposed use. These respondents believed that removal of this provision would alter the agency's obligation to consider alternatives to the proposed use under current Council on Environmental Quality regulations and the agency's own policies for environmental analysis and documentation. The respondents urged that the provision be retained to provide applicants additional flexibility in obtaining authorizations to use NFS lands. However, one respondent supported the elimination of this provision, stating that it avoided unnecessary duplication in the application process and thus would be helpful to applicants.

Response. The removal of the provision requiring that an alternative site be offered when denying an application does not circumvent NEPA requirements to consider reasonable alternatives to a proposed action when documenting environmental impacts. The Forest Service believes that it has no affirmative duty to provide alternative sites for a proposed use when a use is denied because it is inconsistent or incompatible with the purposes for which the lands are managed, or because the applicant is not qualified. Therefore, this provision has not been included in the final rule.

This determination on the offering of an alternative site for special use authorizations in general differs from that in the recently adopted revisions to this subpart concerning noncommercial group uses and noncommercial

distribution of printed material. Constitutional requirements concerning ample alternatives for communication of information dictated that an alternative site provision be included in the noncommercial group use regulations.

Section 251.54, Paragraph (g)—Processing Applications. Paragraph (g) of the proposed rule, which has until now appeared as paragraph (f) of § 251.54, describes the procedure to be followed when an application is accepted for processing. The proposed rule revised this paragraph to be consistent with revisions made elsewhere in the regulations. Central to these revisions was the removal of those provisions in paragraph (f)(1) that required the authorized officer to complete environmental documentation requirements, consult with other agencies and interested parties, hold public meetings, and take other actions necessary to evaluate an application. These provisions were moved to paragraph (i) of the proposed rule to achieve the consistency sought by the overall revision to subpart B.

A new paragraph (3) was proposed to provide guidance on processing applications for planning permits, principally those for major resort developments. This addition was tied to a revision in paragraph (h) of this section describing major commercial developments. This proposed new provision would limit application information to that needed to make a decision on issuance of a planning permit; that is, a permit authorizing only minor disturbance of the proposed site in order to gather information and data to prepare an application for the development project which would be submitted later. If the planning resulted in an application to develop the project, the detailed information and requisite environmental documentation would be completed.

There were no comments received on proposed paragraph (g). Nevertheless, as noted in the discussion of and comments on proposed paragraph (f), this paragraph has been revised extensively in the final rule to conform to the overall reorganization of this section. In particular, it should be noted that this paragraph was reformatted to accommodate the August 30, 1995, noncommercial group use regulations which are redesignated as paragraph (g)(3) in the final rule.

In the final rule, paragraph (g)(2) requires the authorized officer to evaluate formal applications for special use authorizations, including evaluation of effects on the environment, and, where required by NEPA procedures, to provide notice to the public with an opportunity to comment on the application. This provision appeared in paragraph (j) of the proposed rule. Paragraph (g)(2) represents the point of the special use proposal/application process at which the proposal becomes an application as defined by 40 CFR 1508.23, and thus requires environmental analysis and documentation. In the final rule, paragraph (g)(2) also incorporates provisions previously found elsewhere in the rule regarding notice to and consideration of findings of other Federal, State, and local government agencies concerning the application.

Section 251.54, Paragraph (h)—Special application procedures. This paragraph of the proposed rule described special requirements and procedures for handling applications for oil and gas pipelines and large electric transmission line rights-of-way. In the proposal, a third type of special use requiring special procedures when applying for an authorization would have been added—that is, proponents for a major resort development on NFS lands could apply for a 5-year planning permit.

This provision would substantially change the way proposals for major commercial recreation development would be considered. Previously, an application for this use would trigger full-scale economic and environmental analysis—before the proponent has fully defined the project and prepared a master development plan. Once a project is fully defined in a development plan, a project different from that described in the application often results, thus requiring reconsideration of the original analysis and decision and sometimes requiring a supplemental environmental impact statement. This supplemental analysis can impose considerable additional cost on the proponent and the agency. Under the proposed rule, a proponent who passed the initial screening criteria would apply for a planning permit. This application would be subjected to the established procedures for review and decision by the agency. Approval of the planning permit application would allow the proponent to complete the master development plan, which would then become the basis for an application for an authorization to construct and operate the major resort development. The second application would be subject to separate analysis and decision.

Comment. Respondents generally endorsed the proposed 2-part permitting process for major commercial recreation development. However, they urged that the process be available for all large-scale commercial developments. The respondents suggested that oil and gas pipelines or hydroelectric projects, for example, would qualify for this procedure. The respondents believed that this procedure would further reduce the regulatory burden on both the applicant and the agency.

Response. The Department agrees that the proposed planning permit for major resort developments should be available for all types of major developments on NFS lands and has adopted this change in the final rule. Further, the Department believes that a fixed term of five years for the planning permit may not be adequate for some types of major development, which are subject to separate licensing/approval actions by other Federal and State agencies. Accordingly, the final rule states that planning permits may be issued for up to 10 years.

Paragraph (h) of the proposed rule has been redesignated as (f) in the final rule, with the new provision concerning major developments appearing as paragraph (f)(3). This redesignation places this paragraph ahead of the regulations on processing applications; thus it occupies a more logical location in the sequence of processing requests for authorizations. The title of paragraph (f) has been revised to read ''Special requirements for certain proposals,'' to more accurately reflect the paragraph's purpose.

Section 251.54, Paragraph (j)—Action taken on accepted applications. This provision of the proposed rule would require the authorized officer to evaluate the effects of the accepted application, including effects on the environment, and to make a decision on whether to approve or disapprove the application. The proposed paragraph described the three types of action that could be taken by the authorized officer on an accepted application: (1) approval; (2) denial; or (3) approval with modification. By specifying the range of decisions available, this provision would enable the agency to define more clearly in the environmental documentation the purpose of and need for the project to which the agency is responding.

Comment. Respondents stated that the agency needed to describe in greater detail the review and analysis process that culminates in a decision on the application. For example, respondents suggested that this paragraph address the backgrounds, or areas of expertise, of those who will review the application and the regulations, policies, and agency procedures that will apply to the review. This suggestion was offered in the belief that a more complete decision record is needed. Respondents also

urged the agency to include a time limit in this paragraph for making a decision on an application. If a decision was not made within the time specified, the application would be considered approved under standard permit terms and conditions.

One respondent suggested that due to the magnitude of the revisions proposed in its comments on this and other sections of the proposed rule, the agency should reissue proposed regulations and provide for an additional comment period.

Two respondents objected to the sentence in this paragraph that would allow several similar special use applications to be approved in one decision and its documentation. These respondents felt that an application's approval could be delayed by incomplete applications for similar projects of others and suggested that this provision be amended to require that a combined decision be made only with the concurrence of the applicants. Another respondent believed that all applications need to be considered individually to give adjacent land managers adequate opportunity to consider a proposed use.

Response. Expanding paragraph (j) to describe in detail the process for reaching a decision on an application is not necessary or appropriate to a regulation. While no change will be made in this regard in the final regulations, upon adoption of final regulations, the Forest Service will review its Manual and Handbook direction to determine if revision is necessary to improve consistent interpretation among field units.

It also would be inappropriate to place a time limit on the authorized officer to render a decision on an accepted application. Such a provision could prevent the authorized officer from reaching a sound decision, particularly where unforeseen events, such as an extended period of forest fire emergency, prevent the authorized officer from performing the administrative duties involved in evaluating a special use application. Thus, this suggestion is not adopted in the final regulation.

Similarly, it is not appropriate to reissue proposed regulations reflecting the Department's response to respondents' suggestions. Comments of all respondents were carefully considered and their appropriateness and applicability determined. Acknowledgment of the Department's response to those comments, as explained in this supplementary information section, is considered to be sufficient explanation of the rulemaking decision.

The Department recognizes respondents' concerns about combining applications into one decision. However, it is the agency's intent that uses that could be grouped under one decision would be homogeneous and have relatively minor impact. Applications for complex proposals could not be grouped due to the variations in impacts and the resulting variation in the depth of analysis required for each proposal. An example of how this provision could be used occurs in the Pacific Northwest, where a large number of applications are received each year to place bee hives temporarily on NFS lands where timber harvest activities have recently occurred. While the hives may be scattered over an area of several hundred acres, the impact of each hive is essentially the same as that of all others. Thus, a single decision could authorize placement of all hives. Therefore, the Department has decided to retain the language of this provision as § 251.54(g)(4) in the final rule, but has added clarifying guidance limiting the application of this provision to those uses having minor impacts.

The Department disagrees with the respondent who believes each application must be considered individually to ensure that it does not adversely affect management of adjoining land. Even if several applications were acted upon in one decision, the impacts of each proposed use, including those on adjacent lands, would have to be considered. Further, where an environmental assessment or environmental impact statement is prepared, the public, including the adjacent landowner, would have the opportunity to be involved in the analysis of the proposed use.

Paragraph (j) has been relocated in the final rule as part of the overall reorganization of this section to achieve a more logical sequential process. A portion of the first sentence of proposed paragraph (j) concerning evaluation of the proposed use has been moved to paragraph (g)(2), while the remainder of the paragraph has been moved to paragraph (g)(4) in the final rule. These provisions have been edited in the final regulation to improve clarity.

As part of the overall reorganization of § 251.54, the rules applicable to noncommercial group uses are now codified as paragraph (g)(3). A provision previously in paragraph (f)(5) stating that applications for noncommercial group uses are automatically granted unless denied within 48 hours of receipt has been moved to paragraph (g)(3) in the final rule since the provision concerns the response to rather than the processing of the application. Also, the text of paragraph (g)(3) has been revised to correct citations to other parts of this subpart which have been revised in the final rule and to correct incorrect uses of the word ''shall''; however, the Department emphasizes that no substantive changes have been made.

Section 251.54, Paragraph (k)—Authorization and reauthorization of a special use. This proposed paragraph would govern issuance of a special use authorization after a decision is made to authorize the use. The use thus authorized may be reauthorized as long as it remains consistent with the original decision. However, if new information becomes available, or new circumstances have developed, new analysis must support a decision to reauthorize the use.

Comment. Eight respondents commented on paragraph (k). These respondents suggested that the direction regarding reauthorizing uses is not appropriate since § 251.54 applies only to new authorizations. Respondents also stated that the language on reauthorizations does not provide sufficient protection from an arbitrary decision not to reissue an authorization. One respondent suggested that reauthorizations should be allowed at any time, not just upon expiration of the authorization.

Response. The Department agrees that this language concerning reauthorization of the special use authorization is out of place. Thus, the second sentence of proposed paragraph (k) has been moved to § 251.64(a) in the final rule, which deals with renewals of special use authorizations. The heading of § 251.54 has been revised to make clear that this section deals solely with the special use proposal and application process. Further, the agency believes that placement of the language concerning reauthorization in § 251.64 responds to respondent concerns that decisions disallowing reauthorization may be arbitrary. The language in § 251.64(a), as modified by the final rule, prescribes additional requirements that must be observed when reauthorization is considered. These requirements will help prevent arbitrary decisions.

The adoption of the noncommercial group use regulations on August 30, 1995, to this subpart did not affect proposed paragraph (k). However, the first sentence of proposed paragraph (k) has been redesignated as (g)(5) in the final rule in keeping with the placement of all actions related to processing and responding to applications in paragraph

(g)—Application processing and response.

Because of the complexity of the screening and application processes, the Department has prepared Exhibit 1 to display the entire special use authorization approval process defined in § 251.54. Exhibit 1 is set out at the end of this rule but will not appear in the Code of Federal Regulations.

Section 251.56 Terms and conditions. This section of the current regulations sets forth the terms and conditions to be included in each special use authorization. Paragraph (d) prescribes the liability requirements to be imposed on a holder of an authorization. The proposed rule would have revised only paragraph (d)(2) of this section. The revision was intended to clarify that the maximum limit of liability for certain high hazard authorized uses would be determined by an assessment of the risk associated with the use rather than an amount set by the authorized officer. This is usually $1,000,000, the maximum liability amount previously established by the regulations at § 251.56(d)(2).

Comment. Most respondents commenting on this revision agreed with the proposal to require risk assessments in order to establish liability limits for a specific use. Several respondents suggested factors to be included in the risk assessment, such as the holder's past performance and the historical frequency of incidents where negligence associated with the holder's use and occupancy has contributed to the liability of the Forest Service. Some respondents proposed that holders of authorizations with a lower risk of accidents and negative impacts on the land should not pay the same fee as holders of authorizations with a higher risk use.

Three respondents objected to the current provision, for which revision was not proposed, that requires holders of authorizations for high-risk uses to be liable for all injury, loss, or damage without regard to the holder's negligence. These respondents stated that since the holder does not have exclusive use of the lands and cannot control the activities of others on those lands, the holder should not be liable for the actions of third parties.

Finally, one respondent recommended that the regulations be revised to allow the agency to obtain restitution in excess of the amount established by a risk assessment, or $1,000,000 as authorized by law, should special circumstances arise or actual costs incurred by the agency exceed the established amount. This respondent further suggested that the regulations provide that damages paid to the agency under the liability provision be made available to adjacent landowners who suffer losses as a result of a holder's activities on Federal lands.

Response. Factors to be included in a risk assessment to determine the maximum limit of liability should be identified, in order to avoid standardizing the liability and thus creating inequities among holders of authorizations involving high-risk uses. However, this type of information is more appropriately included in the Forest Service's internal directive system; namely, the Special Uses Handbook (FSH 2709.11). The agency will add direction on how to conduct liability risk assessment to the Special Uses Handbook. Factors to be included in this risk assessment will recognize uses having less risk of damage to National Forest System resources and improvements.

The Department does not agree with those respondents who object to placing liability for all injury, loss, or damage on holders without regard to the holders' negligence. Placing the burden of risk on the holder of the authorization rather than the landowner is an established practice in transactions involving private lands and is justified as a reasonable requirement to insure against potential liability from any cause. Therefore, no change has been made to this provision in the final rule.

State laws governing rules of ordinary negligence allow the agency to litigate to seek damages in excess of an amount established by law or regulation for strict liability. These State laws offer sufficient protection to the Federal Government, and these same laws allow adjacent landowners the opportunity to seek damages from the holder, instead of claiming a share of damages received by the Forest Service. Thus, no change was made in the final regulations to respond to this comment.

Paragraph (a) of § 251.56 has been reformatted and slightly revised in the final rule to clarify the content of a special use authorization. A new paragraph (a)(2) has been added to this section, which states that authorizations may be conditioned to require approvals from other government agencies. This paragraph was previously at § 251.54(c).

Section 251.57 Rental fees. This section of the regulations currently requires that holders of authorizations pay an annual rental fee in advance based on the fair market value of the rights and privileges authorized. In addition, this section prescribes the conditions under which all or a part of those annual fees may be waived and the circumstances under which additional fees may be assessed.

The proposed rule incorporated into paragraph (a) of the regulation an amendment made to the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1701 *et seq.*) by the Act of October 27, 1986 (Pub. L. 99–545). That amendment allows the Secretary of Agriculture to require payment of fees either annually or for more than one year at a time. The 1986 amendment also gives private individuals (holders of authorizations who are not commercial or governmental entities and are acting in an individual capacity) whose annual rental fees are greater than $100 the option of paying annually or for more than one year at a time.

The supplementary information section for the proposed rule explained that in accordance with Title V of FLPMA, the agency is authorized to issue easements and leases, instead of annual permits, when authorizing certain types of special uses, particularly those involving large-scale commercial operations but that this authority had not been implemented in agency practice. (See the definitions for "easement" and "lease" in § 251.51.) The agency can provide an extended authorization period by using easements or leases to authorize commercial land uses, such as communication sites, utility rights-of-way, and roads. In the case of easements, the commonly accepted practice in the private marketplace is to receive a onetime payment when the easement is negotiated that recognizes the fair market value of the rights and privileges granted, as determined by appraisal or other sound business management practices. The proposed rule indicated that if the Forest Service uses this approach when authorizing use of NFS lands by an easement, considerable cost-savings could accrue to the agency and to the holder of the authorization through avoidance of annual administrative costs and the costs of permit renewal activities. It is also possible (although uncommon in the private market) that the acquisition of an easement could be accomplished by periodic payments, in which case the purchase value would be amortized over an agreed-upon timeframe, and an appropriate interest rate on the unpaid balance would be applied.

Comment. Eleven respondents commented on this section. Five respondents suggested that the option of annual versus multi-year payments not be limited to private individuals, suggesting that partnerships and corporations be given this option as

well. Five respondents supported the agency's proposal to allow use of easements and leases, but suggested that the conversion of permits be made at the request of the holder rather than upon expiration of the permit. Some respondents expressed concern that allowing a one-time payment would not allow the agency to keep pace with inflation, thus preventing receipt of fair market value. Finally, some respondents asked how the proposed revisions to this section would be implemented by the agency, suggesting that modification of the agency's directive system would be necessary.

Response. The provision in the proposed rule allowing private individuals the option of paying fees annually or for more than one year at a time if their annual fees are more than $100 precisely tracks with the language in the 1986 amendment to FLPMA. Thus, since the law limits the revision to private individuals, the suggestion to allow partnerships, corporations, and governmental entities the same privilege in the final rule cannot be adopted. However, the language of proposed paragraph (a)(2) of this section has been revised in the final rule to simplify and clarify the provision.

Allowing immediate use of easements and leases would be desirable; however, the workload imposed on the agency's field staff should this occur could be overwhelming. Thus, the agency will revise its current administrative direction to indicate that conversion to easements and leases will be made as permits expire, or as mutually agreed upon between the holder and the authorized officer, in order to spread out the workload of conversion. Also, it should be noted that many of the authorizations that would be affected by this provision can be terminated annually by mutual agreement of the agency and the holder, thus accomplishing what has been suggested by the respondents.

The Department disagrees with those respondents who suggest that the effects of inflation should be a part of the fee calculation process when providing for a one-time payment of fees. The fair market value of an easement is indicated by comparable transactions in the private market place. The agency assumes that inflation is considered by the grantor in determining the value of the easement in the same manner that the additional rights granted are recognized in determining value. For example, an easement could convey additional rights to the holder, such as tenure, transferability, and compensation in the event of termination. In addition, the holder could treat the easement as a capital asset, thereby gaining favorable financial treatment. The value of these additional rights would be realized in increased fees, providing increased returns to the Treasury. Thus, a one-time payment can represent fair market value for the entire term of the authorization, and no loss to the Government will occur. Upon adoption of this final rule, the agency's directives will be amended to reflect this regulatory revision.

The proposed regulation would have removed paragraph (g) of § 251.57. Subsequently redesignated as paragraph (h) by the 1995 noncommercial group use rule, this paragraph provides special authority to the Supervisor of the Mark Twain National Forest to waive fees under certain specified conditions. This provision was added to the regulations to test a procedure to reduce costs to the agency and contained an expiration date of December 31, 1990. Thus, the provision is no longer in effect and should be removed from the section. No comments were received on the removal of this paragraph, and no additional information has come to light bearing on this provision. Therefore, this provision is removed by adoption of this final rule.

Section 251.59 Transfer of special use privileges. This section sets forth the requirements for transferring a special use authorization from the current holder to a new holder. No change was proposed to this section in the 1992 proposed rule. However, as a result of its review of public comments and the overall analysis of subpart B, the Department has determined that this section contains incorrect and misleading requirements. Specifically, the language of this section can be interpreted to contradict itself by stating in the first sentence that a permit may be transferred and, then, by stating in the last sentence that, if the holder through transfer of the authorized improvements ceases to be the owner, the permit is subject to termination.

Section 504(c) of FLPMA (90 Stat. 2778) provides discretionary authority to the agency (delegated through the Secretary of Agriculture) to specify the terms and conditions applicable to authorizations it grants. The Department's longstanding position has been and remains that, with the exception of easements, an authorization itself has no value. To allow transfer of the authorization would simply imply that it is a valuable asset to the owner of the improvements. Accordingly, the Forest Service requires as a provision of the authorizing document that new owners of improvements covered by a special use authorization must first obtain a new authorization. Therefore, except for certain types of easements and leases, the agency does not actually transfer an authorization when the authorized improvements are sold or otherwise transferred between parties. Rather, upon a change of ownership, the agency deems the original authorization terminated and issues a new authorization to the new owner of the improvements upon a determination that the new owner is eligible to hold a special use authorization.

Therefore, the agency has revised the title and the text of this section to remove the current ambiguity and to reflect more accurately its purpose and intent. In the final rule, the title reads "Transfer of authorized improvements." The text of the section has been reorganized and edited for precision and clarity. It now states that a special use authorization terminates when the holder of the authorization ceases to be the owner of the authorized improvements. A new owner of the improvements may be issued an authorization upon applying for and receiving approval from the authorized officer.

The Department considers this change to be a technical correction that reflects longstanding policy and practice and that it has no substantial effect on administration of current special use authorizations.

Section 251.60 Termination, revocation, and suspension. This section of the regulation prescribes the conditions under which a special use authorization may be suspended, terminated, or revoked. Revisions to paragraphs (b), (e), (f), and (h) of this section were proposed to be consistent with proposed definitions of these terms in § 251.51. Revision to paragraphs (g) and (i) of this section was necessary to correct identification of regulations pertaining to administrative appeals of decisions relating to special use authorizations.

Comment. Five respondents commented on the proposed revisions to this section. These respondents noted that the use of the word "termination" in paragraph (a) implies an action by the authorized officer, which is inconsistent with the proposed definition in § 251.51. One respondent recommended that the proposed revision require the authorized officer to follow agency policy and procedures when decisions to terminate, revoke, or suspend a permit are under consideration. Another respondent recommended that decisions to suspend or revoke a permit not be delegated to agency officials below the

Regional Forester. Two respondents suggested that the on-site review set forth in paragraph (f), proposed to be conducted within 10 days following the request of the holder when a permit is suspended, is too long a period for public utilities such as hydroelectric facilities or electric or gas transmission lines. These respondents suggested that the review be conducted within 24 hours of a suspension.

One respondent suggested that the proposed regulation be revised to require that all authorizations issued to holders providing public utilities must be renewed as long as the holder is in compliance with all laws and regulations affecting the authorization. One respondent suggested that the proposed definition for ''termination'' would require review of all related laws, regulations, and policies and revision of many individual permits to make them conform to the proposed definition. As a result, the agency would face a major increase in regulatory burden and costs.

Response. Readers are advised that the adoption of the noncommercial group use amendments on August 30, 1995, resulted in extensive revision to paragraphs (a) and (b) of § 251.60. The amendments, in specifying the grounds for termination, revocation, and suspension of special use authorizations, distinguished between noncommercial group uses (paragraph (a)(1)) and all other special uses (paragraph (a)(2)). In responding to comments to this section of the proposed rule, the agency was required to take special consideration of the August 30, 1995, amendments. The revisions also caused paragraph (b), as amended in 1995, to be reorganized to be consistent with paragraph (a). The revision of paragraphs (a) and (b) of this section resulted in the elimination in the final rule of paragraph (g), concerning appeals of termination, revocation, and suspension decisions by an authorized officer. This provision has been incorporated into both paragraphs (a) and (b).

The Department agrees that the language of paragraph (a) of the proposed regulations (previously paragraph (a)(2)) was inconsistent with the new definition for ''termination'' in § 251.51 and has revised this paragraph to remove the inconsistency. The agency disagrees that additional language should be added in the final rule to ensure that authorized officers follow policy and procedures when considering decisions to terminate, revoke, or suspend permits. The delegation of authority to agency officials carries with it the responsibility to follow agency policies and procedures; therefore, no additional regulatory guidance is necessary. The suggestion that decisions to suspend or revoke permits not be delegated below the Regional Forester has not been adopted. Decisions by authorized officers below the Regional Forester are reviewable by line officers one level above the deciding officers under current administrative appeal regulations. The Department believes that this procedure offers sufficient protection for holders.

In response to the concern about the proposed 10-day period to review conditions leading to suspension of a permit, readers should be aware that paragraph (f) would be invoked only in an emergency to protect the public health and safety or the environment. In a normal situation where suspension of a permit is contemplated, written notice would be given and a reasonable time to cure the condition leading to the suspension would be provided. However, the Department agrees that 10 days is too long to respond in an emergency situation and has revised the provision in the final rule to provide for a 48-hour response period.

The Department disagrees with the respondent who suggested that all authorizations for utility rights-of-way must be renewed, if the holder is in compliance with applicable laws and regulations. This proposal would inappropriately restrict the actions of the authorized officer responsible for protecting and managing the NFS lands.

The Department also disagrees with the respondent who believed that the definition of the word ''termination'' would increase regulatory burden and agency costs. Upon adoption of this final rule, the agency will make necessary revision to its internal directives to ensure consistency and conformity with the regulations. Conformance of these directives with the use of the terms adopted by this rule will be a part of this effort. Thus, no change has been made to this provision in the final rule.

The agency determined during its analysis of the proposed rule and the public comments that the regulation does not clearly identify the agency official who may initiate termination, revocation, or suspension of authorizations. Thus, the final rule provides that for the purposes of section 251.60 the authorized officer is the officer who issues the authorization or that officer's successor.

In addition to the revisions and new language included in this section, the final rule also reflects some minor editing to clarify and simplify the text.

Section 251.61 Modifications. This section of the regulation describes those actions which a holder is required to undertake when it becomes necessary to modify an existing authorization and the information which the holder must supply to the authorized officer when modification becomes necessary. The proposed rule would have clarified paragraph (c) of this section, to provide that modifications to an authorization requiring the approval of the authorized officer include all activities that would impact the environment, other users, or the public, not just those involving ''maintenance or other activities.''

Three respondents were concerned that the wording of the proposed revision would apply to all activities that would impact the environment, other users, or the public, not just those activities for which modification is proposed. They suggested that the language be clarified to allow implementation of activities already approved in the permit that are not subject to modification to proceed without further approval.

Response. The Department agrees that the language of proposed paragraph (c) was overly broad. In response to respondents' concerns, the Department has revised paragraph (c) to require the holder to obtain prior approval for all *modifications* to approved uses that will impact the environment, other users, or the public.

Section 251.64 Renewals. This section of the regulation enumerates the criteria for renewing an authorization when it provides for renewal and when it does not. There were no changes proposed to this section, nor did the adoption of the noncommercial group use regulations on August 30, 1995, to this subpart, affect this section. However, the agency has revised this section to incorporate a provision moved from § 251.54(k) into paragraph (a) of this section which respondents had indicated was out of place in that section.

Section 251.65 Information collection requirements. This section of the regulation describes the requirements imposed on the agency when collecting information from applicants. The regulation sets forth in paragraph (b) the agency's estimate of the time required for a proponent/applicant to provide the information requested in an application for a special use authorization, which is estimated to range from 30 minutes for simple projects (or uses) to several months for complex ones with an average of four hours for each project (or use). There were no changes proposed to this section.

The Department notes it is no longer required to set forth the information

contained in paragraph (b) of § 251.65 concerning estimates of the information collection requirement burden. Thus, this paragraph has been removed in the final rule as a technical revision to the section. The text of former paragraph ''(a)'' is retained but as an undesignated paragraph.

Summary

This final rule responds to direction from the President to reduce the regulatory burden imposed on those entities holding or seeking to obtain authorizations to use and occupy National Forest System (NFS) lands. The current special use regulations at 36 CFR Part 251, Subpart B addresses the rights of all citizens regarding uses of National Forest System lands are protected. The regulations provide the means to protect the health and safety of the public when using the services of commercial entities authorized to use the Federal lands; ensure that the services or facilities authorized are operated in compliance with Title VI of the Civil Rights Act of 1964; and ensure that environmental safeguards are employed and that authorized uses do not have adverse environmental effects on National Forest System lands.

This final rule will retain these basic safeguards. The rule will enhance efficiency in the review of applications, the approval/denial process, and the administration of authorizations, thereby providing significant cost savings to applicants, holders, and the Federal Government. The intent of the final rule is to make the issuance and administration of special use authorizations a less cumbersome and costly process, thereby reducing the burden on that segment of the public making use of these Federal lands, improving productivity of agency employees, and streamlining operations of the agency. Screening a proposed use will permit review of the proposal before the proponent invests time and expense in providing detailed information to accompany the application or the Forest Service invests time and expense in performing a detailed evaluation of the proposed use, including an analysis of the impacts on the environment. By eliminating time-consuming and costly processing of proposals that cannot meet minimum requirements, a faster agency response on those applications that pass the initial screening would result.

The final rule also incorporates into regulation statutory authority that has been available to the Forest Service that expands its authority to administer special use authorizations. The final rule underscores that the agency may issue long-term easements instead of annual or short-term permits and that those easements may allow for a one-time fee payment rather than annual fee payments. Holders of authorizations for high-risk uses such as electric transmission lines will be subject to strict liability for damage or loss that will be determined by a risk assessment rather than a fixed dollar amount specified in regulations. Finally, the agency has made the regulations more ''user-friendly'' by clarifying certain provisions and removing unnecessary language, and carefully reorganizing the text to flow in a logical sequence.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866. To the contrary, adoption of this final rule will have positive effects on the economy by creating efficiencies for the Forest Service and special use proponents and holders. The expected benefits of this rule outweigh the expected costs to society, the rule is fashioned to maximize net benefits to society, and the rule provides clarity to the regulated community.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and it has been certified that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. Therefore, contrary to the views of the Small Business Administration, a regulatory flexibility analysis is not required. The efficiencies and cost savings to be achieved by the rule will benefit both small entities who apply for or hold special use authorizations as well as large-scale entities.

No Taking Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the rule does not pose the risk of a taking of constitutionally protected private property rights. This rule applies to the discretionary use of Federally owned land.

Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this rule on State, local, and tribal governments and the private sector. This rule does not compel the expenditure of $100 million or more by any State, local, or tribal governments or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

Civil Justice Reform Act

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. With adoption of this final rule, (1) all State and local laws and regulations that are in conflict with this final rule or which would impede its full implementation would be preempted; (2) no retroactive effect would be given to this final rule; and (3) it would not require administrative proceedings before parties may file suit in court challenging its provisions.

Environmental Impact

Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes or instructions.'' Based on consideration of the comments received and the nature and scope of this rulemaking, the Department has determined that this rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Controlling Paperwork Burdens on the Public

This rule will not result in additional paperwork not already required by law or not already approved for use. Therefore, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR 1320 do not apply.

List of Subjects in 36 CFR Part 251

Electric power, Mineral resources, National forests, Rights-of-way, and Water resources.

Therefore, for the reasons set forth in the preamble, subpart B of part 251 of title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

Subpart B—Special Uses

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

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.51, revise the definitions for ''Easement'' and ''Lease,'' and add definitions for ''NEPA procedures,'' ''Revocation,'' ''Sound business management principles,'' ''Suspension,'' and ''Termination'' in the appropriate alphabetical order to read as follows:

§ 251.51 Definitions.

* * * * *

Easement—a type of special use authorization (usually granted for linear rights-of-way) that is utilized in those situations where a conveyance of a limited and transferable interest in National Forest System land is necessary or desirable to serve or facilitate authorized long-term uses, and that may be compensable according to its terms.

* * * * *

Lease—a type of special use authorization (usually granted for uses other than linear rights-of-way) that is used when substantial capital investment is required and when conveyance of a conditional and transferable interest in National Forest System lands is necessary or desirable to serve or facilitate authorized long-term uses, and that may be revocable and compensable according to its terms.

* * * * *

NEPA procedures—the rules, policies, and procedures governing agency compliance with the National Environmental Policy Act set forth in 50 CFR parts 1500–1508, 7 CFR part 1b, Forest Service Manual Chapter 1950, and Forest Service Handbook 1909.15.

* * * * *

Revocation—the cessation of a special use authorization by action of an authorized officer before the end of the specified period of occupancy or use for reasons set forth in § 251.60(a)(1)(i), (a)(2)(i), (g), and (h) of this subpart.

* * * * *

Sound business management principles—a phrase that refers to accepted industry practices or methods of establishing fees and charges that are used or applied by the Forest Service to help establish the appropriate charge for a special use. Examples of such practices and methods include, but are not limited to, appraisals, fee schedules, competitive bidding, negotiation of fees, and application of other economic factors, such as cost efficiency, supply and demand, and administrative costs.

* * * * *

Suspension—a temporary revocation of a special use authorization.

* * * * *

Termination—the cessation of a special use authorization by operation of law or by operation of a fixed or agreed-upon condition, event, or time as specified in an authorization without the necessity for any decision or action by the authorized officer; for example, expiration of the authorized term or transfer of the authorized improvement to another party.

3. Revise § 251.54 to read as follows:

§ 251.54 Proposal and application requirements and procedures.

(a) *Early notice.* When an individual or entity proposes to occupy and use National Forest System lands, the proponent is required to contact the Forest Service office(s) responsible for the management of the affected land as early as possible in advance of the proposed use.

(b) *Filing proposals.* Proposals for special uses must be filed in writing with or presented orally to the District Ranger or Forest Supervisor having jurisdiction over the affected land (§ 200.2 of this chapter), except as follows:

(1) Proposals for projects on lands under the jurisdiction of two or more administrative units of the Forest Service may be filed at the most convenient Forest Service office having jurisdiction over part of the project, and the proponent will be notified where to direct subsequent communications;

(2) Proposals for cost-share and other road easements to be issued under § 251.53(j) must be filed in accordance with regulations in § 212.10(c) and (d) of this chapter; and

(3) Proposals for oil and gas pipeline rights-of-way crossing Federal lands under the jurisdiction of two or more Federal agencies must be filed with the State Office, Bureau of Land Management, pursuant to regulations at 43 CFR part 2882.

(c) *Rights of proponents.* A proposal to obtain a special use authorization does not grant any right or privilege to use National Forest System lands. Rights or privileges to occupy and use National Forest System lands under this subpart are conveyed only through issuance of a special use authorization.

(d) *Proposal content*—(1) *Proponent identification.* Any proponent for a special use authorization must provide the proponent's name and mailing address, and, if the proponent is not an individual, the name and address of the proponent's agent who is authorized to receive notice of actions pertaining to the proposal.

(2) *Required information*—(i) *Noncommercial group uses.* Paragraphs (d)(3) through (d)(5) of this section do not apply to proposals for noncommercial group uses. A proponent for noncommercial group uses shall provide the following:

(A) A description of the proposed activity;

(B) The location and a description of the National Forest System lands and facilities the proponent would like to use;

(C) The estimated number of participants and spectators;

(D) The starting and ending time and date of the proposed activity; and

(E) The name of the person or persons 21 years of age or older who will sign a special use authorization on behalf of the proponent.

(ii) *All other special uses.* At a minimum, proposals for special uses other than noncommercial group uses must include the information contained in paragraphs (d)(3) through (d)(5) of this section. In addition, if requested by an authorized officer, a proponent in one of the following categories must furnish the information specified for that category:

(A) If the proponent is a State or local government agency: a copy of the authorization under which the proposal is made;

(B) If the proponent is a public corporation: the statute or other authority under which it was organized;

(C) If the proponent is a Federal Government agency: the title of the agency official delegated the authority to file the proposal;

(D) If the proponent is a private corporation:

(*1*) Evidence of incorporation and its current good standing;

(*2*) If reasonably obtainable by the proponent, the name and address of each shareholder owning three percent or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote;

(*3*) The name and address of each affiliate of the entity;

(*4*) In the case of an affiliate which is controlled by the entity, the number of shares and the percentage of any class of voting stock of the affiliate that the

entity owns either directly or indirectly; or

(*5*) In the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, either directly or indirectly by the affiliate; or

(E) If the proponent is a partnership, association, or other unincorporated entity: a certified copy of the partnership agreement or other similar document, if any, creating the entity, or a certificate of good standing under the laws of the State.

(3) *Technical and financial capability.* The proponent is required to provide sufficient evidence to satisfy the authorized officer that the proponent has, or prior to commencement of construction will have, the technical and financial capability to construct, operate, maintain, and terminate the project for which an authorization is requested, and the proponent is otherwise acceptable.

(4) *Project description.* Except for requests for planning permits for a major development, a proponent must provide a project description, including maps and appropriate resource information, in sufficient detail to enable the authorized officer to determine the feasibility of a proposed project or activity, any benefits to be provided to the public, the safety of the proposal, the lands to be occupied or used, the terms and conditions to be included, and the proposal's compliance with applicable laws, regulations, and orders.

(5) *Additional information.* The authorized officer may require any other information and data necessary to determine feasibility of a project or activity proposed; compliance with applicable laws, regulations, and orders; compliance with requirements for associated clearances, certificates, permits, or licenses; and suitable terms and conditions to be included in the authorization. The authorized officer shall make requests for any additional information in writing.

(e) *Pre-application actions.* (1) *Initial screening.* Upon receipt of a request for any proposed use other than for noncommercial group use, the authorized officer shall screen the proposal to ensure that the use meets the following minimum requirements applicable to all special uses:

(i) The proposed use is consistent with the laws, regulations, orders, and policies establishing or governing National Forest System lands, with other applicable Federal law, and with applicable State and local health and sanitation laws.

(ii) The proposed use is consistent or can be made consistent with standards and guidelines in the applicable forest land and resource management plan prepared under the National Forest Management Act and 36 CFR part 219.

(iii) The proposed use will not pose a serious or substantial risk to public health or safety.

(iv) The proposed use will not create an exclusive or perpetual right of use or occupancy.

(v) The proposed use will not unreasonably conflict or interfere with administrative use by the Forest Service, other scheduled or authorized existing uses of the National Forest System, or use of adjacent non-National Forest System lands.

(vi) The proponent does not have any delinquent debt owed to the Forest Service under terms and conditions of a prior or existing authorization, unless such debt results from a decision on an administrative appeal or from a fee review and the proponent is current with the payment schedule.

(vii) The proposed use does not involve gambling or providing of sexually oriented commercial services, even if permitted under State law.

(viii) The proposed use does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded.

(ix) The proposed use does not involve disposal of solid waste or disposal of radioactive or other hazardous substances.

(2) *Results of initial screening.* Any proposed use other than a noncommercial group use that does not meet all of the minimum requirements of paragraphs (e)(1)(i)-(ix) of this section shall not receive further evaluation and processing. In such event, the authorized officer shall advise the proponent that the use does not meet the minimum requirements. If the proposal was submitted orally, the authorized officer may respond orally. If the proposal was made in writing, the authorized officer shall notify the proponent in writing that the proposed use does not meet the minimum requirements and shall simultaneously return the request.

(3) *Guidance and information to proponents.* For proposals for noncommercial group use as well as for those proposals that meet the minimum requirements of paragraphs (e)(1)(i)-(ix), the authorized officer, to the extent practicable, shall provide the proponent guidance and information on the following:

(i) Possible land use conflicts as identified by review of forest land and resource management plans, landownership records, and other readily available sources;

(ii) Proposal and application procedures and probable time requirements;

(iii) Proponent qualifications;

(iv) Applicable fees, charges, bonding, and/or security requirements;

(v) Necessary associated clearances, permits, and licenses;

(vi) Environmental and management considerations;

(vii) Special conditions; and

(viii) identification of on-the-ground investigations which will require temporary use permits.

(4) *Confidentiality.* If requested by the proponent, the authorized officer, or other Forest Service official, to the extent reasonable and authorized by law, shall hold confidential any project and program information revealed during pre-application contacts.

(5) *Second-level screening of proposed uses.* A proposal which passes the initial screening set forth in paragraph (e)(1) and for which the proponent has submitted information as required in paragraph (d)(2)(ii) of this section, proceeds to second-level screening and consideration. In order to complete this screening and consideration, the authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects. An authorized officer shall reject any proposal, including a proposal for commercial group uses, if, upon further consideration, the officer determines that:

(i) The proposed use would be inconsistent or incompatible with the purposes for which the lands are managed, or with other uses; or

(ii) The proposed use would not be in the public interest; or

(iii) The proponent is not qualified; or

(iv) The proponent does not or cannot demonstrate technical or economic feasibility of the proposed use or the financial or technical capability to undertake the use and to fully comply with the terms and conditions of the authorization; or

(v) There is no person or entity authorized to sign a special use authorization and/or there is no person or entity willing to accept responsibility for adherence to the terms and conditions of the authorization.

(6) *NEPA compliance for second-level screening process.* A request for a special use authorization that does not meet the criteria established in paragraphs (e)(5)(i) through (e)(5)(v) of this section does not constitute an agency proposal as defined in 40 CFR

1508.23 and, therefore, does not require environmental analysis and documentation.

(f) *Special requirements for certain proposals.* (1) *Oil and gas pipeline rights-of-way.* These proposals must include the citizenship of the proponent(s) and disclose the identity of its participants as follows:

(i) Citizens of another country, the laws, customs, or regulations of which deny similar or like privileges to citizens or corporations of the United States, shall not own an appreciable interest in any oil and gas pipeline right-of-way or associated permit; and

(ii) The authorized officer shall notify the House Committee on Resources and the Senate Committee on Energy and Natural Resources promptly upon receipt of a proposal for a right-of-way for a pipeline twenty-four (24) inches or more in diameter, and no right-of-way for such a pipeline shall be granted until sixty (60) days (not counting days on which the House of Representatives or the Senate has adjourned for more than three (3) days) after a notice of intention to grant the right-of-way, together with the authorized officer's detailed findings as to terms and conditions the officer proposes to impose, has been submitted to such committees, unless each committee by resolution waives the waiting period.

(2) *Electric power transmission lines 66 KV or over.* Any proposal for authority to construct and maintain a facility for the generation of electric power and energy or for the transmission or distribution of electric power and energy of 66 kilovolts or higher under this section must be referred to the Secretary of Energy for consultation.

(3) *Major development.* Proponents of a major development may submit a request for a planning permit of up to 10 years in duration. Requests for a planning permit must include the information contained in paragraphs (d)(1) through (d)(3) of this section. Upon completion of a master development plan developed under a planning permit, proponents may then submit a request for a long-term authorization to construct and operate the development. At a minimum, a request for a long-term permit for a major development must include the information contained in paragraphs (d)(1) and (d)(2)(ii) through (d)(5) of this section. Issuance of a planning permit does not prejudice approval or denial of a subsequent request for a special use permit for the development.

(g) *Application processing and response.* (1) *Acceptance of applications.* Except for proposals for noncommercial group uses, if a request does not meet the criteria of both screening processes or is subsequently denied, the proponent must be notified with a written explanation of the rejection or denial and any written proposal returned to the proponent. If a request for a proposed use meets the criteria of both the initial and second-level screening processes as described in paragraph (e) of this section, the authorized officer shall notify the proponent that the agency is prepared to accept a written formal application for a special use authorization and shall, as appropriate or necessary, provide the proponent guidance and information of the type described in paragraphs (e)(3)(i) through (e)(3)(viii) of this section.

(2) *Processing applications.* (i) Upon acceptance of an application for a special use authorization other than a planning permit, the authorized officer shall evaluate the proposed use for the requested site, including effects on the environment. The authorized officer may request such additional information as necessary to obtain a full description of the proposed use and its effects.

(ii) Federal, State, and local government agencies and the public shall receive adequate notice and an opportunity to comment upon a special use proposal accepted as a formal application in accordance with Forest Service NEPA procedures.

(iii) The authorized officer shall give due deference to the findings of another agency such as a Public Utility Commission, the Federal Regulatory Energy Commission, or the Interstate Commerce Commission in lieu of another detailed finding. If this information is already on file with the Forest Service, it need not be refiled, if reference is made to the previous filing date, place, and case number.

(iv) Applications for noncommercial group uses must be received at least 72 hours in advance of the proposed activity. Applications for noncommercial group uses shall be processed in order of receipt, and the use of a particular area shall be allocated in order of receipt of fully executed applications, subject to any relevant limitations set forth in this section.

(v) For applications for planning permits, including those issued for a major development as described in paragraph (f)(3) of this section, the authorized officer shall assess only the applicant's financial and technical qualifications and determine compliance with other applicable laws, regulations, and orders. Planning permits may be categorically excluded from documentation in an environmental assessment or environmental impact statement pursuant to Forest Service Handbook 1909.15 (36 CFR 200.4).

(3) *Response to applications for noncommercial group uses.* (i) All applications for noncommercial group uses shall be deemed granted and an authorization shall be issued for those uses pursuant to the determination as set forth below, unless applications are denied within 48 hours of receipt. Where an application for a noncommercial group use has been granted or is deemed to have been granted and an authorization has been issued under this paragraph, an authorized officer may revoke that authorization only as provided under § 251.60(a)(1)(i).

(ii) An authorized officer shall grant an application for a special use authorization for a noncommercial group use upon a determination that:

(A) Authorization of the proposed activity is not prohibited by the rules at 36 CFR part 261, subpart B, or by Federal, State, or local law unrelated to the content of expressive activity;

(B) Authorization of the proposed activity is consistent or can be made consistent with the standards and guidelines in the applicable forest land and resource management plan required under the National Forest Management Act and 36 CFR part 219;

(C) The proposed activity does not materially impact the characteristics or functions of the environmentally sensitive resources or lands identified in Forest Service Handbook 1909.15, chapter 30;

(D) The proposed activity will not delay, halt, or prevent administrative use of an area by the Forest Service or other scheduled or existing uses or activities on National Forest System lands, including but not limited to uses and activities authorized under parts 222, 223, 228, and 251 of this chapter;

(E) The proposed activity does not violate State and local public health laws and regulations as applied to the proposed site. Issues addressed by State and local public health laws and regulations as applied to the proposed site include but are not limited to:

(*1*) The sufficiency of sanitation facilities;

(*2*) The sufficiency of waste-disposal facilities;

(*3*) The availability of sufficient potable drinking water;

(*4*) The risk of disease from the physical characteristics of the proposed site or natural conditions associated with the proposed site; and

(*5*) The risk of contamination of the water supply;

(F) The proposed activity will not pose a substantial danger to public safety. Considerations of public safety must not include concerns about possible reaction to the users' identity or beliefs from non-members of the group that is seeking an authorization and shall be limited to the following:

(*1*) The potential for physical injury to other forest users from the proposed activity;

(*2*) The potential for physical injury to users from the physical characteristics of the proposed site or natural conditions associated with the proposed site;

(*3*) The potential for physical injury to users from scheduled or existing uses or activities on National Forest System lands; and

(*4*) The adequacy of ingress and egress in case of an emergency;

(G) The proposed activity does not involve military or paramilitary training or exercises by private organizations or individuals, unless such training or exercises are federally funded; and

(H) A person or persons 21 years of age or older have been designated to sign and do sign a special use authorization on behalf of the applicant.

(iii) If an authorized officer denies an application because it does not meet the criteria in paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section, the authorized officer shall notify the applicant in writing of the reasons for the denial. If an alternative time, place, or manner will allow the applicant to meet the eight evaluation criteria, an authorized officer shall offer that alternative. If an application is denied solely under paragraph (g)(3)(ii)(C) of this section and all alternatives suggested are unacceptable to the applicant, the authorized officer shall offer to have completed the requisite environmental and other analyses for the requested site. A decision to grant or deny the application for which an environmental assessment or an environmental impact statement is prepared is subject to the notice and appeal procedures at 36 CFR part 215 and shall be made within 48 hours after the decision becomes final under that appeal process. A denial of an application under paragraphs (g)(3)(ii)(A) through (g)(3)(ii)(H) of this section constitutes final agency action and is immediately subject to judicial review.

(4) *Response to all other applications.* Based on evaluation of the information provided by the applicant and other relevant information such as environmental findings, the authorized officer shall decide whether to approve the proposed use, approve the proposed use with modifications, or deny the proposed use. A group of applications for similar uses having minor environmental impacts may be evaluated with one analysis and approved in one decision.

(5) *Authorization of a special use.* Upon a decision to approve a special use or a group of similar special uses, the authorized officer may issue one or more special use authorizations as defined in § 251.51 of this subpart.

4. In § 251.56, revise paragraphs (a) and (d)(2), to read as follows:

§ 251.56 Terms and conditions.

(a) *General.* (1) Each special use authorization must contain:

(i) Terms and conditions which will:

(A) Carry out the purposes of applicable statutes and rules and regulations issued thereunder;

(B) Minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment;

(C) Require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and

(D) Require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance if those standards are more stringent than applicable Federal standards.

(ii) Such terms and conditions as the authorized officer deems necessary to:

(A) Protect Federal property and economic interests;

(B) Manage efficiently the lands subject to the use and adjacent thereto;

(C) Protect other lawful users of the lands adjacent to or occupied by such use;

(D) Protect lives and property;

(E) Protect the interests of individuals living in the general area of the use who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes;

(F) Require siting to cause the least damage to the environment, taking into consideration feasibility and other relevant factors; and

(G) Otherwise protect the public interest.

(2) Authorizations for use of National Forest System lands may be conditioned to require State, county, or other Federal agency licenses, permits, certificates, or other approval documents, such as a Federal Communication Commission license, a Federal Energy Regulatory Commission license, a State water right, or a county building permit.

* * * * *

(d) * * *

(2) Holders of special use authorizations for high risk use and occupancy, such as, but not limited to, powerlines and oil and gas pipelines, shall be held liable for all injury, loss, or damage, including fire suppression costs, caused by the holder's use or occupancy, without regard to the holder's negligence, provided that maximum liability shall be specified in the special use authorization as determined by a risk assessment, prepared in accordance with established agency procedures, but shall not exceed $1,000,000 for any one occurrence. Liability for injury, loss, or damage, including fire suppression costs, in excess of the specified maximum shall be determined by the laws governing ordinary negligence of the jurisdiction in which the damage or injury occurred.

* * * * *

5. In § 251.57, remove paragraph (h), redesignate paragraph (i) as (h), and revise paragraph (a) to read as follows:

§ 251.57 Rental fees.

(a) Except as otherwise provided in this part or when specifically authorized by the Secretary of Agriculture, special use authorizations shall require the payment in advance of an annual rental fee as determined by the authorized officer.

(1) The fee shall be based on the fair market value of the rights and privileges authorized, as determined by appraisal or other sound business management principles.

(2) Where annual fees of one hundred dollars ($100) or less are assessed, the authorized officer may require either annual payment or a payment covering more than one year at a time. If the annual fee is greater than one hundred dollars ($100), holders who are private individuals (that is, acting in an individual capacity), as opposed to those who are commercial, other corporate, or business or government entities, may, at their option, elect to make either annual payments or payments covering more than one year.

* * * * *

6. Revise § 251.59 to read as follows:

§ 251.59 Transfer of authorized improvements.

If the holder, through death, voluntary sale, transfer, or through enforcement of a valid legal proceeding or operation of law, ceases to be the owner of the authorized improvements, the authorization terminates upon change of ownership. Except for easements issued under authorities other than § 251.53(e) and leases and easements under § 251.53(l) of this subpart, the new

owner of the authorized improvements must apply for and receive a new special use authorization. The new owner must meet requirements under applicable regulations of this subpart and agree to comply with the terms and conditions of the authorization and any new terms and conditions warranted by existing or prospective circumstances.

7. Amend § 251.60 as follows:

a. Remove paragraph (g);

b. Redesignate paragraphs (h), (i), and (j) as (g), (h), and (i), respectively; and

c. Revise paragraphs (a)(2), (b), (e), (f), and newly redesignated (g), (h), and (i) to read as follows:

§ 251.60 Termination, revocation, and suspension.

(a) * * *

(2) *All other special uses.* (i) *Revocation or suspension.* An authorized officer may revoke or suspend a special use authorization for all other special uses, except an easement issued pursuant to § 251.53 (e) and (l):

(A) For noncompliance with applicable statutes, regulations, or the terms and conditions of the authorization;

(B) For failure of the holder to exercise the rights or privileges granted;

(C) With the consent of the holder; or

(D) At the discretion of the authorized officer for specific and compelling reasons in the public interest.

(ii) *Administrative review.* Except for revocation or suspension of an easement issued pursuant to § 251.53 (e) and (l) of this subpart, a suspension or revocation of a special use authorization under this paragraph is subject to administrative appeal and review in accordance with 36 CFR part 251, subpart C, of this chapter.

(iii) *Termination.* For all special uses except noncommercial group uses, a special use authorization terminates when, by its terms, a fixed or agreed-upon condition, event, or time occurs. Termination of a special use authorization under this paragraph does not involve agency action and is not subject to administrative or judicial review.

(b) For purposes of this section, the authorized officer is that person who issues the authorization or that officer's successor.

* * * * *

(e) Except when immediate suspension pursuant to paragraph (f) of this section is indicated, the authorized officer shall give the holder written notice of the grounds for suspension or revocation under paragraph (a) of this section and reasonable time to cure any noncompliance, prior to suspension or revocation pursuant to paragraph (a) of this section,

(f) Immediate suspension of a special use authorization, in whole or in part, may be required when the authorized officer deems it necessary to protect the public health or safety or the environment. In any such case, within 48 hours of a request of the holder, the superior of the authorized officer shall arrange for an on-site review of the adverse conditions with the holder. Following this review, the superior officer shall take prompt action to affirm, modify, or cancel the suspension.

(g) The authorized officer may suspend or revoke easements issued pursuant to § 251.53 (e) and (l) of this subpart under the Rules of Practice Governing Formal Adjudicatory Administrative Proceedings instituted by the Secretary under 7 CFR 1.130 through 1.151. No administrative proceeding shall be required if the easement, by its terms, provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time.

(h)(1) The Chief may revoke any easement granted under the provisions of the Act of October 13, 1964, 78 Stat. 1089, 16 U.S.C. 534:

(i) By consent of the owner of the easement;

(ii) By condemnation; or

(iii) Upon abandonment after a 5-year period of nonuse by the owner of the easement.

(2) Before any such easement is revoked for nonuse or abandonment, the owner of the easement shall be given notice and, upon the owner's request made within 60 days after receipt of the notice, an opportunity to present relevant information in accordance with the provisions of 36 CFR part 251, subpart C, of this chapter.

(i) Upon revocation or termination of a special use authorization, the holder must remove within a reasonable time the structures and improvements and shall restore the site to a condition satisfactory to the authorized officer, unless the requirement to remove structures or improvements is otherwise waived in writing or in the authorization. If the holder fails to remove the structures or improvements within a reasonable period, as determined by the authorized officer, they shall become the property of the United States, but holder shall remain liable for the costs of removal and site restoration.

8. In § 251.61, revise paragraph (c) to read as follows:

§ 251.61 Modifications.

* * * * *

(c) A holder shall obtain prior approval from the authorized officer for modifications to approved uses that involve any activity impacting the environment, other users, or the public.

9. In § 251.64, add two sentences at the end of paragraph (a) to read as follows:

§ 251.64 Renewals.

(a) * * * Special uses may be reauthorized upon expiration so long as such use remains consistent with the decision that approved the expiring special use or group of uses. If significant new information or circumstances have developed, appropriate environmental analysis must accompany the decision to reauthorize the special use.

* * * * *

10. Revise § 251.65 to read as follows:

§ 251.65 Information collection requirements.

The rules of this subpart governing special use applications (§ 251.54 and § 251.59), terms and conditions (§ 251.54), rental fees (§ 251.57), and modifications (§ 251.61) specify the information that proponents or applicants for special use authorizations or holders of existing authorizations must provide in order for an authorized officer to act on a request or administer the authorization. As such, these rules contain information requirements as defined in 5 CFR part 1320. These information requirements are assigned OMB Control Number 0596–0082.

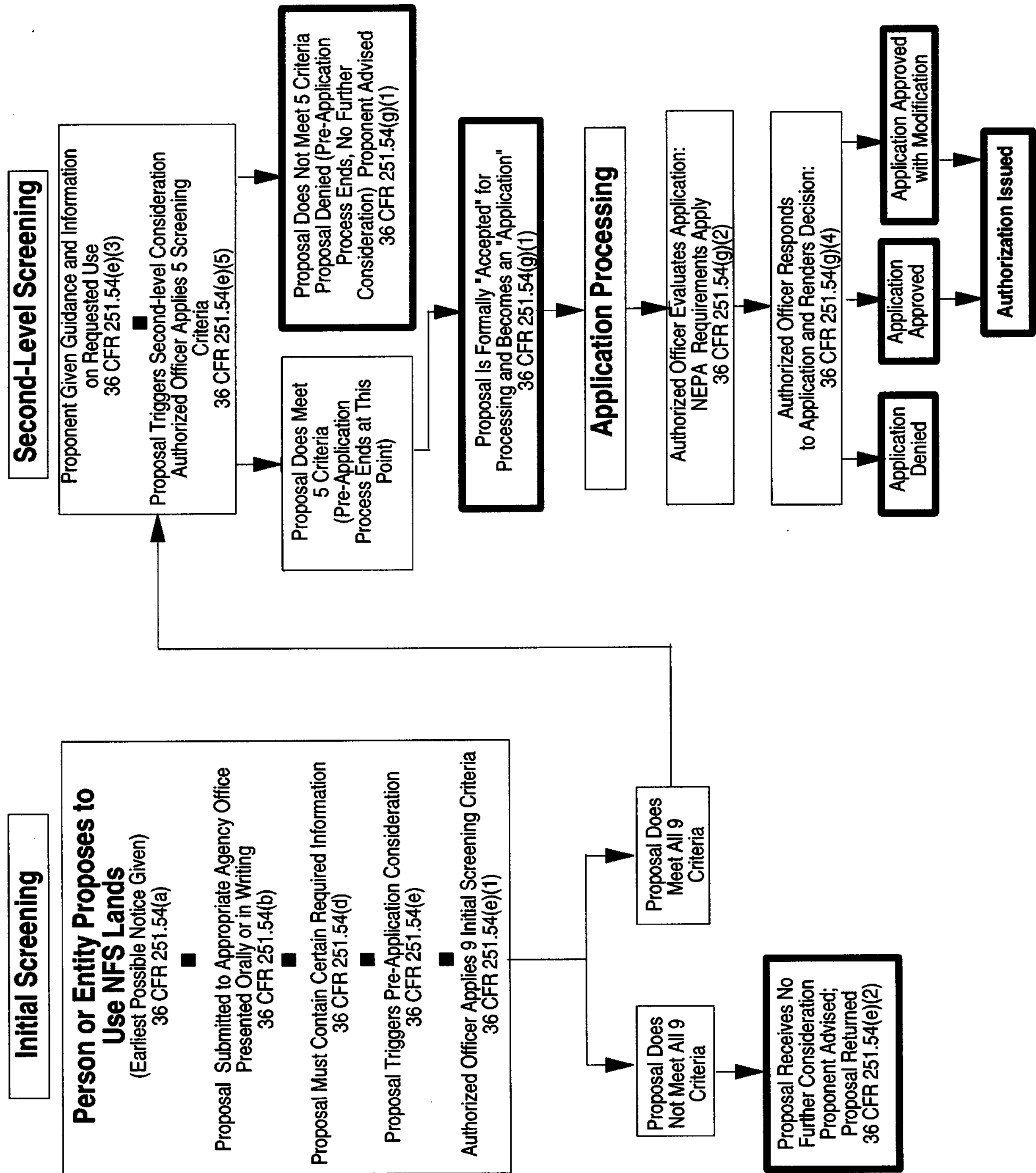
Dated: October 31, 1998.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

Note: The following exhibit will not appear in the Code of Federal Regulations.

BILLING CODE 3410–11–P



[FR Doc. 98–31564 Filed 11–30–98; 8:45 am]

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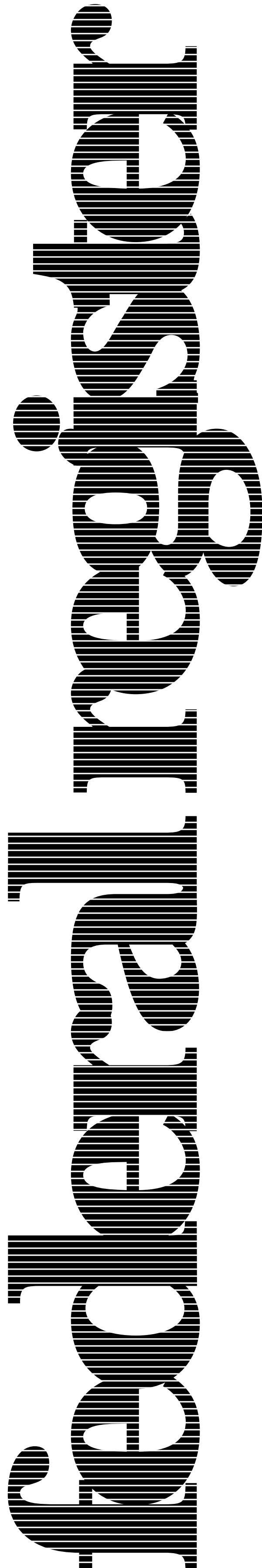

Monday
November 30, 1998

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation for Cincinnati/Northern Kentucky International Class C Airspace Area; KY; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWA–5]

RIN 2120–AE97

Establishment of Cincinnati/Northern Kentucky International Airport Class B Airspace Area, and Revocation for Cincinnati/Northern Kentucky International Class C Airspace Area; KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class B airspace area and revokes the existing Class C airspace area for the Cincinnati/Northern Kentucky International Airport. The Cincinnati Class B airspace area will consist of an area encompassing a 25-mile radius of the Cincinnati/Northern Kentucky International Airport from the surface or higher up to and including 8,000 feet above mean sea level. The current Class C airspace area serving the Cincinnati/Northern Kentucky International Airport will be revoked concurrent with the implementation of this action. The FAA is taking this action to enhance safety, reduce the potential for midair collisions, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area while accommodating the concerns of the airspace users.

EFFECTIVE DATE: 0901 UTC, December 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone number: 703–321–3339), or the Government Printing Office's electronic bulletin board service (telephone number: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to 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 202–267–9680. Communications must identify the amendment number or docket number for this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the FAA's Office of Rulemaking (address above) a copy of Advisory Circular 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.

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.gov.

Related Rulemaking Actions

On May 21, 1970, the FAA published in the **Federal Register** the Designation of Federal Airways, Controlled Airspace, and Reporting Points Final Rule (35 FR 7782; May 21, 1970). This rule provided for the establishment of Terminal Control Airspace (TCA) areas (now known as Class B airspace areas).

On October 14, 1988, the FAA published in the **Federal Register** the Terminal Control Area Classification and Terminal Control Area Pilot and Navigation Equipment Requirements Final Rule (53 FR 40318; Oct. 14, 1988). This rule, in part, requires the pilot-in-command of a civil aircraft operating within a Class B airspace area to hold at least a private pilot certificate, except for a student pilot who has received certain documented training.

On December 17, 1991, the FAA published in the **Federal Register** the Airspace Reclassification Final Rule (56 FR 65638; Dec. 17, 1991). This rule discontinued the use of the term "Terminal Control Area" and replaced it with the designation "Class B airspace area." This change in terminology is reflected in this final rule.

Background

The TCA area program was developed to reduce the potential for midair collision in the congested airspace surrounding airports with high density air traffic by providing an area wherein all aircraft are subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between general aviation (GA) aircraft and air carrier or military aircraft, or between one GA aircraft and another GA aircraft. The basic cause common to these conflicts was the mix of aircraft operating under visual flight rules (VFR) and aircraft operating under instrument flight rules (IFR). Class B airspace areas provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of these airspace areas afford the greatest protection for the greatest number of people by giving air traffic control increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

The standard configuration of these airspace areas contains three concentric circles centered on the primary airport extending to 10, 20, and 30 nautical miles (NM), respectively. The standard vertical limit of these airspace areas normally should not exceed 10,000 feet mean sea level (MSL), with the floor established at the surface in the inner area and at levels appropriate to the containment of operations in the outer areas. Variations of these criteria may be utilized contingent on the terrain, adjacent regulatory airspace, and factors unique to the terminal area.

Public Input

On February 10, 1998, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (Airspace Docket 93–AWA–5;

63 FR 6818; Feb. 10, 1998; correction at 63 FR 9459; Feb. 25, 1998) proposing to establish a Class B airspace area and revoke the existing Class C airspace area for the Cincinnati/Northern Kentucky International Airport (CVG). The comment period for this proposed rulemaking action closed on April 13, 1998. However, the FAA received two petitions to extend the comment period. On May 15, 1998, in response to these petitions, the FAA reopened the comment period for an additional 60 days (63 FR 27160; May 15, 1998). The supplemental comment period closed on July 14, 1998.

In response to the proposal the FAA received 36 comments. All comments received were considered before making a determination on this final rule. An analysis of the comments received and the FAA's responses are summarized below.

Discussion of Comments

Two commenters suggested that the proposed configuration of the Cincinnati Class B airspace area had changed and was not the same as presented to the public during the informal airspace meetings.

The FAA disagrees with these comments. The proposed configuration for the Class B airspace area presented during the informal meetings held on September 3 and 4, 1992 (57 FR 32835; July 23, 1992) is the same as published in the Notice of Proposed Rulemaking (NPRM) on February 10, 1998.

The Experimental Aircraft Association (EAA), Chapter 174 and several other commenters recommended the adoption of a modified airspace area that would eliminate areas F and G from the FAA's proposal, and that would use a vertical ceiling of 6,000 feet instead of the 8,000-foot ceiling proposed by the FAA. These commenters believe that the elimination of these areas would allow aircraft to operate to and from satellite airports without the need for an altitude encoding transponder.

Several commenters recommended reducing the size of the proposed Class B airspace area to a 15- to 20-mile radius rather than the proposed 25-mile radius. These commenters are of the opinion that a smaller Class B airspace area should be sufficient airspace to accommodate aircraft operations into and out of CVG, would allow more airspace for non-participating aircraft electing to circumnavigate the area, and would reduce the probability of numerous aircraft in a concentrated area.

The FAA does not agree with these comments. Areas F and G of this Class B airspace area support IFR approaches and departure procedures for CVG, and provide optimum use of the airspace to contain aircraft operations and enhance aviation safety. The purpose of a Class B airspace area is to provide for the separation, segregation, and control of aircraft operations, creating a safer environment in congested terminal areas. On March 11, 1970, the FAA published in the **Federal Register** the results of a Midair Collision Study Program (Notice 69–41B). The study found that 97 percent of the terminal area incidents occurred below 8,000 feet above ground level (AGL), and that the vast majority involved conflict between GA aircraft, and either air carriers, military, or another GA aircraft. The study also highlighted that the mix of noncontrolled VFR, and controlled IFR aircraft was a basic causal factor of these air traffic conflicts.

The FAA believes that the proposed vertical 8,000-foot ceiling is necessary to provide greater protection for air traffic in the airspace areas most commonly used by passenger-carrying aircraft and still provide sufficient areas for those aircraft electing to circumnavigate the Class B airspace area. In addition, aircraft transitioning from the outer fixes to final approach courses at satellite airports routinely enter the terminal area at 5,000 feet from the south and southeast. Because of the high volume of arrival and departure aircraft at the primary airport, it is necessary to utilize the area between 20–25 NM, including areas F and G, to transition lower performance aircraft to and from the satellite airports.

Many commenters submitted comments specifically addressing the area commonly known as the Mode C Veil area, which is the 30-mile radius of a Class B airspace area primary airport up to the floor of the Class B airspace, and associated equipment requirements. These commenters are of the opinion that the veil area creates an unnecessary economic burden on aircraft operations within the proposed Class B airspace area. The Aircraft Owners and Pilots Association (AOPA) and others commented that the provisions of Special Federal Aviation Regulations No. 62 (SFAR 62), Suspension of Certain Aircraft Operations From the Transponder With Automatic Pressure Altitude Reporting Capability Requirement, was intended to suspend the altitude encoding capability requirement for certain operations to and from specific outlying airports located within 30 NM of a Class B airspace area.

In response to the Department of Transportation and Related Agencies Appropriation Bill, 1988 (Pub. L. 100–202) and the Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100–223), the FAA published in the **Federal Register** the Transponder with Automatic Altitude Reporting Capability Requirement Final Rule (53 FR 23356; June 21, 1988). This rule, commonly referred to as the "Mode C rule," requires all aircraft to have an altitude encoding transponder when operating within 30 NM of any designated Class B airspace area primary airport from the surface up to 10,000 feet MSL. This rule also provides an exclusion for those aircraft that were not originally certificated with an engine-driven electrical system, (or those that have not subsequently been certified with such a system), balloons, or gliders operating outside of the Class B airspace area, but within the 30 NM veil area.

On December 5, 1990, the FAA issued SFAR 62. The intent of the SFAR was to provide temporary relief for approximately 300 airports at which operations by aircraft not equipped with a transponder with altitude encoding capability could be conducted at or below a specified altitude (1) within a 2 NM radius of a listed airport; and (2) along a direct route between that airport and the outer boundary of the veil area. The SFAR expired in December of 1993. Comments relating to the expired SFAR are beyond the scope of this rulemaking effort.

The commenters are correct that the proposed airspace area will have a veil area wherein a transponder with altitude encoding capability will be required. Section 91.215 of title 14 of the Code of Federal Regulations (CFR) sets out requirements for air traffic control (ATC) transponder and altitude reporting equipment and use; however, this regulation also includes procedures whereby aircraft not equipped with the required transponder equipment may get relief from the stipulated requirements.

In the preamble of the Mode C rule, the FAA assessed the economic impact on aircraft operators complying with the rule. The FAA acknowledged that the rule would impose an additional cost component for transponder maintenance. The FAA also projected the cost for obtaining transponder and altitude encoding equipment, and estimated at the time of rulemaking that some aircraft operators would incur a one-time acquisition and installation cost ranging between $900 and $2,000, depending on whether or not they had a transponder. However, the FAA still finds that the potential benefits, primarily in the form of enhanced safety to the aviation community and flying

public, far outweigh the economic factors. Additionally, those aircraft transiting the area that do not want to establish radio communication with ATC may also choose to circumnavigate the Class B airspace area. As set out in the regulatory evaluation for this rule (see ''Economic Evaluation'' below), the FAA believes that any costs associated with circumnavigation will be negligible.

The FAA received several comments concerning accessibility to satellite airports located within the lateral boundaries of the Class B airspace area. Some of the comments recommended a cutout for Hamilton-Fairfield, Hickory Grove, Blue Ash, and Clermont Airports to ensure that these airports remain accessible. These commenters are of the opinion that cutouts should be utilized to remove satellite airports from the Class B airspace area and, consequently, the requirements of the Mode C Veil.

The FAA does not agree with these comments. Providing a cutout would remove these satellite airports from the Class B airspace area; however, the satellite airports would remain within the Mode C Veil and continue to be subject to the Class B airspace equipment requirements. The FAA notes that 14 CFR 91.215(d) provides for ATC-authorized deviations under certain conditions. An ATC deviation may require, among other conditions, two-way radio communication with ATC or a restriction of that operation to certain altitudes or areas.

The Air Line Pilots Association (ALPA) supported the proposed establishment of a Class B airspace area, but suggested that the ceiling for the airspace area should be at 10,000 feet rather than the proposed 8,000 feet. ALPA believes that this would eliminate a perceived a 2,000-foot gap of airspace where aircraft without an altitude encoding transponder can fly and not have to contact an ATC facility.

The FAA does not agree with this comment, and believes that a ceiling of 8,000 feet will be sufficient to control aircraft operations within the Class B airspace. Raising the ceiling to 10,000 feet would result in unnecessary restrictions to that airspace. In addition, aircraft operating within a 30-mile radius of CVG are already required to be equipped with an operational altitude encoding transponder from the surface to 10,000 feet MSL (14 CFR 91.215).

Several pilots commented on the FAA's limited utilization of geographical landmarks to define the lateral boundaries of the Class B airspace area. One pilot commended the FAA for proposing to utilize I–275 and I–74 as identifiable landmarks, but questioned whether pilots could see the powerlines as a prominent landmark at altitudes of 5,000 to 6,000 feet.

The FAA agrees with the concept of these comments. Identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR in assisting them with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design, consideration was given to utilizing Very High Frequency Omnidirectional Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks wherever possible. This site-specific design is an effort to utilize as many landmarks (i.e., I–275, I–74, and the powerlines to the east of CVG), as feasible to identify the boundaries of the Class B airspace area. The FAA will continue to work with the airspace users to further identify any additional landmarks.

Several commenters recommended that the FAA establish VFR corridors or VFR flyways for the Cincinnati/Covington area. The FAA agrees with the concept of these comments. Identifiable and prominent landmarks have proven to be extremely useful to pilots operating under VFR in assisting them with identifying the boundaries of a Class B airspace area. During the preliminary planning for the Class B airspace area design, consideration was given to utilizing Very High Frequency Omnidirectional Range (VOR) radials, latitudes and longitudes, as well as geographical landmarks wherever possible. However, the issue of VFR flyways and corridors was not addressed. The FAA will continue to work with the airspace users to determine the feasibility of VFR flyways and corridors and to further identify any additional landmarks to assist general aviation operators with identifying the Class B airspace area.

One commenter suggested that the areas F and G, designated with floors at 5,000 or 6,000 feet, should be reduced to a minimum of 7 miles east of the airport to allow sufficient airspace for operations outside the Class B airspace area. In addition, this commenter suggested that the floor designated at 3,000 feet (area C) does not appear to interfere with operations, but the floor at 2,100 feet (area B) will not provide enough room to transition under the shelf of the area and above the tallest obstacle.

The FAA does not agree with this comment. The floors of areas F and G are necessary to support IFR approaches and departure procedures for CVG. Furthermore, the 2,100-foot floor of Area B is necessary to provide optimum safety to enplaned passengers and to contain aircraft operations in the Class B airspace area.

AOPA commented that the FAA ignored the guidelines in FAA Order 7400.2D, *Procedures for Handling Airspace Matters*, when developing the proposed Class B airspace area between the 10 to 20-mile radius. AOPA also recommended changing the Runway 27 glidescope to 3.5 degrees thereby raising the floor of area D to 4,000 feet.

The FAA does not agree with this comment. In order to effectively design a safe and efficient airspace area, it is necessary to tailor the airspace configuration to the particular needs of that area, taking into consideration the local terrain, noise abatement, and adjacent airspace. The FAA made every effort to comply with the guidelines as published in FAA Order 7400.2D. FAA Order 7400.2D states that the floor of the area between ''10 and 20 NM shall be predicated on a 300-foot per NM gradient for 10 NM.'' It also states that ''this segment will normally have a floor between 2,800 feet and 3,000 feet above the airport elevation.'' However, the order also states that, to the extent practicable, the vertical and lateral limits of the airspace should be designed to retain all published instrument procedures once their flight track enters the Class B airspace area. The national standard for the angle of a glidescope is 3 degrees as published in FAA Order 8260.36A. Any angle above 3.1 degrees would raise the minimums for Category C aircraft, and preclude the authorization of approaches for Category D and E aircraft. The FAA complied with FAA Order 8260.36A in establishing the 3-degree glidescope angle to accommodate Category C, D, and E aircraft operations.

The Board of Aviation Commissioners for the City of Madison, IN, submitted comments regarding operations at the Madison Municipal Airport and proposed Class B airspace area. The Board raised the possibility of pilots departing that airport on an IFR flight plan and encountering delays when receiving a clearance on the ground. The Board explained to the FAA that many pilots may have to travel substantially longer distances to get their clearances because of the proposed establishment of a Class B airspace area. The Board recommended that the FAA: (1) change the size or ceiling of the proposed Class B airspace to make it feasible to depart Madison Municipal Airport eastbound; (2) adjust the airspace to allow at least a 10-mile area between the existing restricted area and the western edge of Class B airspace area; and (3) install

equipment to allow pilot to receive his or her clearance on the ground.

The FAA does not agree with the assessment of the Madison Board of Aviation Commissioners. The Madison County Airport is located approximately 41 miles southwest of CVG. The proposed Class B airspace area boundary will be approximately 16 miles from the Madison County Airport. VFR aircraft departing Madison eastbound can remain below 5,000 feet and would have ample time to contact the approach control facility and receive the required clearance to enter the Class B airspace area. Additionally, IFR aircraft may contact the approach control facility on the ground by radio or telephone before departure to receive a clearance.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this final rule.

The Rule

This amendment to 14 CFR part 71 establishes a Class B airspace area at CVG and revokes the CVG Class C airspace area. The FAA is taking this action to enhance safety, reduce the potential for midair collision, and to improve the management of air traffic operations in the Cincinnati/Northern Kentucky area.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class B airspace area listed in this document will be published subsequently in the order.

Economic Evaluation

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 FAA has determined that this final rule (1) will generate benefits that justify the minimal costs of the rule and is not ''a significant regulatory action'' as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply. These analyses are summarized in this preamble, and the full Regulatory Evaluation is contained in the docket.

The final rule will provide benefits to participating and non-participating aircraft operators primarily in the form of enhanced safety by increasing ATC's authority and capability to monitor and to separate aircraft in the terminal airspace around CVG.

The FAA has determined that this final rule will impose minimal additional cost on the agency and aircraft operators. The FAA has determined this final rule will impose a one-time cost on the agency for the revision of aeronautical charts for CVG because of the changes to the plates used to print those charts on which the Class B airspace area will be depicted. The National Oceanic Service, the agency responsible for the publication and distribution of aeronautical charts, estimates that the total one-time cost of these changes will be approximately $75,480 (1997 dollars). The final rule will not impose any additional administrative costs on the FAA for either personnel or equipment. The additional ATC operations workload generated by the final rule will be absorbed by current ATC personnel and equipment resources at CVG. The final rule will not require any additional air traffic controllers or any additional radar control or hand-off positions. Last, those few operators without the required aircraft equipment (Mode C transponder and two-way radio) will incur only negligible cost for circumnavigating the Class B airspace area.

In view of the minimal cost of compliance, enhanced safety and operational efficiency, the FAA has determined that the final rule will be cost-beneficial.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (the Act) 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 principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational 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. 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 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.

The FAA believes that the vast majority of affected unscheduled aircraft operators are already equipped to operate under IFR requirements. This is because such operators routinely fly into CVG airspace and other airspace where radar approach control services have been established. The few operators who do not have the required equipment will only incur negligible costs for circumnavigating the Class B airspace area.

The FAA has also determined that other local airspace users, such as balloonists, parachutists, ultralight and sailplane owners, and fixed base operators, will only have to circumnavigate a portion of the Class B airspace area. Cincinnati Approach Control will accommodate these users on a case-by-case basis and use letters of agreement and cutouts, where advisable, to ensure as little adverse impact as possible on these users.

The FAA conducted the required review of this proposal 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 economic impact on a substantial number of small entities.

International Trade Impact Statement

The FAA has determined that the final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S.

products or services in foreign countries. This is because the final rule will impose, at most, only negligible costs on aircraft operators and no costs on aircraft manufacturers (U.S. or foreign).

Federalism Implications

The regulations 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 rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

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 of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. 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 proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would 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 the regulatory proposal.

This final rule does not contain any Federal intergovernmental or private sector mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

1. The authority citation for 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. In § 71.1, Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASO KY B Cincinnati/Northern Kentucky International Airport, KY [NEW]

* * * * *

Cincinnati/Northern Kentucky International Airport (Primary Airport)
(Lat. 39°02′46″ N., long. 84°39′44″ W.).
Cincinnati VORTAC (CVG)
(Lat. 39°00′57″ N., long. 84°42′12″ W.).

Boundaries

Area A. That airspace extending upward from the surface to and including 8,000 feet MSL within a radius of 5 miles from the Cincinnati/Northern Kentucky International Airport.

Area B. That airspace extending upward from 2,100 feet MSL to and including 8,000 feet MSL beginning at the 5-mile arc of the airport and the Kentucky bank of the Ohio River northeast of the airport; northeast along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence clockwise along the 10-mile arc to the Kentucky bank of the Ohio River southwest of the airport, north along the Kentucky bank of the Ohio River to the Indiana-Ohio State line (long. 84°49′00″ W); thence north to Interstate 275; follow Interstate 275 northeast to Interstate 74; thence east on Interstate 74 to CVG VORTAC 040° radial; thence southwest on the CVG VORTAC 040° radial to the 5-mile arc of the airport; thence counterclockwise on the 5-mile arc to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Interstate 275 and the Indiana-Ohio State line (long. 84°49′00″ W); thence north on the Indiana Ohio State line, to intersect the 15-mile arc of the airport; thence clockwise on the 15-mile arc to long. 84°30′00″ W; thence south on long. 84°30′00″ W to the 10-mile arc of the airport; thence clockwise on the 10-mile arc to the Kentucky bank of the Ohio River; proceed along the Kentucky bank the Ohio River west to the 5-mile arc of the airport; thence counterclockwise along the 5-mile arc to the CVG VORTAC 040° radial; thence northeast along the CVG VORTAC 040° radial to Interstate 74; proceed west along Interstate 74 to Interstate 275; thence west along Interstate 275 to the point of beginning. That airspace beginning at the 10-mile arc southeast of the airport and long. 84°30′00″ W; thence south along long. 84°30′00″ W to the 15-mile arc of the airport; thence clockwise along the 15-mile arc to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning.

Area D. That airspace extending upward from 3,500 feet MSL to and including 8,000 feet MSL beginning at lat. 39°09′18″ N and the 10-mile arc northeast of the airport; thence east to the 15-mile arc of the airport; thence clockwise on the 15-mile arc to lat. 38°56′15″ N; thence west on lat. 38°56′15″ N to intersect the 10-mile arc of the airport; thence counterclockwise along the 10-mile arc to the point of beginning. That airspace beginning at the intersection of the Kentucky bank of the Ohio River and lat. 38°56′15″ N southwest of the airport; thence west along lat. 38°56′15″ N to the 15-mile arc of the airport; clockwise on the 15-mile arc to lat. 39°09′18″ N; thence east to the Indiana-Ohio State line; thence South along the Indiana-Ohio State line to the Kentucky bank of the Ohio River; thence south along the Kentucky bank of the Ohio River to point of beginning. That airspace beginning at the intersection of the 15-mile arc of the airport and the Indiana-Ohio State line; thence proceeding north to the 20-mile arc of the airport; thence clockwise along the arc to long. 84°30′00″ W; thence south to the 15-mile arc of the airport; thence counterclockwise along the 15-mile arc to point of beginning. That airspace beginning at the intersection of the 15-mile arc southeast of the airport and long. 84°30′00″ W; thence south to the 20-mile arc of the airport; thence clockwise along the 20-mile arc to long. 84°49′00″ W; thence north to the Kentucky bank of the Ohio River; thence proceeding north along the Kentucky bank of the Ohio River to the 15-mile arc of the airport; thence counterclockwise on the 15-mile arc to the point of beginning.

Area E. That airspace extending upward from 4,000 feet MSL to and including 8,000 feet MSL beginning at the 20-mile arc of the airport and the Indiana-Ohio State line; thence north to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°30′00″ W; thence south to the 20-mile arc of the airport; thence counterclockwise on the 20-mile arc to the point of beginning. That airspace extending beginning at the 20-mile arc of the airport and long. 84°30′00″ W south of the airport; thence south along the long. 84°30′00″ W to the 25-mile arc of the airport; thence clockwise along the 25-mile arc to long. 84°49′00″ W; thence north along long. 84°49′00″ W to the 20-mile arc of the airport;

thence counterclockwise along the 20-mile arc to the point of beginning.

Area F. That airspace extending upward from 5,000 feet MSL to and including 8,000 feet MSL beginning at the 25-mile arc north of the airport and long. 84°30′00″ W; thence clockwise on the 25-mile arc of the airport to Route 28; thence southwest along Route 28 3-miles to the power line; thence south along the power line to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc of the airport southeast; thence clockwise on the 25-mile arc of the airport to long. 84°30′00″ W south of the airport; thence north to the 10-mile arc of the airport at lat. 38°56′15″ N; thence east along lat. 38°56′15″ N to the 15-mile arc of the airport; thence north along the 15-mile arc of the airport to lat. 39°09′18″ N; thence west to the 10-mile arc of the airport and long. 84°30′00″ W; thence north to the point of beginning. That airspace beginning at the 25-mile arc of the airport and the Indiana-Ohio State line; thence counterclockwise along the 25-mile arc to long. 84°49′00″ W south of the airport; thence north to the Kentucky bank of the Ohio River; thence north along the Kentucky bank of the Ohio River to lat. 38°56′15″ N; thence west to the 15-mile arc of the airport; thence clockwise on the 15-mile arc of the airport to lat. 39°09′18″ N; thence east to the Indiana-Ohio State line; thence north to the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 8,000 feet MSL beginning at the intersection of Route 28 and the 25-mile arc of the airport; thence southwest along Route 28 3 miles to the powerline; thence south along the powerline to the Ohio River; thence south-southeast along the Ohio bank of the Ohio River to the 25-mile arc southeast of the airport; thence counterclockwise along the 25-mile arc of the airport to the point of beginning.

* * * * *

Paragraph 4000—Subpart C—Class C Airspace

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ASO KY C Cincinnati/Northern Kentucky International Airport, KY [Revoked]

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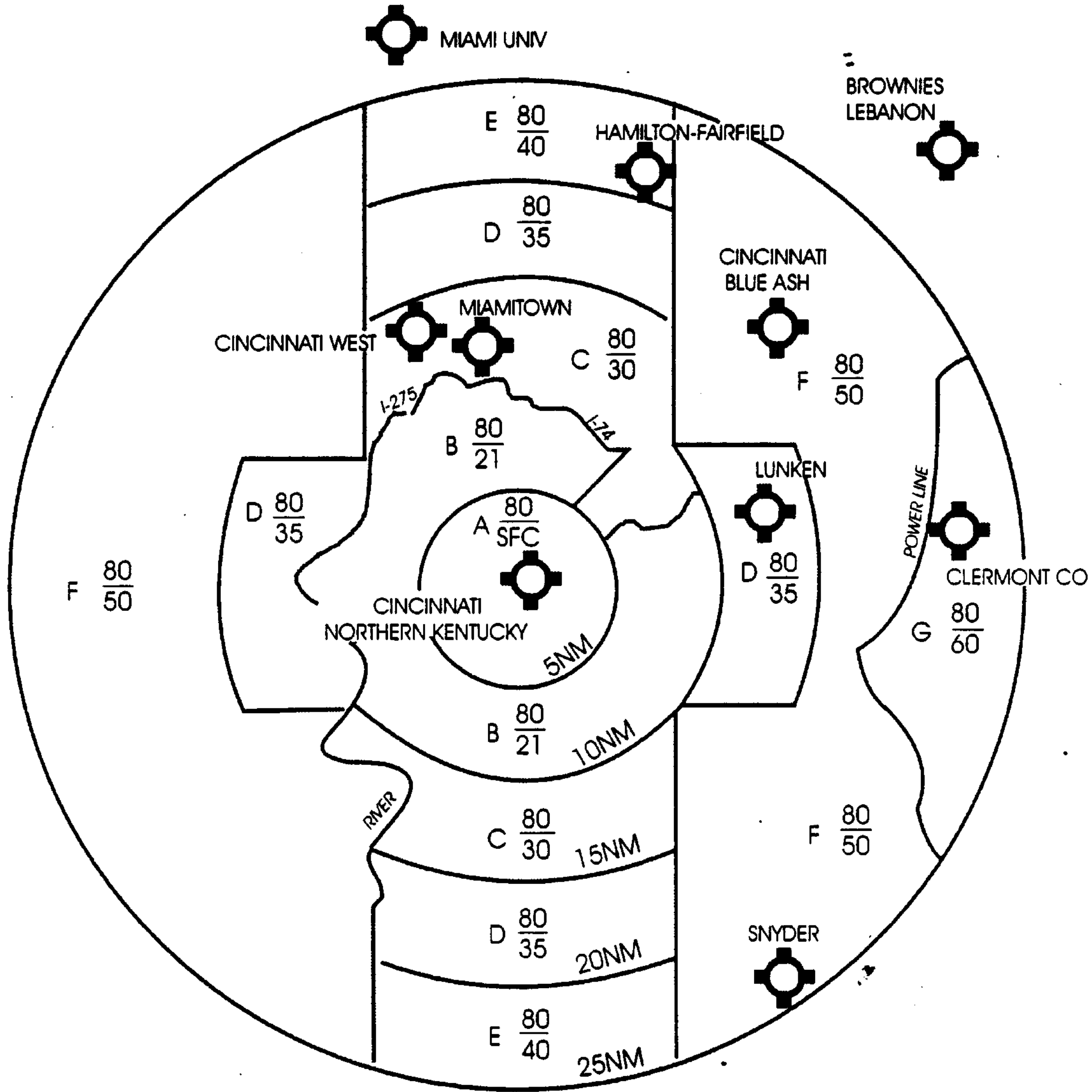

Issued in Washington, DC, on November 24, 1998.

Jane Garvey,

Administrator.

[FR Doc. 98–31774 Filed 11–24–98; 3:02 pm]

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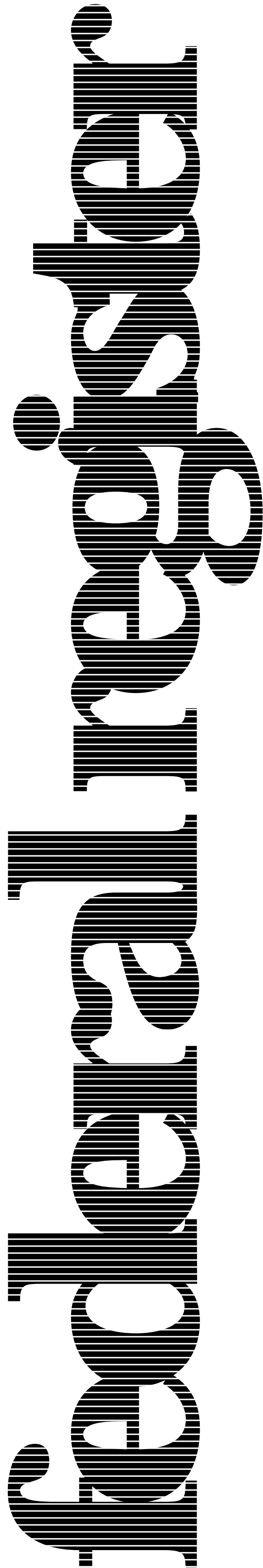

Monday
November 30, 1998

Part VI

United States Sentencing Commission

Sentencing Guidelines for United States Courts; Notice

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of intent to re-promulgate temporary, emergency amendment as permanent amendment; and other proposed amendments to sentencing guidelines, policy statements, and commentary. Request for public comment.

SUMMARY: Pursuant to section 994(a), (o), and (p) of title 28, United States Code, and certain other provisions of law, the Commission is considering promulgating amendments to the sentencing guidelines, policy statements, and commentary. This notice sets forth the proposed amendments and, for each proposed amendment, a synopsis of the issues addressed by that amendment. The Commission seeks comment on the proposed amendments, alternative proposed amendments, and any other aspect of the sentencing guidelines, policy statements, and commentary. The Commission may submit amendments to the Congress not later than May 1, 1999.

Part I sets out the Commission's proposed re-promulgation of a telemarketing fraud amendment as a permanent amendment. On September 23, 1998, the Commission submitted this telemarketing fraud amendment to Congress as a temporary, emergency amendment in response to the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184.

Part II sets out a proposed ''Economic Crime Package.'' The Economic Crime Package developed from the Commission's work in the past two years to examine the sufficiency of guidelines covering certain economic crimes, particularly fraud, theft, and tax offenses. The primary focus of this examination has been: (1) To develop a loss table that incorporates the more-than-minimal-planning enhancement and increases sentence severity for large-dollar loss offenses; (2) to develop a loss definition that, among other things, is more consistent across offense types and easier to use; (3) to consolidate the theft, property destruction, and fraud guidelines in order to provide uniformity of applicable commentary; and (4) to make necessary conforming changes to all other guidelines that refer to the fraud and theft loss tables.

Recent highlights of the Commission's work in this area include (1) soliciting, in January 1998, public comment on various amendment proposals and issues for comment (see 63 FR 602–25); (2) conducting, in March 1998, two public hearings, one of which (in San Francisco, California) was dedicated exclusively to economic crimes; (3) Commissioner consideration, in April 1998, of an ''economic crime package'' of amendments to the sentencing guidelines; and (4) conducting field testing, in the summer of 1998, of the proposed loss definition with the Criminal Law Committee of the Judicial Conference, probation officers, and other guideline users.

The Economic Crime Package primarily is composed of the following: (1) The Theft, Property Destruction, and Fraud Package; (2) the Tax Package; (3) More than Minimal Planning Conforming Amendments; (4) Amendments for Referring Guidelines; and (5) Other Technical and Conforming Amendments. The proposed amendments in this part are presented in one of two formats. First, some of the amendments are proposed as specific revisions to a guideline or commentary. Bracketed text within a proposed amendment indicates alternative proposals and that the Commission invites comment and suggestions for appropriate policy choices; for example, in a case in which the Commission is considering whether a particular enhancement should provide only a minimum offense level or a minimum offense level with an additional two-level increase, each option would appear in bracketed text. Second, the Commission has highlighted certain issues for comment and invites suggestions for specific guideline language.

Part III proposes to make certain amendments to the probation and supervised release guidelines that are consistent with recently enacted legislation.

Finally, Part IV presents several issues for which the Commission requests public comment.

DATES: The Commission will announce at a later date the deadline for public comment on these proposed amendments and issues for comment, and the date for any public hearing(s) that may be scheduled.

ADDRESSES: Public comment should be sent to: United States Sentencing Commission, One Columbus Circle, NE, Suite 2–500, Washington, DC 20002–8002, Attention: Public Information.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 273–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year, pursuant to 28 U.S.C. 994(p).

(**Note:** The publication of these proposed amendments and issues for comment was approved before October 21, 1998.)

Authority: 28 U.S.C. 994(a), (o), (p), (x); Pub. L. 105–184, section 6, June 23, 1998, 112 Stat. 520.

Richard P. Conaboy,
Chairman.

Part I—Notice of Proposed Re-Promulgation of Telemarketing Fraud Amendment as Permanent Amendment

1. Synopsis of Proposed Amendment: On September 23, 1998, in response to directives contained in the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184, the Commission submitted to Congress a temporary, emergency amendment that provided (1) a two-level increase and a minimum offense level of level 12 in the fraud guideline (§ 2F1.1) for offenses that involve sophisticated means; and (2) a two-level increase in the vulnerable victim guideline (§ 3A1.1) for offenses that involve a large number of vulnerable victims. The amendment, particularly the sophisticated means enhancement, built upon and broadened an amendment submitted to Congress on May 1, 1998, which created an enhancement in § 2F1.1 for sophisticated concealment. The Commission specified an effective date of November 1, 1998 for the emergency amendment.

The Commission proposes to re-promulgate this amendment as a permanent, non-emergency amendment and submit it to Congress not later than May 1, 1999. Under the terms of the congressionally granted authority, the emergency amendment is temporary unless re-promulgated in the next amendment cycle under regularly applicable amendment procedures. See Pub. L. 100–182, § 21, set forth as an editorial note under 28 U.S.C. § 994.

Proposed Amendment: Section 2F1.1(b) is amended by striking

subdivision (3) and all that follows through the end of the subsection and inserting the following:

''(3) If the offense was committed through mass-marketing, increase by 2 levels.

(4) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious or political organization, or a government agency; or (B) violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than level 10, increase to level 10.

(5) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(6) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

(7) If the offense—

(A) substantially jeopardized the safety and soundness of a financial institution; or

(B) affected a financial institution and the defendant derived more than $1,000,000 in gross receipts from the offense,

increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by striking Application Note 14 and all that follows through the end of the Application Notes and inserting the following:

''15. For purposes of subsection (b)(5)(B), 'United States' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(5)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

The enhancement for sophisticated means under subsection (b)(5)(C) requires conduct that is significantly more complex or intricate than the conduct that may form the basis for an enhancement for more than minimal planning under subsection (b)(2)(A).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

16. 'Financial institution,' as used in this guideline, is defined to include any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 1014; any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; any health, medical or hospital insurance association; brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and ''any health, medical, or hospital insurance association,'' as used above, primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

17. An offense shall be deemed to have 'substantially jeopardized the safety and soundness of a financial institution' if, as a consequence of the offense, the institution became insolvent; substantially reduced benefits to pensioners or insureds; was unable on demand to refund fully any deposit, payment, or investment; was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or was placed in substantial jeopardy of any of the above.

18. 'The defendant derived more than $1,000,000 in gross receipts from the offense,' as used in subsection (b)(7)(B), generally means that the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. 'Gross receipts from the offense' includes all property, real or personal, tangible or intangible, which is obtained directly or indirectly as a result of such offense. See 18 U.S.C. § 982(a)(4).

19. If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the 'continuing financial crimes enterprise.'

20. If subsection (b)(7) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by redesignating Notes 3 through 13 as Notes 4 through 14, respectively; and by inserting after Note 2 the following new Note 3:

''3. 'Mass-marketing,' as used in subsection (b)(3), means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply, for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended in Note 1 by striking ''§ 2F1.1(b)(3)'' and inserting ''§ 2F1.1(b)(4)''; in redesignated Note 5 (formerly Note 4), by striking ''(b)(3)(A)'' and inserting ''(b)(4)(A)''; and in redesignated Note 6 (formerly Note 5), by striking ''(b)(3)(B)'' and inserting ''(b)(4)(B)''.

The Commentary to § 2F1.1 captioned ''Background'' is amended by inserting after the fifth paragraph the following new paragraph:

''Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.''.

Section 3A1.1(b) is amended to read as follows:

''(b)(1) If the defendant knew or should have known that a victim of the offense was a vulnerable victim, increase by 2 levels.

(2) If (A) subdivision (1) applies; and (B) the offense involved a large number of vulnerable victims, increase the offense level determined under subdivision (1) by 2 additional levels.''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the first paragraph by striking '' 'victim' includes any person'' before ''who is'' and inserting '' 'vulnerable victim' means a person (A)''; and by inserting after ''(Relevant Conduct)'' the following:

''; and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the second paragraph by striking ''where'' each place it appears and inserting ''in which''.

The Commentary to § 3A1.1 captioned ''Application Notes'' is amended in Note 2 in the third paragraph by striking ''offense guideline specifically incorporates this factor'' and inserting ''factor that makes the person a vulnerable victim is incorporated in the offense guideline''.

The Commentary to § 3A1.1 captioned ''Background'' is amended by adding at the end the following additional paragraph:

''Subsection (b)(2) implements, in a broader form, the instruction to the Commission in section 6(c)(3) of Public Law 105–184.''.

The Commentary to § 2B5.1 captioned ''Application Notes'' is amended in Note 1 by inserting ''United States'' before ''Virgin Islands''.

Part II—The Economic Crime Package

In May, 1997, the Commission set as one of its priorities the systematic study and analysis of the guidelines for fraud, theft, and tax offenses. After approximately two years of data collection, analyses, public comment, and public hearings, the Commission developed a comprehensive ''Economic Crime Package''.

The Economic Crime Package is composed of the following: (A) The Theft, Property Destruction, and Fraud Package; (B) the Tax Package; (C) More than Minimal Planning Conforming Amendments; (D) Amendments for Referring Guidelines; and (E) other technical and conforming amendments.

In addition to seeking comment on the Economic Crime Package, the Commission invites suggestions for options, other than those presented in the Package, for treating theft, fraud, and tax offenses in the guidelines.

(A) The Theft, Property Destruction, and Fraud Package

2. Synopsis of Proposed Amendment: The ''Theft, Property Destruction, and Fraud Package'' has the following principal features: (A) A consolidated theft, fraud, and property destruction guidelines; (B) a new loss table for fraud and theft offenses, with more than minimal planning ''built in''; and (C) a clarified loss definition.

The new consolidated guideline begins with a base offense level of level 6. This base offense level has the effect of increasing the base offense level for theft and property destruction cases. However, this increase will be offset, for the most part, by a higher floor offense level in the new loss table for these offenses. The current loss table for theft and property destruction has its first offense level increase at amounts exceeding $100, whereas the offense level increase in the new loss table will begin at amounts exceeding $2000.

The proposed guideline also provides for a loss table that builds more than minimal planning into the table, instead of maintaining this factor as a separate two-level enhancement. The first level from the former enhancement is built in at amounts exceeding $10,000; the second level is built in at amounts exceeding $20,000. The proposed loss table also provides an increase in offense level severity beginning at amounts exceeding $40,000. Because more than minimal planning is built into the loss table, the package also presents options for departure language that would either prohibit or discourage a departure from the guideline range based on more than minimal planning, or lack thereof.

The enhancement for sophisticated means is included in the consolidated guideline based on the assumption that the enhancement, promulgated as a temporary, emergency amendment effective November 1, 1998, will be re-promulgated as a permanent amendment during the next amendment cycle. (See, Part I—Notice of Re-Promulgation of Telemarketing Fraud Amendment as Permanent Amendment.) Other changes in the guideline structure include (A) the addition of risk of death to the risk of serious bodily injury enhancement and an increase in the floor offense level from level 13 to level 14 in this enhancement; (B) options for a floor offense level and offense level increase for the gross receipts enhancement; and (C) options for a bribery cross reference and other, general cross references.

The clarified loss definition begins with the general rule that loss is the greater of actual loss or intended loss. The loss definition also: (A) Defines ''actual loss,'' ''reasonably foreseeable,'' and ''intended loss''; (B) provides flexibility in determining the loss amount, giving consideration to a number of factors; (C) provides that gain shall be used instead of loss if gain is greater than loss and more accurately reflects the seriousness of the offense; (D) provides rules for crediting amounts the defendant paid back to the victim; (E) provides special rules relating to certain kinds of cases, such as ''Ponzi'' schemes; (F) presents options on whether interest can be considered in the loss calculation; and (G) sets out upward and downward departure considerations.

Proposed Amendment: Strike the heading to Part B of Chapter Two, the heading to Subpart 1 of Part B of Chapter Two, the Introductory Commentary to such subpart, §§ 2B1.1, 2B1.3, and 2F1.1, and insert the following:

Part B—Basic Economic Offenses

1. Theft, Embezzlement, Receipt of Stolen Property, Property Destruction, Fraud, and Insider Trading

Introductory Commentary

These sections address basic forms of property offenses: theft, embezzlement, fraud, forgery, counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States), insider trading, transactions in stolen goods, and simple property damage or destruction. (Arson is dealt with separately in Part K, Offenses Involving Public Safety.) These guidelines apply to offenses prosecuted under a wide variety of federal statutes, as well as offenses that arise under the Assimilative Crimes Act.

§ 2B1.1. Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States.

(a) Base Offense Level: 6.

(b) Specific Offense Characteristics.

(1) If the loss exceeded $2,000, increase the offense level as follows:

Loss (apply the greatest)	Increase in level
(A) More than $2,000	Add 1.
(B) More than $5,000	Add 2.
(C) More than $10,000	Add 4.
(D) More than $20,000	Add 6.
(E) More than $40,000	Add 8.
(F) More than $80,000	Add 10.
(G) More than $200,000	Add 12.
(H) More than $500,000	Add 14.
(I) More than $1,200,000	Add 16.
(J) More than $2,500,000	Add 18.
(K) More than $7,500,000	Add 20.
(L) More than $20,000,000	Add 22.
(M) More than $50,000,000	Add 24.

Loss (apply the greatest)	Increase in level
(N) More than $100,000,000	Add 26.

(2) If the offense involved theft from the person of another, increase by 2 levels.

(3) If the offense involved receiving stolen property, and the defendant was a person in the business of receiving and selling stolen property, increase by 2 levels.

(4) If the offense involved misappropriation of a trade secret and the defendant knew or intended that the offense would benefit a foreign government, foreign instrumentality, or foreign agent, increase by 2 levels.

(5) If the offense was committed through mass-marketing, increase by 2 levels.

(6) If (A) the offense involved theft of property from a national cemetery; or (B) property of a national cemetery was damaged or destroyed, increase by 2 levels.

(7) If the offense involved (A) a misrepresentation that the defendant was acting on behalf of a charitable, educational, religious, or political organization, or a government agency; or (B) a violation of any judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines, increase by 2 levels. If the resulting offense level is less than 10, increase to level 10.

(8) If (A) the defendant relocated, or participated in relocating, a fraudulent scheme to another jurisdiction to evade law enforcement or regulatory officials; (B) a substantial part of a fraudulent scheme was committed from outside the United States; or (C) the offense otherwise involved sophisticated means, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(9) If the offense involved (A) the conscious or reckless risk of death or serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 14, increase to level 14.

(10) If (A) the offense involved an organized scheme to steal vehicles or vehicle parts, or to receive stolen vehicles or vehicle parts, and (B) the offense level as determined above is less than level 14, increase to level 14.

(11) If the offense substantially jeopardized the safety and soundness of a financial institution, increase by 4 levels. If the resulting offense level is less than level 24, increase to level 24.

[Gross Receipts, Option 1: [(12) If (A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense; and (B) the offense level as determined above is less than level 24, increase to level 24.]

[Gross Receipts, Option 2: [(12) If (A) the defendant derived more than $1,000,000 in gross receipts from one or more financial institutions as a result of the offense, increase by 2 levels. If the resulting offense level is less than level 24, increase to level 24.]

[**Note:** The Commission also has the option to keep the current 4-level enhancement (as well as the floor) gross receipts SOC.]

(c) Cross References.

(1) If (A) a firearm, destructive device, explosive material, or controlled substance was taken, or the taking of such item was an object of the offense; or (B) the stolen property received, transported, transferred, transmitted, or possessed was a firearm, destructive device, explosive material, or controlled substance, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking; Attempt or Conspiracy), § 2D2.1 (Unlawful Possession; Attempt or Conspiracy), § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), or § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), as appropriate, if the resulting offense level is greater than that determined above.

(2) If the offense involved (A) arson; or (B) property destruction by use of explosives, apply § 2K1.4 (Arson: Property Destruction by Use of Explosives).

[(3) If the offense involved (A) commercial bribery, or (B) bribery, gratuity, or a related offense involving a public official, apply § 2B4.1 (Bribery in Procurement of Bank Loan and Other Commercial Bribery) or a guideline from Chapter Two, Part C (Offenses Involving Public Officials), as most appropriate [, if the resulting offense level is greater than that determined above].]

[(4) If (A) none of subdivisions (1), (2), or (3) of this subsection apply; (B) the defendant was convicted under a statute proscribing false, fictitious, or fraudulent statements or representations generally (e.g., 18 U.S.C. § 1001, 1341, 1342, or 1343); and (C) the conduct set forth in the count of conviction is more specifically covered by another guideline in Chapter Two, apply that other guideline.]

(d) Special Instruction.

(1) If the defendant was convicted under 18 U.S.C. § 1030(a)(4) or (5), the minimum guideline sentence, notwithstanding any other adjustment, shall be six months' imprisonment.

Commentary

Statutory Provisions: 7 U.S.C. §§ 6, 6b, 6c, 6h, 6o, 13, 23; 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 78ff, 80b–6, 1644, 1983–1988, 1990c; 18 U.S.C. §§ 225, 285–289, 471–473, 500, 510, 511, 553(a)(1), (2), 641, 656, 657, 659, 662, 664, 1001–1008, 1010–1014, 1016–1022, 1025–1028, 1029, 1030(a)(5), 1031, 1341–1344, 1361, 1363, 1702, 1703, 1708, 1831, 1832, 2113(b), 2312–2317, 2321; 29 U.S.C. §§ 439, 461, 501(c), 1131. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. For purposes of this guideline—

'Financial institution' means (A) any institution described in 18 U.S.C. §§ 20, 656, 657, 1005–1007, and 1014; (B) any state or foreign bank, trust company, credit union, insurance company, investment company, mutual fund, savings (building and loan) association, union or employee pension fund; (C) any health, medical or hospital insurance association; (D) brokers and dealers registered, or required to be registered, with the Securities and Exchange Commission; (E) futures commodity merchants and commodity pool operators registered, or required to be registered, with the Commodity Futures Trading Commission; and (F) any similar entity, whether or not insured by the federal government. 'Union or employee pension fund' and 'health, medical, or hospital insurance association,' primarily include large pension funds that serve many individuals (e.g., pension funds of large national and international organizations, unions, and corporations doing substantial interstate business), and associations that undertake to provide pension, disability, or other benefits (e.g., medical or hospitalization insurance) to large numbers of persons.

'Firearm' and 'destructive device' are defined in the Commentary to § 1B1.1 (Application Instructions).

'Foreign instrumentality,' 'foreign agent,' and 'trade secret' have the meaning given those terms in 18 U.S.C. § 1839(1), (2), and (3), respectively.

'Mass-marketing,' means a plan, program, promotion, or campaign that is conducted through solicitation by telephone, mail, the Internet, or other means to induce a large number of persons to (A) purchase goods or services; (B) participate in a contest or sweepstakes; or (C) invest for financial profit. The enhancement would apply,

for example, if the defendant conducted or participated in a telemarketing campaign that solicited a large number of individuals to purchase fraudulent life insurance policies.

'National cemetery' means a cemetery (A) established under section 2400 of title 38, United States Code; or (B) under the jurisdiction of the Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of the Interior.

'Theft from the person of another' means the taking, without the use of force, of property that was being held by another person or was within arms' reach. Examples include pick-pocketing or non-forcible purse-snatching, such as the theft of a purse from a shopping cart.

2. For purposes of subsection (b)(1)—

(A) General Rule. Loss is the greater of the actual loss or the intended loss.

'Actual loss' means the reasonably foreseeable pecuniary harm that resulted or will result from the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). 'Reasonably foreseeable pecuniary harm' means pecuniary harm that the defendant knew or, under the circumstances of the particular case, should have known would likely follow, in the ordinary course of events, as a result of that conduct.

'Intended loss' means the pecuniary harm intended to be caused by the conduct for which the defendant is accountable under § 1B1.3, even if that harm would have been unlikely or impossible to accomplish (e.g., as in a government sting operation).

(B) Determination of Loss. The court need not determine the precise amount of the loss. Rather, it need only make a reasonable estimate of that amount, based on available information and using, as appropriate and practicable under the circumstances to best effectuate the general rule in subdivision (A), factors such as the following:

(i) The fair market value of the property, or other thing of value, taken or otherwise unlawfully acquired, misapplied, misappropriated, or destroyed; or if the fair market value is impracticable to determine or inadequately measures the harm, the cost to the victim of replacing property taken or otherwise unlawfully acquired or destroyed.

(ii) The cost of repairs to damaged property, not to exceed the replacement cost had the property been destroyed.

(iii) The approximate number of victims multiplied by the average loss to each victim.

(iv) More general factors, such as the scope and duration of the offense and revenues generated by similar operations.

(C) Gain. The court shall use gain instead of loss under subsection (b)(1) if both (i) gain is greater than loss (which may be zero); and (ii) gain more accurately reflects the seriousness of the offense.

(D) Credits Against Loss. Except as provided in subdivision (F)(i), loss shall be reduced by the value of the economic benefit the defendant or other persons acting jointly with the defendant transferred to the victim before the defendant knew or should have known that the offense had been detected.

In the case of collateral, the value of the economic benefit is the amount the victim has recovered as of the time of sentencing from disposition of the collateral. If the collateral has not been disposed of by that time, the value is its fair market value as of the time of sentencing.

In any other case, the value of the economic benefit is its fair market value as of the time of transfer to the victim.

However, in cases in which the economic benefit transferred to the victim has little or no value to the victim because it is substantially different from what the victim intended to receive, loss shall not be reduced by the value of that economic benefit.

For purposes of this subdivision: (i) ''economic benefit'' includes money, property, or services performed; and (ii) ''transferred'' means pledged or otherwise provided as collateral, returned, or otherwise conveyed.

Option 1: [(E) Opportunity Costs. Interest (of any kind), anticipated profits, and other opportunity costs shall not be included in determining loss. However, there may be cases in which the amount of interest, anticipated profits, and other opportunity costs is so substantial that not including that amount as part of the loss would substantially understate the seriousness of the offense or the culpability of the defendant. In such cases, an upward departure may be warranted.]

Option 2: [(E) Interest. Interest shall be included in determining loss only if it is bargained for as part of a lending transaction that is involved in the offense. The court shall include any such interest that is accrued and unpaid as of the time the defendant knew or should have known that the offense had been detected.]

(F) Special Rules. The following special rules shall be used to assist in determining actual loss in the cases indicated:

(i) Fraudulent Investment Schemes. In a case involving a fraudulent investment scheme, such as a Ponzi scheme, actual loss is the sum of the net actual losses of each victim who lost all or part of that victim's principal investment as a result of the fraudulent investment scheme. Because this subdivision provides, in cases covered hereunder, for determination of the net loss of each victim, subdivision (D), relating generally to credits against loss, shall not apply to such cases.

(ii) Stolen or Counterfeit Credit Cards and Access Devices; Purloined Numbers and Codes. In a case involving stolen or counterfeit credit cards (see 15 U.S.C. § 1602(k)), stolen or counterfeit access devices (see 18 U.S.C. § 1029(e)(1)), or purloined numbers or codes, the actual loss includes any unauthorized charges made with the credit cards, access devices, or numbers or codes. The actual loss determined for each such credit card, access device, or number or code shall be not less than $100.

(iii) Diversion of Government Program Benefits. In a case involving diversion of government program benefits, actual loss is the value of the benefits diverted from intended recipients or uses.

(iv) Davis-Bacon Act Cases. In a case involving a Davis-Bacon Act violation (i.e., a violation of 40 U.S.C. § 276a, criminally prosecuted under 18 U.S.C. § 1001), the actual loss is the difference between the legally required and actual wages paid.

(G) Upward Departure Considerations. There may be cases in which the loss substantially understates the seriousness of the offense or the culpability of the defendant. In such cases, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure is warranted:

(i) A primary objective of the offense was an aggravating, non-monetary objective. For example, a primary objective of the offense was to inflict emotional harm.

(ii) The offense caused or risked substantial non-monetary harm. For example, the offense caused physical harm, psychological harm, or severe emotional trauma, or resulted in a substantial invasion of a privacy interest.

(iii) The offense created a risk of substantial loss beyond the loss determined above.

(iv) The offense (I) endangered national security or military readiness; or (II) caused a loss of confidence in an important institution.

(v) The offense (I) endangered the solvency or financial security of one or more victims; or (II) impacted numerous victims and the loss determination

substantially understates the aggregate harm.

(H) Downward Departure Considerations. There also may be cases in which the loss substantially overstates the seriousness of the offense or the culpability of the defendant. In such cases, a downward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether a downward departure is warranted:

(i) The primary objective of the offense was a mitigating, non-monetary objective. For example, the primary objective of the offense was to fund medical treatment for a sick parent. [However, if, in addition to that primary objective, a substantial objective of the offense was to benefit the defendant economically, a downward departure would not be warranted.]

(ii) The defendant made complete, or substantially complete, restitution prior to the time the defendant knew or should have known that the offense had been detected.

(I) Appropriate Deference. The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon that evidence. Accordingly, the court's loss determination is entitled to appropriate deference. See 18 U.S.C. § 3742(e) and (f).

3. In some cases in which the amount of intended loss exceeds the actual loss, whether some of the intended loss would have occurred may be speculative. In such cases, the offense level ordinarily applicable to that amount of intended loss sometimes must be reduced, in accordance with § 2X1.1. (Conspiracies, Attempts, Solicitations). Specifically, in a case involving only inchoate offense conduct (i.e., a case in which the defendant was convicted only of an attempt, conspiracy, or solicitation, and in which the offense involved only intended loss), a decrease of three levels sometimes may apply, as provided under § 2X1.1.

Similarly, in the case of a partially completed offense (e.g., an offense involving a completed fraud that is part of a larger, attempted fraud in which both actual loss and additional intended loss result), the offense level is to be determined, and may be decreased in some cases, in accordance with the provisions of § 2X1.1, whether the defendant is convicted of the substantive offense, the inchoate offense (attempt, solicitation, or conspiracy), or both. As explained more fully in Application Note 4 of the Commentary to § 2X1.1, in such a case, a three-level decrease in the offense level for the intended loss sometimes may apply, except that the offense level for the intended loss, with or without a three-level decrease, shall not be used if it is less than the offense level for the actual loss.

Options on Discouraged or Prohibited Departure Based on MMP:

[4. [Option 1: The Commission has determined that the amount of loss involved in a particular case is a more appropriate factor in distinguishing the seriousness of an offense than is the extent of planning. Accordingly, (A) a sentence below the applicable guideline range [Option 2: [ordinarily]] would not be warranted in a case merely because it involved only minimal planning; and (B) a sentence above the applicable guideline range [Option 2: [ordinarily]] would not be warranted in a case merely because it involved more-than-minimal planning.]

5. Subsection (b)(7)(A) applies in the case of a misrepresentation that the defendant was an employee or authorized agent of a charitable, educational, religious or political organization, or a government agency. Examples of conduct to which this factor applies include (A) the mail solicitation by a group of defendants of contributions to a non-existent famine relief organization; (B) the diversion by a defendant of donations given for a religiously affiliated school as a result of telephone solicitations to church members in which the defendant falsely claims to be a fund-raiser for the school; and (C) the posing by a defendant as a federal collection agent in order to collect a delinquent student loan.

Subsection (b)(7)(B) provides an adjustment for violation of any judicial or administrative order, injunction, decree, or process. If it is established that an entity the defendant controlled was a party to the prior proceeding, and the defendant had knowledge of the prior decree or order, this provision applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business was previously enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, would be subject to this provision. This subsection does not apply to conduct addressed elsewhere in the guidelines; e.g., a violation of a condition of release (addressed in § 2J1.7 (Offense Committed While on Release)) or a violation of probation (addressed in § 4A1.1 (Criminal History Category)).

The enhancements in subsection (b)(7) are alternative rather than cumulative; however, if both of the enumerated factors apply in a particular case, an upward departure may be warranted.

7. For purposes of subsection (b)(8)(B), ''United States'' means each of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

For purposes of subsection (b)(8)(C), 'sophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction would ordinarily indicate sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore bank accounts also ordinarily would indicate sophisticated means.

If the conduct that forms the basis for an enhancement under subsection (b)(8) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.

8. For purposes of subsection (b)(10), a minimum measure of loss is provided in the case of an ongoing, sophisticated operation (such as an auto theft ring or ''chop shop'') to steal vehicles or vehicle parts or to receive stolen vehicles or vehicle parts. ''Vehicles'' refers to all forms of vehicles, including aircraft and watercraft.

9. For purposes of subsection (b)(11), an offense shall be considered to have substantially jeopardized the safety and soundness of a financial institution if, as a consequence of the offense, the institution (A) became insolvent; (B) substantially reduced benefits to pensioners or insureds; (C) was unable on demand to refund fully any deposit, payment, or investment; (D) was so depleted of its assets as to be forced to merge with another institution in order to continue active operations; or (E) was placed in substantial jeopardy of experiencing any of the conditions described in subdivisions (A) through (D) of this note.

10. For purposes of subsection (b)(12), the defendant shall be considered to have derived more than $1,000,000 in gross receipts if the gross receipts to the defendant individually, rather than to all participants, exceeded $1,000,000. ''Gross receipts'' means any moneys, funds, credits, assets, securities, or other real or personal property, whether tangible or intangible, owned by, or under the custody or control of, a financial institution, that are obtained

directly or indirectly as a result of the offense. See 18 U.S.C. §§ 982(a)(4), 1344.

11. Subsection (c)[(4)] provides a cross reference to another Chapter Two guideline in cases in which the defendant is convicted of a general fraud statute, and the conduct set forth in the count of conviction is more specifically covered by that other Chapter Two guideline. Sometimes offenses involving fraudulent statements are prosecuted under 18 U.S.C. § 1001, or a similarly general statute, although the offense is also covered by a more specific statute. Examples include false entries regarding currency transactions, for which § 2S1.3 (Structuring Transactions to Evade Reporting Requirements; Failure to Report Cash or Monetary Transactions; Failure to File Currency and Monetary Instrument Report; Knowingly Filing False Reports) would be more apt, and false statements to a customs officer, for which § 2T3.1 (Evading Import Duties or Restrictions (Smuggling); Receiving or Trafficking in Smuggled Property) likely would be more apt. In certain other cases, the mail or wire fraud statutes, or other relatively broad statutes, are used primarily as jurisdictional bases for the prosecution of other offenses.

Offenses involving fraudulent identification documents and access devices, in violation of 18 U.S.C. §§ 1028 and 1029, are also covered by this guideline. If the primary purpose of the offense involved the unlawful production, transfer, possession, or use of identification documents for the purpose of violating, or assisting another to violate, the laws relating to naturalization, citizenship, or legal resident status, apply § 2L2.1 or § 2L2.2, as appropriate, rather than this guideline, pursuant to subsection (c)(3).

12. If the defendant is convicted under 18 U.S.C. § 225 (relating to a continuing financial crimes enterprise), the offense level is that applicable to the underlying series of offenses comprising the continuing financial crimes enterprise.

Background: This guideline covers offenses involving theft, stolen property, property damage or destruction, fraud, forgery, insider trading, and counterfeiting (other than offenses involving altered or counterfeit bearer obligations of the United States). It also covers offenses involving altering or removing motor vehicle identification numbers, trafficking in automobiles or automobile parts with altered or obliterated identification numbers, odometer laws and regulations, obstructing correspondence, the falsification of documents or records relating to a benefit plan covered by the Employment Retirement Income Security Act, and the failure to maintain, or falsification of, documents required by the Labor Management Reporting and Disclosure Act.

Because federal fraud statutes often are broadly written, a single pattern of offense conduct usually can be prosecuted under several code sections, as a result of which the offense of conviction may be somewhat arbitrary. Furthermore, most fraud statutes cover a broad range of conduct with extreme variation in severity. The specific offense characteristics and cross references contained in this guideline are designed with these considerations in mind.

The Commission has determined that, ordinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline. Because of the structure of the Sentencing Table (Chapter 5, Part A), subsection (b)(1) results in an overlapping range of enhancements based on the loss.

Both direct and consequential pecuniary harm that is reasonably foreseeable to result from the offense will be taken into account in determining the loss. Accordingly, in any particular case, the determination of loss may include consideration of factors not specifically set forth in this guideline. For example, in an offense involving unlawfully accessing, or exceeding authorized access to, a ''protected computer,'' as defined in 18 U.S.C. § 1030(e)(2)(A) or (B), ''loss'' is the reasonably foreseeable pecuniary harm to the victim, which typically includes costs such as conducting a damage assessment and restoring the system and data to their condition prior to the offense, and any lost revenue due to interruption of service. The Commission does not intend that the cost to the government of prosecution and criminal investigation of an offense covered by this guideline will be included in the determination of loss, even if such costs are reasonably foreseeable.

Theft from the person of another, such as pickpocketing or non-forcible purse-snatching, receives an enhanced sentence because of the increased risk of physical injury. This guideline does not include an enhancement for thefts from the person by means of force or fear; such crimes are robberies and are covered under § 2B3.1 (Robbery).

A minimum offense level of 14 is provided for offenses involving an organized scheme to steal vehicles or vehicle parts. Typically, the scope of such activity is substantial, but the value of the property may be particularly difficult to ascertain in individual cases because the stolen property is rapidly resold or otherwise disposed of in the course of the offense. Therefore, the specific offense characteristic of an organized scheme is used as an alternative to loss in setting a minimum offense level.

Use of false pretenses involving charitable causes and government agencies enhances the sentences of defendants who take advantage of victims' trust in government or law enforcement agencies or the generosity and charitable motives of victims. Taking advantage of a victim's self-interest does not mitigate the seriousness of fraudulent conduct; rather, defendants who exploit victims' charitable impulses or trust in government create particular social harm. In a similar vein, a defendant who has been subject to civil or administrative proceedings for the same or similar fraudulent conduct demonstrates aggravated criminal intent and is deserving of additional punishment for not conforming with the requirements of judicial process or orders issued by federal, state, or local administrative agencies.

Subsection (b)(5) implements, in a broader form, the instruction to the Commission in section 6(b)(1) of Public Law 105–184. Subsection (b)(6) implements the instruction to the Commission in section 2 of Public Law 105–101. Subsection (b)(8) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184. Subsection (b)(9)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322. Subsection (b)(11) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73. Subsection (b)(12) implements the instruction to the Commission in section 2507 of Public Law 101–647. Subsection (d)(1) implements the instruction to the Commission in section 805(c) of Public Law 104–132.''.

(B) The Tax Package

3. Synopsis of Proposed Amendment: The following proposed amendment provides increases that are similar to the loss table presented in the consolidated theft, fraud, and property destruction

guideline, except at amounts between $12,500 and $80,000.

Proposed Amendment: Strike the tax table in § 2T4.1 and insert a new table as follows:

"§ 2T4.1. Tax Table.

Tax loss (apply the greatest)	Offense level
(A) $2,000 or less	6
(B) More than $2,000	8
(C) More than $5,000	10
(D) More than $12,500	12
(E) More than $30,000	14
(F) More than $80,000	16
(G) More than $200,000	18
(H) More than $500,000	20
(I) More than $1,200,000	22
(J) More than $2,500,000	24
(K) More than $7,500,000	26
(L) More than $20,000,000	28
(M) More than $50,000,000	30
(N) More than $100,000,000	32.".

Issue for Comment: On May 1, 1998, the Commission submitted to Congress an amendment that provided a two-level enhancement in the fraud guideline, § 2F1.1, for sophisticated concealment. The Commission also submitted amendments that generally conformed the sophisticated means enhancement in §§ 2T1.1, 2T1.4 and 2T3.1 to the sophisticated concealment enhancement provided in the fraud guideline.

Subsequent to these amendments, the Congress enacted the Telemarketing Fraud Protection Act of 1998, Pub. L. 105–184. This Act required the Commission to act under emergency authority and, among other things, specifically required the Commission to provide "an additional appropriate sentencing enhancement, if [a telemarketing] offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States."

The Commission responded to this directive by building on the amendment to § 2F1.1 that added sophisticated concealment. The new amendment, which was submitted to Congress in September, 1998, broadened the scope of the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense.

The Commission invites comment on whether it should amend §§ 2T1.1, 2T1.4, and 2T3.1 to generally conform the sophisticated concealment enhancement (and the accompanying commentary) to the sophisticated means enhancement added to the fraud guideline in response to the Telemarketing Fraud Protection Act. The Commission also invites comment on whether it should provide a minimum offense level of [12] for tax offenses that involve either sophisticated concealment or sophisticated means (if the Commission conforms the enhancement in §§ 2T1.1, 2T1.4, and 2T3.1).

(C) More Than Mimimal Planning Conforming Amendments

4. Synopsis of Proposed Amendment: The following amendment makes conforming changes that necessarily follow from the incorporation of more than minimal planning into the loss table. The amendment proposes to strike references to more than minimal planning in appropriate places throughout the guidelines.

Proposed Amendment: The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) in the first paragraph by striking the last sentence as follows:

" 'More than minimal planning' also exists if significant affirmative steps were taken to conceal the offense, other than conduct to which § 3C1.1 (Obstructing or Impeding the Administration of Justice) applies.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) by striking the second paragraph as follows:

" 'More than minimal planning' is deemed present in any case involving repeated acts over a period of time, unless it is clear that each instance was purely opportune. Consequently, this adjustment will apply especially frequently in property offenses."

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(f) by striking the last two paragraphs as follows:

"In a theft, going to a secluded area of a store to conceal the stolen item in one's pocket would not alone constitute more than minimal planning. However, repeated instances of such thefts on several occasions would constitute more than minimal planning. Similarly, fashioning a special device to conceal the property, or obtaining information on delivery dates so that an especially valuable item could be obtained, would constitute more than minimal planning.

In an embezzlement, a single taking accomplished by a false book entry would constitute only minimal planning. On the other hand, creating purchase orders to, and invoices from, a dummy corporation for merchandise that was never delivered would constitute more than minimal planning, as would several instances of taking money, each accompanied by false entries.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 4 in the second paragraph by striking the last sentence as follows:

"For example, the adjustments from § 2F1.1(b)(2) (more than minimal planning) and § 3B1.1 (Aggravating Role) are applied cumulatively.".

Section 2B1.1(b)(4) is amended by striking subdivision (A) as follows:

"(A) If the offense involved more than minimal planning, increase by 2 levels; or".

Section 2B1.1(b)(4)(B) is amended by striking "(B)'; and by striking "4 " and inserting "2".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by striking " 'More than minimal planning,' "; and by striking " 'firearm,' " and inserting " 'Firearm" '.

The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 13 as follows:

"13. If subsection (b)(6) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' ".

The Commentary to § 2B1.1 captioned "Application Notes" is amended by redesignating Notes 14, 15, and 16 as Notes 13, 14, and 15, respectively.

The Commentary to § 2B1.1 captioned "Background" is amended in the first paragraph by striking the last sentence as follows:

"Because of the structure of the Sentencing Table (Chapter 5, Part A), subsection (b)(1) results in an overlapping range of enhancements based on the loss.".

The Commentary to § 2B1.1 captioned "Background" is amended by striking the second paragraph as follows:

"The guidelines provide an enhancement for more than minimal planning, which includes most offense behavior involving affirmative acts on multiple occasions. Planning and repeated acts are indicative of an intention and potential to do considerable harm. Also, planning is often related to increased difficulties of detection and proof.".

Section 2B1.3(b) is amended by striking subdivision (3) as follows:

"(3) If the offense involved more than minimal planning, increase by 2 levels."; and by redesignating (b)(4) as (b)(3).

The Commentary to § 2B1.3 captioned "Application Notes" is amended in Note 1 by striking the first paragraph as follows:

" 'More than minimal planning' is defined in the Commentary to § 1B1.1 (Application Instructions)."

Section 2F1.1(b) is amended by striking subdivision (2) as follows:

"(2) If the offense involved (A) more than minimal planning, or (B) a scheme

to defraud more than one victim, increase by 2 levels.''.

The Commentary to § 2F1.1 captioned ''Application Notes'' is amended by striking Note 2 as follows:

''2. 'More than minimal planning' (subsection (b)(2)(A)) is defined in the Commentary to § 1B1.1 (Application Instructions).'';

by striking Note 4 as follows:

''4. 'Scheme to defraud more than one victim,' as used in subsection (b)(2)(B), refers to a design or plan to obtain something of value from more than one person. In this context, 'victim' refers to the person or entity from which the funds are to come directly. Thus, a wire fraud in which a single telephone call was made to three distinct individuals to get each of them to invest in a pyramid scheme would involve a scheme to defraud more than one victim, but passing a fraudulently endorsed check would not, even though the maker, payee and/or payor all might be considered victims for other purposes, such as restitution.'';

by striking Note 20 as follows:

''20. If subsection (b)(7) (A) or (B) applies, there shall be a rebuttable presumption that the offense involved 'more than minimal planning.' '';

by redesignating Note 3 as Note 2, and by redesignating Notes 5 through 19 as Notes 3 through 17, respectively.

The Commentary to § 2F1.1 captioned ''Background'' is amended by striking the third paragraph as follows:

''The extent to which an offense is planned or sophisticated is important in assessing its potential harmfulness and the dangerousness of the offender, independent of the actual harm. A complex scheme or repeated incidents of fraud are indicative of an intention and potential to do considerable harm. In pre-guidelines practice, this factor had a significant impact, especially in frauds involving small losses. Accordingly, the guideline specifies a 2-level enhancement when this factor is present.''.

The Commentary to § 3D1.3 captioned ''Application Notes'' is amended in Note 3 by striking the last sentence as follows:

''In addition, the adjustment for 'more than minimal planning' frequently will apply to multiple count convictions for property offenses.''.

The ''Illustrations of the Operation of the Multiple-Count Rules'' after guideline 3D1.5 is amended in the fifth sentence of illustration 2 by inserting ''and'' before ''1 level''; by striking ''; and 2 levels are added because the conduct involved repeated acts with some planning (§ 2F1.1(b)(2)(A))''; and in the last sentence by striking ''9'' and inserting ''7''.

(D) Amendments for Referring Guidelines

5. Synopsis of Proposed Amendment: Currently, many guideline provisions refer to the loss tables in the theft (§ 2B1.1) and fraud (§ 2F1.1) guidelines. In general, the following amendments show how the guidelines that refer to either § 2B1.1 or § 2F1.1 are proposed to be amended if the Commission were to adopt the consolidated guideline presented in Proposed Amendment 1, above.

The proposed amendment accomplishes the following: (A) Presents a reference monetary table to be used as an alternative to the loss table in the consolidated guideline for guidelines that already build in more than minimal planning; (B) sets out the guidelines that would refer to this new reference monetary table; (C) presents three options for amending the pornography and obscenity guidelines; (D) presents two options for amending the copyright and structuring transactions guidelines; (E) presents two options for amending § 2B3.2 for offenses involving the invasion of a protected computer; (F) consolidates the bank gratuity and principal gratuity guidelines; and (G) presents technical and conforming amendments that would be required if the Commission consolidates the theft, fraud, and property destruction guidelines.

5(A). Reference Monetary Table

Proposed Amendment: Chapter Two, Part X is amended by adding at the end the following new subpart:

''6. Reference Monetary Table

§ 2X6.1. Reference Monetary Table

Amount (apply the greatest)	Increase in level
(A) More than $2,000	Add 1.
(B) More than $5,000	Add 2.
(C) More than $10,000	Add 3.
(D) More than $20,000	Add 4.
(E) More than $40,000	Add 6.
(F) More than $80,000	Add 8.
(G) More than $200,000	Add 10.
(H) More than $500,000	Add 12.
(I) More than $1,200,000	Add 14.
(J) More than $2,500,000	Add 16.
(K) More than $7,500,000	Add 18.
(L) More than $20,000,000	Add 20.
(M) More than $50,000,000	Add 22.
(N) More than $100,000,000	Add 24.''.

5(B). Guidelines That Will Refer to Reference Monetary Table

Proposed Amendment: Section 2B5.1(b) is amended by striking:

''(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table at § 2F1.1 (Fraud and Deceit).'', and inserting:

''(1) If the face value of the counterfeit items exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2B6.1(b) is amended by striking:

''(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).'', and inserting:

''(1) If the retail value of the motor vehicles or parts involved exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2F1.2(b) is amended by striking:

''(1) Increase by the number of levels from the table in § 2F1.1 corresponding to the gain resulting from the offense.'', and inserting:

''(1) If the gain resulting from the offense exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2B4.1(b) is amended by striking:

''(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1.'',

and inserting:

''(1) If the greater of the value of the bribe or the improper benefit to be conferred exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2B3.3(b) is amended by striking:

''(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1.'',

and inserting:

''(1) If the greater of the amount obtained or demanded exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2Q2.1(b)(3) is amended by striking:

''(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase the offense level by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or'',

and inserting:

''(A) If the market value of the fish, wildlife, or plants exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table), [but in no event more than [18] levels]; or''.

Section 2C1.1(b)(2) is amended by striking:

''(A) If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).'',

and inserting:

''(A) If the value of the payment, the benefit received or to be received in return for the payment, or the loss to the government from the offense, whichever is greatest, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2C1.2(b)(2) is amended by striking:

''(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).'',

and inserting:

''(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2C1.7(b)(1) is amended by striking:

''(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit); or'',

and inserting:

''(A) If the loss to the government, or the value of anything obtained or to be obtained by a public official or others acting with a public official, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2E5.1(b) is amended by striking:

''(2) Increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater.'',

and inserting:

''(2) If the value of the prohibited payment or the value of the improper benefit to the payer, whichever is greater, exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

5(C). Pornography and Obscenity Guidelines

Proposed Amendment: [Option 1: Section 2G2.2(b) is amended by striking:

''(2) If the offense involved distribution, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.'',

and inserting:

''(2) If the offense involved distribution, increase by the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the retail value of the material, but in no event by less than [5] levels.''.

[Option 2: Section 2G2.2(b)(2) is amended by inserting ''(Fraud and Deceit)'' after ''§ 2F1.1''.

[Option 3: Section 2G2.2(b)(2) is amended by striking ''the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than''.

The Commentary to § 2G2.2 captioned ''Application Notes'' is amended by adding at the end the following new note:

''4. Subsection (b)(2) provides a five-level enhancement if the offense involved distribution. If the offense involved distribution by a large-scale commercial enterprise [(i.e., a commercial enterprise distributing material having a retail value that is more than [$40,000])], an upward departure may be warranted.''.

[Option 1: Section 2G3.1(b) is amended by striking:

''(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5 levels.'',

and inserting:

''(1) If the offense involved an act related to distribution for pecuniary gain, increase by the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the retail value of the material, but in no event by less than [5] levels.''.

[Option 2: Section 2G3.1(b)(1) is amended by inserting ''(Fraud and Deceit)'' after ''§ 2F1.1''.

[Option 3: Section 2G3.1(b)(1) is amended by striking ''the number of levels from the table in § 2F1.1 corresponding to the retail value of the material, but in no event by less than 5'', and inserting ''[5]''.

The Commentary to § 2G3.1 captioned ''Application Note'' is amended by striking ''Note'' and inserting ''Notes''; and adding at the end the following new note:

''2. Subsection (b)(1) provides a [five-level] enhancement if the offense involved an act related to distribution for pecuniary gain.. If the offense involved distribution by a large-scale commercial enterprise [(i.e., a commercial enterprise distributing material having a retail value that is more than [$40,000])], an upward departure may be warranted''.

[Option 1: Section 2G3.2(b) is amended by striking:

''(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.'',

and inserting:

''(2) If 6 plus the number of levels from the table in § 2X6.1 (Reference Monetary Table) corresponding to the volume of commerce attributable to the defendant results in a greater offense level than the offense level determined above, increase to the greater offense level.''.

[Option 2: Section 2G3.2(b) is amended by striking:

''(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.'',

and inserting:

''(2) If 6 plus the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the volume of commerce attributable to the defendant results in a greater offense level than the offense level determined above, increase to the greater offense level.''.

[Option 3: Section 2G3.2(b) is amended by striking:

''(2) If 6 plus the offense level from the table at 2F1.1(b)(1) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.''.

The Commentary to § 2G3.2 is amended by striking:

''Background: Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it. Subsection (b)(2) provides an enhancement for large-scale

''dial-a-porn'' or obscene broadcasting operations that results in an offense level comparable to the offense level for such operations under § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter). The extent to which the obscene material was distributed is approximated by the volume of commerce attributable to the defendant.'';

and by inserting:

''Application Notes:

1. Subsection (b)(1) provides an enhancement where an obscene telephonic communication was received by a minor less than 18 years of age or where a broadcast was made during a time when such minors were likely to receive it.

2. If the offense involved communications or broadcasting operations by a large-scale commercial enterprise [(i.e., a commercial enterprise engaging in a volume of commerce having a value that is more than [$40,000])], an upward departure may be warranted.''.

5(D). Copyright and Structuring Transactions

Proposed Amendment: [Option 1: Section 2B5.3(b) is amended by striking:

''(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).'',

and inserting:

''(1) If the retail value of the infringing items exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

[Option 2: Maintains current reference to the fraud table.

[Option 1: Section § 2S1.3 is amended by striking:

''(a) Base Offense Level: 6 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.'',

and inserting:

''(a) Base Offense Level: 6 plus the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table), if the value of the funds exceeded $2,000.

[Option 2: Section § 2S1.3 is amended by striking:

''(a) Base Offense Level: 6 plus the number of offense levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the value of the funds.'',

and inserting:

''(a) Base Offense Level: 6 plus the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit), if the value of the funds exceeded $2,000.''.

5(E). Trespass Offenses Involving Invasion of Protected Computers

Proposed Amendment: [Option 1: Section 2B2.3(b) is amended by striking:

''(3) If the offense involved invasion of a protected computer resulting in a loss exceeding $2,000, increase the offense level by the number of levels from the table in § 2F1.1 corresponding to the loss.'',

and inserting:

''(3) If (A) the offense involved invasion of a protected computer, and (B) the loss resulting from the invasion exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

[Option 2: Section 2B2.3(b) is amended by striking:

''(3) If the offense involved invasion of a protected computer resulting in a loss exceeding $2,000, increase the offense level by the number of levels from the table in § 2F1.1 corresponding to the loss.'',

and inserting:

''(3) If (A) the offense involved invasion of a protected computer, and (B) the loss resulting from the invasion exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).''.

5(F). Consolidation of Bank Gratuity and Principal Gratuity Guidelines

Proposed Amendment: Section 2C1.2(b)(2) is amended by striking:

''(A) If the value of the gratuity exceeded $2,000, increase by the corresponding number of levels from the table in § 2F1.1 (Fraud and Deceit).'',

and inserting:

''(A) If the value of the unlawful payment exceeded $2,000, increase by the corresponding number of levels from the table in § 2X6.1 (Reference Monetary Table).''.

Section 2C1.2(b)(2)(B) is amended by striking ''gratuity'' and inserting ''unlawful payment''.

The Commentary to § 2C1.2 captioned ''Statutory Provision'' is amended by striking ''Provision'' and inserting ''Provisions''; by inserting ''§ '' following ''U.S.C. § ''; and by inserting '', 212–214, 217'' following ''(1)''.

The Commentary to § 2C1.2 captioned ''Application Notes'' is amended by adding at the end the following new note:

''5. An unlawful payment may be anything of value; it need not be a monetary payment.''.

The Commentary to § 2C1.2 captioned ''Background'' is amended by striking the second and third sentences as follows:

''A corrupt purpose is not an element of this offense. An adjustment is provided where the value of the gratuity exceeded $2,000, or where the public official was an elected official or held a high-level decision-making or sensitive position.'',

and inserting:

''It also applies to the offer to, or acceptance by, a bank examiner of any unlawful payment; the offer or receipt of anything of value for procuring a loan or discount of commercial paper from a Federal Reserve Bank; and the acceptance of a fee or other consideration by a federal employee for adjusting or canceling a farm debt.''.

Strike § 2C1.6 in its entirety.

5(G). Technical and Conforming Amendments

Synopsis of Proposed Amendment: The following amendments are technical and conforming amendments that would be required if the Commission adopts the amendments in (A) that propose to consolidate the theft, fraud, and property destruction guidelines.

Proposed Amendment: The Commentary to § 1B1.1 captioned ''Application Notes'' is amended in Note 4 in the second paragraph by striking the second sentence.

The Commentary to § 1B1.3 captioned ''Application Notes'' is amended in Note 5 by striking ''§ 2F1.1 (Fraud and Deceit)'' and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud)''.

Chapter Two is amended by striking ''§ 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft)'' wherever it appears and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud)''; and by striking ''§ 2F1.1 (Fraud and Deceit)'' wherever it appears and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud)''.

The Commentary to § 2C1.1 captioned ''Application Notes'' is amended in Note 2 by striking ''and includes both actual and intended loss''.

The Commentary to § 2C1.7 captioned ''Application Notes'' is amended in Note 3 by striking ''and includes both actual and intended loss''.

Section 2F1.2 is deleted in its entirety; and Chapter Two, Part B is amended by adding at the end the following new guideline:

''§ 2B1.4. Insider Trading

(a) Base Offense Level: 8

(b) Specific Offense Characteristic

(1) Increase by the number of levels from the table in § 2B1.1 (Theft, Property Destruction, and Fraud)

corresponding to the gain resulting from the offense.

Commentary

Statutory Provisions: 15 U.S.C. 78j and 17 CFR 240.10b–5. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Note:

1. Section 3B1.3 (Abuse of Position of Trust or Use of Special Skill) should be applied only if the defendant occupied and abused a position of special trust. Examples might include a corporate president or an attorney who misused information regarding a planned but unannounced takeover attempt. It typically would not apply to an ordinary ''tippee.''

Background: This guideline applies to certain violations of Rule 10b–5 that are commonly referred to as 'insider trading.' Insider trading is treated essentially as a sophisticated fraud. Because the victims and their losses are difficult if not impossible to identify, the gain, i.e., the total increase in value realized through trading in securities by the defendant and persons acting in concert with him or to whom he provided inside information, is employed instead of the victims' losses.

Certain other offenses, e.g., 7 U.S.C. § 13(e), that involve misuse of inside information for personal gain also may appropriately be covered by this guideline.''.

The Commentary to § 2B5.3 captioned ''Background'' is amended in the first paragraph by striking'', which will generally exceed the loss or gain due to the offense''.

Section 2H3.3(a)(2) is amended by inserting ''or destruction'' after ''theft'.

Section 2H3.3(a) is amended by striking subdivision (3).

The Commentary to § 2H3.3 captioned ''Background'' is amended by striking ''or § 2B1.3 (Property Damage or Destruction)''.

Section 2K1.4(a) is amended in subdivision (3) by striking ''if the offense was committed in connection with a scheme to defraud; or'' and inserting a period; and by striking subdivision (4).

Section 2K1.4(b) is amended in subdivision (2) by striking ''(a)(4)'' and inserting ''(a)(3)''.

The Commentary to § 2N2.1 captioned ''Application Notes'' is amended in Note 2 by inserting ''theft, property destruction, and'' after ''involved''; and by striking ''theft, bribery, revealing trade secrets, or destruction of property'' and inserting ''bribery''.

The Commentary to § 2N3.1 captioned ''Background'' is amended by striking ''the guideline for fraud and deception, § 2F1.1,'' and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud)''.

The Commentary to § 3B1.3 captioned ''Application Notes'' is amended by adding at the end the following new note:

''4. The following additional illustrations of an abuse of a position of trust pertain to theft or embezzlement from employee pension or welfare benefit plans or labor unions:

(A) If the offense involved theft or embezzlement from an employee pension or welfare benefit plan and the defendant was a fiduciary of the benefit plan, an adjustment under this section for abuse of a position of trust will apply. Fiduciary of the benefit plan is defined in 29 U.S.C. § 1002(21)(A) to mean a person who exercises any discretionary authority or control in respect to the management of such plan or exercises authority or control in respect to management or disposition of its assets, or who renders investment advice for a fee or other direct or indirect compensation with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or who has any discretionary authority or responsibility in the administration of such plan.

(B) If the offense involved theft or embezzlement from a labor union and the defendant was a union officer or occupied a position of trust in the union (as set forth in 29 U.S.C. § 501(a)), an adjustment under this section for an abuse of a position of trust will apply.''.

Section 3D1.2(d) is amended by striking ''2B1.3'' and inserting ''2B1.4''; and by striking ''§§ 2F1.1, 2F1.2;''.

Section 3D1.3(b) is amended by striking ''(e.g., theft and fraud)''.

The Commentary to § 3D1.3 captioned ''Application Notes'' is amended in Note 3 by striking ''(e.g., theft and fraud)''.

The ''Illustrations of the Operation of the Multiple-Count Rules'' after § 3D1.5 is amended in illustration 4 by striking ''§ 2F1.1 (Fraud and Deceit)'' and inserting ''2B1.1 (Theft, Property Destruction, and Fraud)''; and by striking illustration 2 in its entirety; and by redesignating illustrations 3 and 4 as illustrations 2 and 3.

Chapter Eight is amended by striking ''Larceny, Embezzlement, and Other Forms of Theft'' wherever it appears and inserting ''Theft, Property Destruction, and Fraud''.

Chapter Eight is amended by striking ''2F1.1 (Fraud and Deceit)'' wherever it appears and inserting ''§ 2B1.1 (Theft, Property Destruction, and Fraud)''.

The Commentary to § 8A1.2 captioned ''Application Notes'' is amended in Note 3(i) by striking ''§ '' before ''§ 2B1.1''; and by striking ''(Larceny, Embezzlement, and Other Forms of Theft), § 2F1.1 (Fraud and Deceit)'' and inserting ''(Theft, Property Destruction, and Fraud)''.

Section 8C2.1 subsection (a) is amended by striking ''2B1.3'' and inserting ''2B1.4''; and by striking ''§§ 2F1.1, 2F1.2;'';

Section 8C2.1 subsection (a) is amended by striking ''2C1.6,''.

Appendix A (Statutory Index) is amended in the line referenced to 15 U.S.C. § 1281 by striking ''2B1.3 '' and inserting ''2B1.1'';

in the lines referenced to 16 U.S.C. §§ 114, 117c, 123, 146, 413, and 433 by striking ''2B1.3'';

in the lines referenced to any of 18 U.S.C. §§ 32(a)(b), 33, 37, 43, 112(a), 970(a), 1030(a)(5), 1361, 1363, 1366, 1702, 1705, 1706, 1857, 2275, 2276, 2280, 2281, 2332a, by striking ''2B1.3'' and inserting ''2B1.1'';

in the lines referenced to any of 18 U.S.C. §§ 1852 through 1854 by striking ''2B1.3'';

in the line referenced to 49 U.S.C. App. § 1687(g) by striking ''2B1.3'' and inserting ''2B1.1''.

in the line referenced to 18 U.S.C. § 217 by striking ''2C1.6'' and inserting ''2C1.2''; in the lines referenced to any of 7 U.S.C. §§ 6, 6b(A), 6b(B), 6b(C), 6c, 6h, 6o, 13(a)(2), 13(a)(3), 13(a)(4), 23, 270, 2024(b), and 2024(c) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 12 U.S.C. § 631 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 15 U.S.C. §§ 50, 77e, 77q, 77x, 78j, 80-b-6, 158, 645(a), 714m(a), 1644, 1681q, and 1693n(a) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 15 U.S.C. § 645(b) by striking '', 2F1.1'';

in the line referenced to 15 U.S.C. § 714m(b) by striking '', 2F1.1'';

in the lines referenced to any of 16 U.S.C. §§ 831t(b) and 831t(c) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 18 U.S.C. § 152 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 18 U.S.C. § 153 by striking '', 2F1.1'';

in the line referenced to 18 U.S.C. § 500 by striking '', 2F1.1'';

in the line referenced to 18 U.S.C. § 501 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 18 U.S.C. §§ 502, 503, 505–510, 513, 514, and 642 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 18 U.S.C. § 656, 657, 659, 663, 665(a), and 666(a)(1)(A), by striking '', 2F1.1'';

in the lines referenced to any of 18 U.S.C. §§ 709 and 712 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 18 U.S.C. §§ 911, 914, 915, 917, 1001–1007, 1010–1022 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 18 U.S.C. § 1023 by striking '', 2F1.1'';

in the lines referenced to any of 18 U.S.C. §§ 1025, 1026, 1028, 1029, 1030(a)(6), 1031, 1032 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 18 U.S.C. § 1033 by striking '', 2F1.1'';

in the lines referenced to any of 18 U.S.C. §§ 1035, 1341–1344, 1347, 1422, 1704, 1708, 1712, 1716C, 1720, 1728, 1919, 1920, 1923, 2072, 2073, 2197, and 2272 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 18 U.S.C. §§ 2315 and 2316 by striking '', 2F1.1'';

in the lines referenced to any of 19 U.S.C. §§ 1434–1436, 1919, and 2316 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 20 U.S.C. § 1097(a) by striking '', 2F1.1'';

in the lines referenced to any of 20 U.S.C. §§ 1097(b) and 1097(d) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 21 U.S.C. § 333(a)(2) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 22 U.S.C. §§ 1980(g), 2197(n), and 4221 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 25 U.S.C. § 450d by striking '', 2F1.1'';

in the line referenced to 26 U.S.C. § 7208 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 26 U.S.C. §§ 7214 and 7232 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 29 U.S.C. § 1141 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 38 U.S.C. §§ 787 and 3502 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 41 U.S.C. § 423(e) striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 42 U.S.C. §§ 408, 1307(a), 1307(b), 1320a–7b, 1383(d)(2), 1383a(a), 1383a(b), 1395nn(a), 1395nn(c), 1396h(a), 1713 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 42 U.S.C. § 1760(g) by striking '', 2F1.1'';

in the line referenced to 42 U.S.C. § 1761(o)(1) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 42 U.S.C. §§ 1761(o)(2), by striking '', 2F1.1'';

in the line referenced to 42 U.S.C. § 3220(a) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 42 U.S.C. § 3220(b) by striking '', 2F1.1'';

in the line referenced to 42 U.S.C. § 3426 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 42 U.S.C. § 3791 by striking '', 2F1.1'';

in the line referenced to 42 U.S.C. § 3792 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 42 U.S.C. § 3795 by striking '', 2F1.1'';

in the line referenced to 42 U.S.C. § 5157 by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 45 U.S.C. § 359(a) by striking ''2F1.1'' and inserting ''2B1.1'';

in the line referenced to 46 U.S.C. § 1276 by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 49 U.S.C. §§ 121, 11903, 14912, 16102, 80116, by striking ''2F1.1'' and inserting ''2B1.1'';

in the lines referenced to any of 7 U.S.C. § 13(d) and 13(f) by striking ''2F1.2'' and inserting ''2B1.4'';

in the line referenced to 15 U.S.C. § 78j by striking ''2F1.2'' and inserting ''2B1.4''; and

in the line referenced to 18 U.S.C. § 1902 by striking ''2F1.2'' and inserting ''2B1.4'.

Part III—Conditions of Probation and Supervised Release

6. Synopsis of Proposed Amendment: In the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998, Pub. L. 105–119, Congress amended sections 3563(a) and 3583(d) of title 18, United States Code, to add a new mandatory condition of probation for persons convicted of sex offenses. The new mandatory condition requires a person convicted of a sex offense (as described in 18 U.S.C. § 4042(c)(4)) to report that person's address and any change of residence to the probation officer supervising the case and to register as a sex offender in any State where the person resides, works, or is a student. These amendments to sections 3563(a) and 3583(d) become effective one year after November 26, 1997.

The following proposed amendment would add this new condition to the mandatory conditions of probation and supervised release listed in §§ 5B1.3 and 5D1.3.

Proposed Amendment: Subsection 5B1.3(a) is amended by adding at the end the following new subdivision:

''(9) a defendant convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student (see 18 U.S.C. § 3563(a)(8)).''.

Subsection 5D1.3(a) is amended by adding at the end the following new subdivision:

''(7) a defendant convicted of a sexual offense as described in 18 U.S.C. § 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student (see 18 U.S.C. § 3583(d)).''.

Part IV—Issues for Comment

7. *Unauthorized Compensation:* As a result of enacted legislation, the maximum term of imprisonment for violations of 18 U.S.C. § 209 is now five years if the conduct is willful. Before that change, the maximum term of imprisonment for any violation of 18 U.S.C. § 209 was one year. The Commission invites comment on whether, in view of the increased maximum term of imprisonment for violations of 18 U.S.C. § 209, the guideline offense levels in § 2C1.4 (Payment or Receipt of Unauthorized Compensation) should be increased, and, if so, by what amount.

8. *Cloning of Wireless Telephones:* (A). The Wireless Telephone Protection Act, Pub. L. 105–418 (the ''Act''), provides a general directive to the Commission to review and amend, if appropriate, the sentencing guidelines and policy statements to provide an appropriate penalty for offenses involving the cloning of wireless telephones, including attempts and conspiracies. The Commission invites comment on whether and how it should amend the guidelines for offenses involving the cloning of wireless telephones, including offenses involving an attempt or conspiracy to clone a wireless telephone. See 18 U.S.C. § 1029(e)(9) (as amended by the Act).

Specifically, should the Commission amend § 2F1.1 (Fraud), the guideline to which such offenses are referenced, to provide a tailored enhancement (specific offense characteristic) if the offense, including any relevant conduct, involved the use of hardware (a ''copycat box'') or software which has been configured for altering or modifying a wireless telephone? If so, what should be the magnitude of such an enhancement? Should the

Commission provide a specific offense characteristic in § 2F1.1, or a cross reference to other offense guidelines, if the cloning offense facilitated, or was in connection with, another offense? If such a specific offense characteristic or a cross reference is warranted, by how many levels should the sentence for such offenders be increased?

(B). If the Commission does not adopt a comprehensive revision of the guidelines and commentary for theft, property destruction, and fraud offenses, such as the comprehensive revision set forth in the Economic Crime Package proposed in Amendment 2, above (which, in the proposed loss definition, includes a special rule for access devices and purloined numbers), should the Commission nevertheless adopt a special rule for cases involving stolen, unauthorized, or counterfeit access devices used in cloning offenses? Such a special rule could, for example, provide for a minimal loss amount of $100 in the case of each such access device.

9. *Nuclear, Chemical, and Biological Weapons:* Section 1423(a) of the Defense Authorization Act for Fiscal Year 1997 expressed the sense of Congress that the guidelines for the offenses of importation, attempted importation, exportation, and attempted exportation of nuclear, biological, and chemical weapons materials provide inadequate punishment for those offenses. Section 1423(b) of that Act urged the Commission to amend the guidelines to increase the penalties for such offenses under (1) section 11 of the Export Administration Act of 1979 (50 U.S.C. App. 2410); (2) sections 38 and 40 of the Arms Export Control Act (22 U.S.C. 2778 and 2780); (3) the International Economic Powers Act (50 U.S.C. 1701 et seq.); and (4) section 309(c) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 2156a(c)).

The Commission invites comment on whether, as Congress suggests, the guidelines, particularly §§ 2M5.1 (Evasion of Export Controls) and 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License) provide inadequate penalties for these offenses. If the guidelines provide inadequate punishment, how should the Commission address that inadequacy? Should the base offense level be increased? Are there specific offense characteristics that should be added to the guidelines to take into account more egregious offense conduct? Alternatively, should encouraged upward departure commentary be added to these guidelines for cases in which more egregious conduct occurs?

Section 511 of the Antiterrorism and Effective Death Penalty Act of 1996 pertains to biological weapons. It incorporates attempt and conspiracy into 18 U.S.C. § 175, which prohibits the production, stockpiling, transferring, acquiring, retaining, or possession of biological weapons. It also expands the scope of biological weapons provisions in chapter 10 of title 18 by expanding the meaning of biological agents.

Section 201 of the Chemical Weapons Convention Implementation Act of 1998 creates a new offense at 18 U.S.C. § 229. The new offense makes it unlawful for a person knowingly (1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or (2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1). The penalty, set out in 18 U.S.C. § 229A, is any term of years, or, if the death of another person results, death or life imprisonment.

The Commission also invites comment as to how the guidelines should be amended to cover these statutes. One approach could be to amend § 2M6.1 (Unlawful Acquisition, Alteration, Use, Transfer, or Possession of Nuclear Material, Weapons, or Facilities) to include conduct that violates these statutes. If the Commission were to select this approach, what changes, if any, would be appropriate to accommodate these offenses? For example, should an alternative base offense level be added in the case of biological or chemical materials, weapons, or facilities? Are there specific offense characteristics that should be added to take into account the range of likely offense conduct? Should commentary encouraging an upward (or downward) departure be added for cases in which certain atypical conduct occurs?

10. *Tax Privacy Issues:* The Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, created an offense, codified at 26 U.S.C. § 7217, that makes it unlawful for the President, Vice President, anyone employed in their executive offices, or certain other high-ranking officials of the executive branch to request the Internal Revenue Service to conduct or terminate an audit or other investigation of the tax liability of any person. The maximum term of imprisonment is 5 years.

The Act also amended 26 U.S.C. § 7213, which makes it unlawful for federal and state employees and certain other persons to disclose tax return information. The Act amended § 7213 to also make it unlawful to disclose tax-related computer software. The maximum term of imprisonment for such offenses is 5 years.

The Taxpayer Browsing Protection Act, Pub. L. 105–35, created an offense, codified at 26 U.S.C. § 7213A, that makes it unlawful for federal and state employees and certain other persons to inspect tax return information in any way other than that authorized under the Internal Revenue Code. The maximum term of imprisonment for such offenses is one year.

These new provisions are similar in nature to another tax offense, codified at 26 U.S.C. § 7216, which makes it unlawful for persons who are in the business of preparing tax returns to knowingly or recklessly disclose any such information or to use any such information for any purpose other than the preparation of the tax return. The maximum term of imprisonment for such offenses is one year.

The Commission invites comment on whether and/or how the sentencing guidelines might be amended to address violations of 26 U.S.C. §§ 7213, 7213A, 7216, and 7217. One approach may be to rework the guideline pertaining to the interception of communications or eavesdropping, § 2H3.1, because arguably all of the offenses described above implicate the privacy interests of the taxpayer whose tax information was the subject of the offense. An alternative approach would be to create a new guideline dealing with the invasion of privacy with respect to the audit, inspection, or disclosure of tax information. Are there other approaches that might be appropriate to address these offenses? The Commission invites alternative suggestions with proposed offense levels.

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Open container laws; comments due by 12-4-98; published 10-6-98

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Hazardous materials:
Infectious substances and genetically modified micro-organisms standards; requirements and exceptions clarification and public meeting; comments due by 12-1-98; published 9-2-98

TRANSPORTATION DEPARTMENT

Transportation Statistics Bureau

ICC Termination Act; implementation:
Motor carriers of property; reporting requirements; comments due by 12-3-98; published 11-3-98

TREASURY DEPARTMENT

Customs Service

Drawback:
False drawback claims; penalties; comments due by 11-30-98; published 9-29-98

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:
Taxpayer Relief Act—
Qualified retirement plan benefits; section 411(d)(6) protected benefits; comments due by 12-3-98; published 9-4-98
Roth IRAs; comments due by 12-2-98; published 9-3-98
Procedure and administration:
Tax refund offset program; revisions; comments due by 11-30-98; published 8-31-98

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the second session of the 105th Congress has been completed and will resume when bills are enacted into law during the first session of the 106th Congress, which convenes on January 6, 1999.

A cumulative list of Public Laws for the second session of the 105th Congress is in Part II of this issue of the **Federal Register**.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1998
3 (1997 Compilation and Parts 100 and 101)	(869–034–00002–9)	19.00	[1] Jan. 1, 1998
4	(869–034–00003–7)	7.00	[5] Jan. 1, 1998
5 Parts:			
1–699	(869–034–00004–5)	35.00	Jan. 1, 1998
700–1199	(869–034–00005–3)	26.00	Jan. 1, 1998
1200–End, 6 (6 Reserved)	(869–034–00006–1)	39.00	Jan. 1, 1998
7 Parts:			
1–26	(869–034–00007–0)	24.00	Jan. 1, 1998
27–52	(869–034–00008–8)	30.00	Jan. 1, 1998
53–209	(869–034–00009–6)	20.00	Jan. 1, 1998
210–299	(869–034–00010–0)	44.00	Jan. 1, 1998
300–399	(869–034–00011–8)	24.00	Jan. 1, 1998
400–699	(869–034–00012–6)	33.00	Jan. 1, 1998
700–899	(869–034–00013–4)	30.00	Jan. 1, 1998
900–999	(869–034–00014–2)	39.00	Jan. 1, 1998
1000–1199	(869–034–00015–1)	44.00	Jan. 1, 1998
1200–1599	(869–034–00016–9)	34.00	Jan. 1, 1998
1600–1899	(869–034–00017–7)	58.00	Jan. 1, 1998
1900–1939	(869–034–00018–5)	18.00	Jan. 1, 1998
1940–1949	(869–034–00019–3)	33.00	Jan. 1, 1998
1950–1999	(869–034–00020–7)	40.00	Jan. 1, 1998
2000–End	(869–034–00021–5)	24.00	Jan. 1, 1998
8	(869–034–00022–3)	33.00	Jan. 1, 1998
9 Parts:			
1–199	(869–034–00023–1)	40.00	Jan. 1, 1998
200–End	(869–034–00024–0)	33.00	Jan. 1, 1998
10 Parts:			
0–50	(869–034–00025–8)	39.00	Jan. 1, 1998
51–199	(869–034–00026–6)	32.00	Jan. 1, 1998
200–499	(869–034–00027–4)	31.00	Jan. 1, 1998
500–End	(869–034–00028–2)	43.00	Jan. 1, 1998
11	(869–034–00029–1)	19.00	Jan. 1, 1998
12 Parts:			
1–199	(869–034–00030–4)	17.00	Jan. 1, 1998
200–219	(869–034–00031–2)	21.00	Jan. 1, 1998
220–299	(869–034–00032–1)	39.00	Jan. 1, 1998
300–499	(869–034–00033–9)	23.00	Jan. 1, 1998
500–599	(869–034–00034–7)	24.00	Jan. 1, 1998
600–End	(869–034–00035–5)	44.00	Jan. 1, 1998
13	(869–034–00036–3)	23.00	Jan. 1, 1998
14 Parts:			
1–59	(869–034–00037–1)	47.00	Jan. 1, 1998
60–139	(869–034–00038–0)	40.00	Jan. 1, 1998
140–199	(869–034–00039–8)	16.00	Jan. 1, 1998
200–1199	(869–034–00040–1)	29.00	Jan. 1, 1998
1200–End	(869–034–00041–0)	23.00	Jan. 1, 1998
15 Parts:			
0–299	(869–034–00042–8)	22.00	Jan. 1, 1998
300–799	(869–034–00043–6)	33.00	Jan. 1, 1998
800–End	(869–034–00044–4)	23.00	Jan. 1, 1998
16 Parts:			
0–999	(869–034–00045–2)	30.00	Jan. 1, 1998
1000–End	(869–034–00046–1)	33.00	Jan. 1, 1998
17 Parts:			
1–199	(869–034–00048–7)	27.00	Apr. 1, 1998
200–239	(869–034–00049–5)	32.00	Apr. 1, 1998
240–End	(869–034–00050–9)	40.00	Apr. 1, 1998
18 Parts:			
1–399	(869–034–00051–7)	45.00	Apr. 1, 1998
400–End	(869–034–00052–5)	13.00	Apr. 1, 1998
19 Parts:			
1–140	(869–034–00053–3)	34.00	Apr. 1, 1998
141–199	(869–034–00054–1)	33.00	Apr. 1, 1998
200–End	(869–034–00055–0)	15.00	Apr. 1, 1998
20 Parts:			
1–399	(869–034–00056–8)	29.00	Apr. 1, 1998
400–499	(869–034–00057–6)	28.00	Apr. 1, 1998
500–End	(869–034–00058–4)	44.00	Apr. 1, 1998
21 Parts:			
1–99	(869–034–00059–2)	21.00	Apr. 1, 1998
100–169	(869–034–00060–6)	27.00	Apr. 1, 1998
170–199	(869–034–00061–4)	28.00	Apr. 1, 1998
200–299	(869–034–00062–2)	9.00	Apr. 1, 1998
300–499	(869–034–00063–1)	50.00	Apr. 1, 1998
500–599	(869–034–00064–9)	28.00	Apr. 1, 1998
600–799	(869–034–00065–7)	9.00	Apr. 1, 1998
800–1299	(869–034–00066–5)	32.00	Apr. 1, 1998
1300–End	(869–034–00067–3)	12.00	Apr. 1, 1998
22 Parts:			
1–299	(869–034–00068–1)	41.00	Apr. 1, 1998
300–End	(869–034–00069–0)	31.00	Apr. 1, 1998
23	(869–034–00070–3)	25.00	Apr. 1, 1998
24 Parts:			
0–199	(869–034–00071–1)	32.00	Apr. 1, 1998
200–499	(869–034–00072–0)	28.00	Apr. 1, 1998
500–699	(869–034–00073–8)	17.00	Apr. 1, 1998
700–1699	(869–034–00074–6)	45.00	Apr. 1, 1998
1700–End	(869–034–00075–4)	17.00	Apr. 1, 1998
25	(869–034–00076–2)	42.00	Apr. 1, 1998
26 Parts:			
§§ 1.0-1–1.60	(869–034–00077–1)	26.00	Apr. 1, 1998
§§ 1.61–1.169	(869–034–00078–9)	48.00	Apr. 1, 1998
§§ 1.170–1.300	(869–034–00079–7)	31.00	Apr. 1, 1998
§§ 1.301–1.400	(869–034–00080–1)	23.00	Apr. 1, 1998
§§ 1.401–1.440	(869–034–00081–9)	39.00	Apr. 1, 1998
§§ 1.441-1.500	(869-034-00082-7)	29.00	Apr. 1, 1998
§§ 1.501–1.640	(869–034–00083–5)	27.00	Apr. 1, 1998
§§ 1.641–1.850	(869–034–00084–3)	32.00	Apr. 1, 1998
§§ 1.851–1.907	(869–034–00085–1)	36.00	Apr. 1, 1998
§§ 1.908–1.1000	(869–034–00086–0)	35.00	Apr. 1, 1998
§§ 1.1001–1.1400	(869–034–00087–8)	38.00	Apr. 1, 1998
§§ 1.1401–End	(869–034–00088–6)	51.00	Apr. 1, 1998
2–29	(869–034–00089–4)	36.00	Apr. 1, 1998
30–39	(869–034–00090–8)	25.00	Apr. 1, 1998
40–49	(869–034–00091–6)	16.00	Apr. 1, 1998
50–299	(869–034–00092–4)	19.00	Apr. 1, 1998
300–499	(869–034–00093–2)	34.00	Apr. 1, 1998
500–599	(869–034–00094–1)	10.00	Apr. 1, 1998
600–End	(869–034–00095–9)	9.00	Apr. 1, 1998
27 Parts:			
1–199	(869–034–00096–7)	49.00	Apr. 1, 1998

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200–End	(869–034–00097–5)	17.00	[6] Apr. 1, 1997
28 Parts:			
0-42	(869-034-00098-3)	36.00	July 1, 1998
43-end	(869-034-00099-1)	30.00	July 1, 1998
29 Parts:			
0–99	(869–034–00100–9)	26.00	July 1, 1998
100–499	(869–034–00101–7)	12.00	July 1, 1998
500–899	(869–034–00102–5)	40.00	July 1, 1998
900–1899	(869–034–00103–3)	20.00	July 1, 1998
1900–1910 (§§ 1900 to 1910.999)	(869–034–00104–1)	44.00	July 1, 1998
1910 (§§ 1910.1000 to end)	(869–034–00105–0)	27.00	July 1, 1998
1911–1925	(869–034–00106–8)	17.00	July 1, 1998
1926	(869–034–00107–6)	30.00	July 1, 1998
1927–End	(869–034–00108–4)	41.00	July 1, 1998
30 Parts:			
1–199	(869–034–00109–2)	33.00	July 1, 1998
200–699	(869–034–00110–6)	29.00	July 1, 1998
700–End	(869–034–00111–4)	33.00	July 1, 1998
31 Parts:			
0–199	(869–034–00112–2)	20.00	July 1, 1998
200–End	(869–034–00113–1)	46.00	July 1, 1998
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–034–00114–9)	47.00	July 1, 1998
191–399	(869–032–00115–4)	51.00	July 1, 1997
400–629	(869–034–00116–5)	33.00	July 1, 1998
630–699	(869–034–00117–3)	22.00	July 1, 1998
700–799	(869–034–00118–1)	26.00	July 1, 1998
800–End	(869–034–00119–0)	27.00	July 1, 1998
33 Parts:			
1–124	(869–034–00120–3)	29.00	July 1, 1998
125–199	(869–034–00121–1)	38.00	July 1, 1998
200–End	(869–034–00122–0)	30.00	July 1, 1998
34 Parts:			
1–299	(869–034–00123–8)	27.00	July 1, 1998
300–399	(869–034–00124–6)	25.00	July 1, 1998
400–End	(869–034–00125–4)	44.00	July 1, 1998
35	(869–034–00126–2)	14.00	July 1, 1998
36 Parts			
1–199	(869–034–00127–1)	20.00	July 1, 1998
200–299	(869–034–00128–9)	21.00	July 1, 1998
300–End	(869–034–00129–7)	35.00	July 1, 1998
37	(869–034–00130–1)	27.00	July 1, 1998
38 Parts:			
0–17	(869–034–00131–9)	34.00	July 1, 1998
18–End	(869–034–00132–7)	39.00	July 1, 1998
39	(869–034–00133–5)	23.00	July 1, 1998
40 Parts:			
1–49	(869–034–00134–3)	31.00	July 1, 1998
50–51	(869–034–00135–1)	24.00	July 1, 1998
52 (52.01–52.1018)	(869–034–00136–0)	28.00	July 1, 1998
52 (52.1019–End)	(869–034–00137–8)	33.00	July 1, 1998
53–59	(869–034–00138–6)	17.00	July 1, 1998
60	(869–034–00139–4)	53.00	July 1, 1998
61–62	(869–034–00140–8)	18.00	July 1, 1998
63	(869–034–00141–6)	57.00	July 1, 1998
64–71	(869–034–00142–4)	11.00	July 1, 1998
72–80	(869–034–00143–2)	36.00	July 1, 1998
81–85	(869–034–00144–1)	31.00	July 1, 1998
86	(869–034–00144–9)	53.00	July 1, 1998
87-135	(869–034–00146–7)	47.00	July 1, 1998
*136–149	(869–034–00147–5)	37.00	July 1, 1998
150–189	(869–034–00148–3)	34.00	July 1, 1998
190–259	(869–034–00149–1)	23.00	July 1, 1998
260–265	(869–034–00150–9)	29.00	July 1, 1998
266–299	(869–034–00151–3)	33.00	July 1, 1998
300–399	(869–034–00152–1)	26.00	July 1, 1998
400–424	(869–034–00153–0)	33.00	July 1, 1998
425–699	(869–034–00154–8)	42.00	July 1, 1998
700–789	(869–034–00155–6)	41.00	July 1, 1998
790–End	(869–034–00156–4)	22.00	July 1, 1998
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
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7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–034–00157–2)	13.00	July 1, 1998
101	(869–034–00158–1)	37.00	July 1, 1998
102–200	(869–034–00158–9)	15.00	July 1, 1998
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42 Parts:			
1–399	(869–032–00160–0)	32.00	Oct. 1, 1997
400–429	(869–032–00161–8)	35.00	Oct. 1, 1997
430–End	(869–032–00162–6)	50.00	Oct. 1, 1997
43 Parts:			
1–999	(869–032–00163–4)	31.00	Oct. 1, 1997
1000–end	(869–032–00164–2)	50.00	Oct. 1, 1997
44	(869–032–00165–1)	31.00	Oct. 1, 1997
45 Parts:			
1–199	(869–032–00166–9)	30.00	Oct. 1, 1997
200–499	(869–032–00167–7)	18.00	Oct. 1, 1997
500–1199	(869–032–00168–5)	29.00	Oct. 1, 1997
1200–End	(869–032–00169–3)	39.00	Oct. 1, 1997
46 Parts:			
1–40	(869–032–00170–7)	26.00	Oct. 1, 1997
41–69	(869–032–00171–5)	22.00	Oct. 1, 1997
70–89	(869–032–00172–3)	11.00	Oct. 1, 1997
90–139	(869–032–00173–1)	27.00	Oct. 1, 1997
140–155	(869–032–00174–0)	15.00	Oct. 1, 1997
156–165	(869–032–00175–8)	20.00	Oct. 1, 1997
166–199	(869–032–00176–6)	26.00	Oct. 1, 1997
200–499	(869–032–00177–4)	21.00	Oct. 1, 1997
500–End	(869–032–00178–2)	17.00	Oct. 1, 1997
47 Parts:			
0–19	(869–032–00179–1)	34.00	Oct. 1, 1997
20–39	(869–032–00180–4)	27.00	Oct. 1, 1997
40–69	(869–032–00181–2)	23.00	Oct. 1, 1997
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80–End	(869–032–00183–9)	43.00	Oct. 1, 1997
48 Chapters:			
1 (Parts 1–51)	(869–032–00184–7)	53.00	Oct. 1, 1997
1 (Parts 52–99)	(869–032–00185–5)	29.00	Oct. 1, 1997
2 (Parts 201–299)	(869–032–00186–3)	35.00	Oct. 1, 1997
3–6	(869–032–00187–1)	29.00	Oct. 1, 1997
7–14	(869–032–00188–0)	32.00	Oct. 1, 1997
15–28	(869–032–00189–8)	33.00	Oct. 1, 1997
29–End	(869–032–00190–1)	25.00	Oct. 1, 1997
49 Parts:			
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100–185	(869–032–00192–8)	50.00	Oct. 1, 1997
186–199	(869–032–00193–6)	11.00	Oct. 1, 1997
200–399	(869–032–00194–4)	43.00	Oct. 1, 1997
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1000–1199	(869–032–00196–1)	19.00	Oct. 1, 1997
1200–End	(869–032–00197–9)	14.00	Oct. 1, 1997
50 Parts:			
1–199	(869–032–00198–7)	41.00	Oct. 1, 1997
200–599	(869–032–00199–5)	22.00	Oct. 1, 1997
600–End	(869–032–00200–2)	29.00	Oct. 1, 1997

Title	Stock Number	Price	Revision Date
CFR Index and Findings Aids	(869–034–00049–6)	46.00	Jan. 1, 1998
Complete 1998 CFR set		951.00	1998
Microfiche CFR Edition:			
Subscription (mailed as issued)		247.00	1998
Individual copies		1.00	1998
Complete set (one-time mailing)		247.00	1997
Complete set (one-time mailing)		264.00	1996

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1996 to June 30, 1997. The volume issued July 1, 1996, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1997 through December 31, 1997. The CFR volume issued as of January 1, 1997 should be retained.

[6] No amendments to this volume were promulgated during the period April 1, 1997, through April 1, 1998. The CFR volume issued as of April 1, 1997, should be retained.