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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–SW–29–AD; Amendment 39–10943; AD 98–26–02]

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V helicopters, that requires a nondestructive inspection (NDI) for cracks in the main rotor shaft (shaft), and requires removal of any shaft with a crack and replacement with an airworthy shaft. This AD also requires appropriate marking of shafts and log book entries by the operator to determine the shaft retirement life, and establishes a new retirement life for the shaft. This amendment is prompted by four reports of cracks occurring in helicopters that were utilized in repetitive external lift (REL) operations. The actions specified by this AD are intended to detect a fatigue crack in the shaft that could result in shaft structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective January 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P.O. Box 9729, Stratford, CT 06497–9129. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Wayne Gualzetti, Aerospace Engineer, ANE–150, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7156, 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 Sikorsky Aircraft Corporation Model S–61A, D, E, L, N, NM, R, and V helicopters was published in the **Federal Register** on September 18, 1997 (62 FR 48961). That action proposed to require a NDI of the shaft, part number (P/N) S6135–20640–001, S6135–20640–002, or S6137–23040–001, used in REL operations within the next 1,000 hours time-in-service (TIS). The NDI must be performed in accordance with the Overhaul Manual. That action also proposed to establish retirement lives for certain shafts utilized in REL operations. For shafts installed on helicopters utilized in REL operations that have not been modified in accordance with Sikorsky Customer Service Notice (CSN) 6135–10, dated March 18, 1987, and Sikorsky Alert Service Bulletin (ASB) No. 61B35–53, dated December 2, 1981, the retirement life would be 1,500 hours TIS. For shafts installed on helicopters utilized in REL operations that have been modified in accordance with Sikorsky CSN 6135–10, dated March 18, 1987, and Sikorsky ASB No. 61B35–53, dated December 2, 1981, the retirement life would be 2,000 hours TIS.

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

Several commenters state that the cost of a replacement shaft, which is $44,753, should be stated in the AD to indicate the severity of the cost impact this AD will have on owners and operators. The FAA concurs and will include the cost of the shaft in the AD.

One commenter states that issuance of the AD is unnecessary because, over a period of 38 years, there have been only two occurrences of shaft cracks. The FAA does not concur. There have been a total of four reported instances of cracked shaft flanges. All four shafts were used in REL operations. Subsequent tests conducted by the manufacturer confirmed the failure due to REL cycles and the need for the life limitation.

The same commenter states that the AD should be applicable to Model CH–3C, CH–3E, HH–3C, and HH–3E helicopters. The FAA concurs since these restricted category helicopters are equipped with the same main gearbox and shaft. These models will be the subject of future rulemaking action.

Two commenters state that the proposed retirement life should be increased from 2,000 hours TIS to 2,500 hours TIS. The change is requested so that the shaft retirement time will be in line with existing gearbox overhaul requirements. The FAA partially concurs. This change will allow the shaft replacement to be conducted concurrently with any recommended gearbox overhaul actions. Based on a further evaluation of the dowel pin cracking and the fretting cracking, the FAA has determined that the retirement life can safely be increased from the proposed 2,000 hours TIS to 2,200 hours TIS. This will allow operators to get two overhaul cycles of 1,100 hours TIS for each shaft used in REL operations. Therefore, the retirement life is extended from 2,000 hours TIS to 2,200 hours TIS for shafts that have been modified in accordance with the Sikorsky service information described previously. This change also will allow operators to avoid excessive disassembly and re-assembly of the gearbox for overhauls and shaft removal based on an approved 1,100 hours TIS gearbox overhaul cycle.

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.

The FAA estimates that 30 helicopters of U.S. registry that are involved in REL operations will be affected by this AD, that it will take approximately 2.2 work hours per helicopter to accomplish the

required actions during the next scheduled overhaul, and that the average labor rate is $60 per work hour. Required parts will cost approximately $50 for the inspection and $44,753 for each shaft. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,348,050, assuming all 30 shafts are replaced.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–26–02 Sikorsky Aircraft Corporation: Amendment 39–10943. Docket No. 96–SW–29–AD.

Applicability: Model S–61A, D, E, L, N, NM, R, and V helicopters, with main rotor shaft (shaft), part number (P/N) S6135–20640–001, S6135–20640–002, or S6137–23040–001, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect a fatigue crack in the shaft that could result in shaft structural failure, loss of power to the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 30 calendar days or 240 hours time-in-service (TIS) after the effective date of this AD, whichever occurs first, determine if the shaft has been used in repetitive external lift (REL) operations. REL operation is defined as operation during which the average number of external lifts equals or exceeds six per flight hour for any 250 hour TIS period during the main gearbox overhaul interval. An external lift is defined as a flight cycle in which an external load is picked up, the helicopter is repositioned (through flight or hover), and the helicopter hovers and releases the load and departs or lands and departs. Record the total number of hours TIS during which external lifts have been conducted, as well as the number of external lifts conducted during each hour, on the component log card or equivalent record. If the number of external lifts cannot be determined, assume 6 external lifts were conducted during each hour TIS in which external lifts were conducted. If the hours TIS of external lift operations cannot be determined, assume REL operations were conducted.

(b) For shafts used in REL operations, within the next 1,100 hours TIS after the effective date of this AD, conduct a non-destructive inspection (NDI) for cracks in the shaft in accordance with the Overhaul Manual. If a crack is discovered in a shaft, remove the shaft and replace it with an airworthy shaft. Mark the removed airworthy shafts and the replacement shafts in accordance with the Accomplishment Instructions in paragraphs 2E and 2f of Sikorsky Aircraft Corporation Alert Service Bulletin (ASB) No. 61B35–68, dated July 19, 1996. Once a shaft has been designated and marked as an REL shaft, it is life-limited accordingly for the remainder of that shaft's airworthy service life.

(c) Retire all shafts that have been used in REL operations as follows:

(1) Shafts that have been modified in accordance with Sikorsky Customer Service Notice 6135–10, dated March 18, 1997, and Sikorsky ASB No. 61B35–53, dated December 2, 1981 (modified REL shafts), must be removed from service on or before attaining 2,200 hours TIS.

(2) Shafts that have not been modified in accordance with Sikorsky Customer Service Notice 6135–10, dated March 18, 1987, and Sikorsky ASB 61B35–53, dated December 1981 (unmodified REL shafts), must be removed from service on or before attaining 1,500 hours TIS.

(d) This AD revises the Limitations section of the maintenance manual by establishing new retirement lives of 1,500 hours TIS for unmodified REL shafts and 2,200 hours TIS for modified REL shafts.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment 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.

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

(g) The marking of the shaft shall be done in accordance with Sikorsky Aircraft Corporation Alert Service Bulletin No. 61B35–68, dated July 19, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P.O. Box 9729, Stratford, CT 06497–9129. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 20, 1999.

Issued in Forth Worth, Texas, on December 7, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–33106 Filed 12–15–98; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 95–NM–275–AD; Amendment 39–10942; AD 98–26–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A310 series airplanes, that requires various inspections to detect fatigue cracks at certain locations on the fuselage, horizontal stabilizer, and wings and tail, and repair or modification, if necessary; and installation of doublers. This amendment also adds new inspections and reduces certain inspection intervals. This amendment is prompted by results of full-scale fatigue testing of a Model A310 series airplane, which revealed fatigue cracks at those locations. The actions specified by this AD are intended to prevent reduced structural integrity of the fuselage, horizontal stabilizer, and wings.

DATES: Effective January 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1999.

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

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Airbus Model A310 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 21, 1998 (63 FR 39045). That supplemental NPRM proposed to require various inspections to detect fatigue cracks at certain locations on the fuselage, horizontal stabilizer, and wings and tail, and repair or modification, if necessary; and installation of doublers. That supplemental NPRM also proposed to add new inspections and reduce certain inspection intervals.

Comments

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

Support for the Proposal

One commenter supports the proposed rule.

Request to Withdraw AD

The ATA, on behalf of one of its members, questions the need for an AD, and requests a meeting with the FAA to develop an alternative that would provide a program more beneficial to cost and safety. The commenter indicates that, while manufacturers routinely solicit comments from affected operators for aging aircraft issues, nothing in the proposal suggests that its requirements have been well coordinated with operators before being advised of pending rulemaking.

Additionally, the commenter questions whether each of the 16 referenced service bulletins individually satisfies the requirement of part 39 (''Airworthiness Directives'') of the Federal Aviation Regulations (14 CFR part 39) that an unsafe condition exists. As an example, the commenter points out that, in describing the reason for Airbus Service Bulletin A310–53–2014, Airbus states that the existence of a ''crack does not affect aircraft safety. . . .''

The FAA infers that the commenter requests the AD be withdrawn. The FAA does not concur with that request. Each of the 16 service bulletins cited in the original Notice of Proposed Rulemaking (NPRM), as well as the 2 additional service bulletins included in this Supplemental NPRM, address fatigue cracking in the wing, fuselage, and empennage structure of the airplane. As specified in the Airbus Structural Repair Manual (SRM), the wing, fuselage, and empennage structure is primary structure that contributes significantly to carrying flight, ground, and pressurization loads. As is the case with the structure of many commercial airplanes, failure of a single part is not likely to be catastrophic, and safe flight could continue for some time with any single part being cracked or broken. However, if the parts specified in the service bulletins cited in this AD are cracked or failed, the residual strength of the surrounding aircraft structure would be reduced; this could cause failure of structural members, or could initiate or accelerate cracking of other structural members. Such failure clearly poses an unsafe condition. Issuance of an AD (without further delay) is the appropriate vehicle by which unsafe conditions are corrected.

Request for Alternative to Issuance of AD

One ATA member suggests that, as an alternative to issuance of an AD, operators' maintenance programs could be revised or adjusted to accomplish the inspection requirements of the proposed AD in line with scheduled maintenance visits. The commenter states that the A310 Maintenance Planning Document (MPD), one of the primary documents used by operators, addresses all areas covered by the proposed AD. The commenter adds that coordinating revisions to the inspection intervals specified in the MPD and corresponding service bulletins is more appropriate than issuing an AD. The commenter believes that this alternative would be less costly, would provide better control of early detection of damage, and would provide a better level of safety. The commenter states that no operator has yet found damage in the proposed inspection areas; however, the commenter submits no data to support its contention.

The FAA does not concur that revising the MPD is more appropriate than issuing an AD. Accomplishment of the requirements detailed in the service bulletins is considered necessary, since those documents provide detailed inspection information necessary to address the unsafe condition that may not be contained in the MPD. Additionally, the FAA has determined that solely relying on a revision of the maintenance document will not provide the same level of safety, since this document is not mandatory and, in any event, could be subsequently revised or adjusted without FAA approval. No change to the final rule is necessary in this regard.

Clarification of Development of Compliance Thresholds

One commenter indicates that it will request a review of the applicable service bulletins by the manufacturer to assure that the stated compliance thresholds have a sound technical basis.

The commenter requests that the FAA coordinate this review with Airbus so that the AD is consistent with any changes being considered by Airbus. The commenter adds that, if necessary, the comment period should be extended so that coordination among Airbus, affected operators, and the FAA can be accomplished.

Another commenter expresses concern that the initial inspection thresholds specified in the proposal do not coincide with test findings, and questions how the criteria were developed. For example, the commenter objects to one threshold specified in the proposal as 12,000 flight cycles (FC) (with repetitive intervals of 5,000 FC) when cracking was not detected until 90,000 FC. The commenter indicates that, given the inspection thresholds specified in the proposal, operators will be forced to ground aircraft for special inspection visits, which impacts revenue and other operational parameters. The commenter believes that adjustments in operators' FAA-approved maintenance programs to achieve the required inspections and to maintain a level of safety will enhance the effectiveness of such programs.

The FAA finds that clarification is necessary concerning development of the compliance times specified in this AD. The inspection thresholds are based on test data, and adjustment to the thresholds to correspond with operators' various maintenance programs is not always possible. The relationship between the specified inspection threshold and the test data is based on a number of variables. In the example identified by the commenter, the crack was detected after 90,000 FC, and an inspection threshold of 12,000 FC was established. This reduction in flight cycles from the time that the crack was detected during testing to the inspection threshold established, is necessary to account for variations in operational usage, crack initiation and growth, inspection techniques, and human operational error. Additionally, the nature of fatigue testing requires that a ''scatter'' factor be applied to the data. This scatter factor accounts for the number of specimens tested, material property variations, geometry/configuration variations, environmental effects, and loading variations.

Based on these factors, the FAA has determined that the inspection thresholds established by Airbus, and approved by the DGAC, are acceptable to maintain the operational safety of these airplanes. No change to this final rule is necessary.

Directions of Cracking

One commenter, Airbus, requests that the FAA clarify the definitions of directions of cracking. Airbus references a sentence that appears in the preamble to the original NPRM, which reads as follows: ''Operators should note that although the French AD specifies that the airplane may be operated for 500 landings prior to repair of any crack that extends rearward, paragraph (h)(2)(iii) of this proposed AD would require that such cracking be repaired prior to further flight.'' Airbus states that the ''forward'' crack propagates in the direction of the skin edge, and upon reaching the skin edge, the crack will not grow further; therefore, Airbus concludes that repair can be deferred for 500 flights. Airbus states that a ''rearward'' crack would propagate in the direction of the front spar where the skin thickness increases and crack propagation slows down; therefore, repair of such rearward cracking also can be deferred for 500 flights.

The FAA does not concur. It is the FAA's policy to require repair of known cracks prior to further flight, except in certain cases of unusual need. This policy is based on the fact that such damaged airplanes do not conform to the FAA-certificated type design and, therefore, are not airworthy until a properly approved repair is incorporated. Therefore, since the FAA is unaware of any unusual need for repair deferral in this case, it has determined that, due to the safety implications and consequences associated with such cracking, any subject wing skin that is found to be cracked must be repaired prior to further flight. No change to the final rule is necessary.

Request To Revise Cost Impact Information

The ATA, on behalf of one of its members, requests that the FAA revise the cost impact information presented in the proposed AD. The ATA believes that the actual cost for accomplishment of the proposed requirements is considerably greater than that specified in the proposed AD. One ATA member justifies this request by presenting its own cost estimate.

The ATA adds that the ''boilerplate'' paragraph contained in the proposed AD that indicates why a full cost-benefit analysis has not been accomplished (or is needed) is ''particularly offensive'' to those affected. One ATA member believes that the paragraph is contrary to all established procedures of a rulemaking process, and the decision to issue an AD is being based on inaccurate and/or limited data. The ATA concludes that for the FAA to state that the level of safety has been determined previously to be cost beneficial discourages the submittal of any meaningful comments concerning the cost impact of the proposed AD. The ATA states that when operators submit comments to a docket on the cost of AD compliance, those operators are doing so to support the contention that equally safe alternative measures should be considered.

The FAA does not concur that the cost impact information should be revised based on the commenter's justification. (However, it should be noted that the cost impact information presented in this AD was revised in the supplemental NPRM to reflect updated information presented in the latest service bulletin revisions.)

The cost impact information represents the FAA's best estimate as to the number of work hours that will be necessary to accomplish the requirements of the AD. The FAA arrived at this estimate using cost information obtained from the airframe manufacturer. The FAA recognizes that actual costs may vary depending upon the operation of each individual airline and the degree to which the airplane has been opened up for access for other maintenance or inspection actions.

The ''boilerplate'' paragraph referenced by the ATA and one of its members is included in especially expensive AD's, not to discourage comments regarding cost, but simply to explain why the FAA does not prepare full cost-benefit analyses. Cost effectiveness of AD's is always a primary issue for the FAA in the development of AD's. The FAA routinely adopts compliance times and methods that are designed to minimize the cost impact on operators. Thus, the FAA's approach is entirely consistent with Executive Order 12866 in that it complies fully with the philosophy and principles set forth in Section 1 of the executive order. It should be noted that AD's were explicitly exempted from the Office of Management and Budget (OMB) coordination process described in Section 6 of Executive Order 12866. The explanation of why full cost-benefit analyses are not required for AD's is consistent with this exemption.

As for the ATA's conclusion that the FAA is discouraging meaningful comments concerning cost by previously determining the level of safety to be cost beneficial, the FAA has not stated that a cost-benefit analysis has already been accomplished for AD's. Rather, the paragraph states that the purpose of the AD is to restore the level

of safety to that which has already been determined to be cost-effective. Under these circumstances, as stated in the paragraph, a full cost-benefit analysis would be redundant and unnecessary. The purpose of AD's is distinctly different from the purpose of most other FAA regulations, which is to improve the level of safety established by the existing regulations. Under these circumstances, it is appropriate to conduct a cost-benefit analysis to determine whether the improvement in safety is cost-effective.

The FAA does not discourage comments concerning costs; to the contrary, every AD includes a provision specifically requesting comments on the economic aspects of the AD. Given the volume of such comments from operators, there does not appear to be any misunderstanding on the part of most operators about the appropriateness of submitting such comments.

Finally, concerning the ATA's statement that operators submit comments concerning cost to support their contention that equally safe alternative measures should be considered, if a commenter proposes a less costly alternative that achieves an acceptable level of safety, the FAA may concur with the comment and revise the AD accordingly. On the other hand, if a commenter simply requests a change without justifying it or providing data to substantiate it, the FAA may not concur. However, every AD contains a provision allowing operators to comply with the AD using an alternative method of compliance (or extension of compliance time) approved by the FAA.

Explanation of Change Made to This Final Rule

Paragraph (h) of the final rule has been revised to cite Revision 2 of Airbus Service Bulletin A310–57–2002, dated January 4, 1996, as an additional source of service information for accomplishment of the actions specified in that paragraph. Revision 2 contains no substantive differences from Revision 1 of the service bulletin, which was cited as the appropriate source of service information in the supplemental NPRM.

Conclusion

After careful review of the available data, including the change noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD. Approximate work hours to accomplish the required actions and costs for required parts are listed in the following table. The average labor rate is $60 per work hour.

A310 service bulletin No.	Work hours	Parts cost/airplane	Cost/airplane	No. of U.S. airplanes	Number modified
53–2014	78	$12,121	$16,801	7	5
53–2016	317	14,282	33,302	12	5
53–2054	11	N/A	660	8	0
53–2057	12	N/A	720	13	0
53–2059	13	N/A	780	17	0
53–2074	232	N/A	13,920	17	0
55–2002	715	34,100	77,000	7	6
55–2004	16	N/A	960	11	0
57–2002	8	N/A	480	6	0
57–2006	52	N/A	3,120	2	0
57–2032	5	N/A	300	6	0
57–2037	2	N/A	120	6	0
57–2039	3	N/A	180	15	0
57–2046	172	N/A	10,320	33	0
57–2047	82	N/A	4,920	24	0
57–2050	24	N/A	1,440	20	0
57–2064	8	N/A	480	26	0
57–2038	6	N/A	360	0	0

Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,845,591. However, the FAA has been advised that a certain number of U.S.-registered airplanes already have been modified in accordance with the requirements of this AD. (The numbers of U.S.-registered airplanes that have already been modified are listed under the heading, ''Number Modified,'' in the table above.) Therefore, the future economic cost impact of this rule on U.S. operators is now $1,133,076.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that the original cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–26–01 Airbus Industrie: Amendment 39–10942. Docket 95–NM–275–AD.

Applicability: All Model A310 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 (u) 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 reduced structural integrity of the fuselage, horizontal stabilizer, and wings, accomplish the following:

(a) For airplanes listed in Airbus Service Bulletin A310–53–2014, Revision 5, dated June 9, 1992, as revised by Service Bulletin Change Notices 5.A., dated September 29, 1992, and 5.B., dated February 5, 1996: Prior to the accumulation of 12,000 total flight cycles, or within 500 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks on the fuselage center section doublers at frame 40, and install new doublers, in accordance with Airbus Service Bulletin A310–53–2014, Revision 5, dated June 9, 1992, as revised by Service Bulletin Change Notices 5.A., dated September 29, 1992, and 5.B., dated February 5, 1996. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with the service bulletin.

(b) For airplanes listed in Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform a defectoscope or rototest inspection to detect cracks in the area of frame 47 and frame 54, and install new doublers, in accordance with Airbus Service Bulletin A310–53–2016, Revision 5, dated December 7, 1992. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with the service bulletin.

(c) For airplanes listed in Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 flight cycles, perform a visual inspection to detect cracks on frame 46 between the left- and right-hand sides of stringers 21 and 22 on the forward and aft faces in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990. If any crack is found, prior to further flight, repair in accordance with Airbus Service Bulletin A310–53–2054, Revision 2, dated May 22, 1990.

(1) Accomplishment of the repair required by paragraph (c) of this AD, or modification of the reinforcement angle runout in accordance with Airbus Service Bulletin A310–53–2019, Revision 2, dated May 22, 1990, terminates the repetitive inspection requirements of paragraph (c) of this AD.

(2) Accomplishment of paragraph (c) of this AD terminates the requirements of AD 91–13–01, amendment 39–7032.

(d) For airplanes listed in Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992: Perform a visual inspection to detect cracks at the T-section connecting frame 50A to the beam between the left- and right-hand sides of frames 50 and 51, in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Perform the inspection at the time specified in paragraph (d)(1) or (d)(2) of this AD, as applicable. If any crack is found, prior to further flight, accomplish Airbus Modifications No. 4853 and No. 5273 in accordance with Airbus Service Bulletin A310–53–2057, Revision 1, dated April 30, 1992. Accomplishment of these modifications terminates the requirements of this paragraph.

(1) For the airplane having manufacturer's serial number (MSN) 191: Prior to the accumulation of 24,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

(2) For airplanes other than the airplane identified in paragraph (d)(1) of this AD: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 6,000 flight cycles.

(e) For airplanes listed in Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996: Perform a visual inspection to detect cracks in the lower milled side panel at the lap joint with the upper side panel at frame 47 and stringer 22, left- and right-hand sides, in accordance with Airbus Service Bulletin A310–53–2059, Revision 1, dated January 4, 1996. Perform the inspection at the time specified in paragraph (e)(1) or (e)(2) of this AD, as applicable. Except as provided by paragraph (t) of this AD, if any crack is found, prior to further flight, repair in accordance with the service bulletin. Thereafter, repeat the inspections at intervals not to exceed 9,000 flight cycles, or accomplish Airbus Modification 5997 (Airbus Service Bulletin A310–53–2058). Accomplishment of either the repair or Airbus Modification 5997 constitutes terminating action for the repetitive inspections required by this paragraph.

(1) For Model A310–200 series airplanes, accomplish the inspection at the time specified in paragraph (e)(1)(i) or (e)(1)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Prior to the accumulation of 18,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Within 1,000 flight cycles after the effective date of this AD.

(2) For Model A310–300 series airplanes, accomplish the inspection at the time specified in paragraph (e)(2)(i) or (e)(2)(ii) of this AD, as applicable.

(i) For airplanes that have accumulated less than 19,700 total flight cycles as of the effective date of this AD: Prior to the accumulation of 18,000 total flight cycles, or within 1,700 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For airplanes that have accumulated 19,700 or more total flight cycles as of the effective date of this AD: Within 850 flight cycles after the effective date of this AD.

(f) For airplanes listed in Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform an eddy current inspection to detect cracks on the upper integral part adjacent to the rear attach fittings on the horizontal stabilizer, and modify the horizontal stabilizer, in accordance with Airbus Service Bulletin A310–55–2002, Revision 4, dated April 28, 1989. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with the service bulletin.

(g) For airplanes listed in Airbus Service Bulletin A310–55–2004, Revision 2, dated February 7, 1991: Perform a high frequency eddy current rototest inspection to detect cracks at specified fastener holes in the top skin chordwise splice along the contour of the steel doubler between ribs 3 and 4 on the left- and right-hand center and side boxes on the horizontal stabilizer in accordance with Airbus Service Bulletin A310–55–2004, Revision 2, dated February 7, 1991, at the time specified in paragraph (g)(1) or (g)(2) of this AD, as applicable. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with the service bulletin.

(1) For airplanes on which Airbus Modification A310–4933 (Airbus Service Bulletin A310–55–2002) was accomplished prior to the accumulation of 6,000 total flight cycles on the airplane; or for airplanes having MSN 311 through 414 inclusive, on which Airbus Modification A310–4933 was accomplished during production: Prior to the accumulation of 18,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 12,000 flight cycles.

(2) For airplanes on which Airbus Modification A310–4933 (Airbus Service Bulletin A310–55–2002) was accomplished upon or after the accumulation of 6,000 total flight cycles: Prior to the accumulation of 12,000 flight cycles since the modification, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 12,000 flight cycles.

(h) For airplanes listed in Airbus Service Bulletin A310–57–2002, Revision 2, dated January 4, 1996: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,000 flight cycles; perform a detailed visual inspection to detect cracks in the external surface of the wing lower skin around the landing access panel holes of the leading edge, in accordance with Airbus Service Bulletin A310–57–2002, Revision 1, dated July 2, 1992; or Revision 2, dated January 4, 1996. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). Accomplishment of Airbus Modification 5101 (Airbus Service Bulletin A310–57–2003) terminates the repetitive inspection requirements of paragraph (h) of this AD.

(i) For airplanes listed in Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996: Prior to the accumulation of 6,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,000 flight cycles; perform an eddy current inspection to detect cracks in the holes around the overwing refueling aperture at ribs 13–14, in accordance with Airbus Service Bulletin A310–57–2006, Revision 3, dated May 2, 1996. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions, as applicable, in accordance with the service bulletin. Accomplishment of Airbus Modification 5891H5128 (Airbus Service Bulletin A310–57–2020) terminates the repetitive inspection requirements of paragraph (i) of this AD.

(j) For airplanes listed in Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 4,500 flight cycles; perform a detailed visual inspection to detect cracks around the bolts in the wing top skin upper surface of the front spar between rib 7 and rib 28, in accordance with Airbus Service Bulletin A310–57–2032, Revision 3, dated January 4, 1996. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). Accomplishment of Airbus Modification 5026H0878 (Airbus Service Bulletin A310–57–2005) terminates the repetitive inspection requirements of paragraph (j) of this AD.

(k) For airplanes listed in Airbus Service Bulletin A310–57–2037, Revision 3, dated January 4, 1996: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 3,000 flight cycles; perform a high frequency eddy current inspection to detect cracks around the attachment bolt heads for the shroud panel landing on the bottom skin aft of the rear spar, forward of access door 575CB/675CB, in accordance with Airbus Service Bulletin A310–57–2037, Revision 3, dated January 4, 1996. If any discrepancy is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). Accomplishment of Airbus Modification 5106H0894 (Airbus Service Bulletin A310–57–2004) terminates the repetitive inspection requirements of paragraph (k) of this AD.

(l) For airplanes listed in Airbus Service Bulletin A310–57–2039, dated September 24, 1990: Perform either an eddy current or visual inspection to detect cracks on the left and right vertical posts, numbers 1 through 5 inclusive, in the wing center box at frame 40/41, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990. Perform the inspection at the time specified in paragraph (l)(1) or (l)(2) of this AD, as applicable. Except as provided by paragraph (t) of this AD, if any crack is found, prior to further flight, accomplish the modification specified in Airbus Service Bulletin A310–57–2041, dated September 24, 1990, in accordance with Airbus Service Bulletin A310–57–2039, dated September 24, 1990.

(1) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has not been accomplished: Inspect prior to the accumulation of 21,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 4,200 flight cycles (for a visual inspection), or 7,500 flight cycles (for an eddy current inspection).

(2) For airplanes on which Airbus Modification 7541/S7973 (reference Airbus Service Bulletin A310–57–2041) has been accomplished: Inspect at the time specified in the graph contained in NOTE 1 of paragraph 1.A.(2) of Airbus Service Bulletin A310–57–2039, dated September 24, 1990, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 5,000 flight cycles (for a visual inspection), or 8,600 flight cycles (for an eddy current inspection).

(m) For Model A310–200 series airplanes on which Airbus Modification 7925H1113 has not been accomplished: Prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracks in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996 (including Appendix 1, Revision 3, dated October 17, 1995), as revised by Service Bulletin Change Notice 4A, dated October 16, 1996. Accomplishment of paragraph (m) of this AD terminates the requirements of AD 91–06–18, amendment 39–6940.

(1) If no crack is found, accomplish either paragraph (m)(1)(i) or (m)(1)(ii) of this AD in accordance with the service bulletin at the time specified in that paragraph.

(i) Repeat the inspection of the bolt/stud holes thereafter at intervals not to exceed 3,500 flight cycles. Or

(ii) Prior to further flight, accomplish Airbus Modification 7925H1113; and, prior to the accumulation of 18,000 flight cycles after accomplishment of Airbus Modification 7925H1113, perform the inspection required by paragraph (m) of this AD. Repeat the inspection thereafter at intervals not to exceed 11,600 flight cycles.

Note 2: Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996 (including Appendix 1, Revision 3, dated October 17, 1995), as revised by Service Bulletin Change Notice 4A, dated October 16,

1996, references Airbus Service Bulletin A310–57–2049 and Repair Instruction R571–49305 as additional sources of service information for accomplishment of Airbus Modification 7925H1113.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(n) For Model A310–300 series airplanes on which Airbus Modification 7925H1113 has not been accomplished: Prior to the accumulation of 9,000 flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection to detect cracks in certain bolt holes where the main landing gear forward pick-up fitting is attached to the rear spar, in accordance with Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996 (including Appendix 1, Revision 3, dated October 17, 1995), as revised by Service Bulletin Change Notice 4A, dated October 16, 1996. Accomplishment of paragraph (n) of this AD terminates the requirements of AD 91–06–18, amendment 39–6940.

(1) If no crack is found, accomplish either paragraph (n)(1)(i) or (n)(1)(ii) of this AD in accordance with the service bulletin at the time specified in that paragraph.

(i) Repeat the inspection of the bolt/stud holes thereafter at intervals not to exceed 3,100 flight cycles. Or

(ii) Prior to further flight, accomplish Airbus Modification 7925H1113; and, prior to the accumulation of 18,000 flight cycles after accomplishment of Airbus Modification 7925H1113, perform the inspection required by paragraph (n) of this AD. Repeat the inspection thereafter at intervals not to exceed 11,600 flight cycles.

Note 3: Airbus Service Bulletin A310–57–2046, Revision 4, dated October 16, 1996 (including Appendix 1, Revision 3, dated October 17, 1995), as revised by Service Bulletin Change Notice 4A, dated October 16, 1996, references Airbus Service Bulletin A310–57–2049 and Repair Instruction R571–49305 as additional sources of service information for accomplishment of Airbus Modification 7925H1113.

(2) If any crack is found, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(o) For airplanes listed in Airbus Service Bulletin A310–57–2047, Revision 2, dated January 22, 1997: Perform a rotating probe inspection to detect cracks in the fastener holes on the left- and right-hand sides of the rear spar internal angle and tee fitting, in accordance with Airbus Service Bulletin A310–57–2047, Revision 2, dated January 22, 1997, at the applicable time specified in NOTE 2 of paragraph 1.A.(2) of the service bulletin, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at the intervals specified in NOTE 2 of paragraph 1.A.(2) of the service bulletin. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions in accordance with the service bulletin.

(p) For airplanes listed in Airbus Service Bulletin A310–57–2050, dated April 23, 1990, as revised by Service Bulletin Change Notices 0.A., dated September 29, 1992, and 0.B., dated January 6, 1995: Perform a visual or rotating probe inspection to detect cracks in the drain holes on the lower skin panel in the center wing box between frames 42 and 46, in accordance with Airbus Service Bulletin A310–57–2050, dated April 23, 1990, as revised by Service Bulletin Change Notices 0.A., dated September 29, 1992, and 0.B., dated January 6, 1995, at the applicable time specified in NOTE 1 of paragraph 1.A.(2) of the service bulletin, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed those specified in NOTE 1 of paragraph 1.A.(2) of the service bulletin. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions in accordance with the service bulletin. Accomplishment of Airbus Modification number 6130S6815 (Airbus Service Bulletin A310–57–2048), constitutes terminating action for the repetitive inspections required by paragraph (p) of this AD.

(q) For airplanes listed in Airbus Service Bulletin A310–53–2074, Revision 1, dated February 20, 1995: Perform visual and eddy current inspections to detect damaged sealant, corrosion, and cracks in accordance with Airbus Service Bulletin A310–53–2074, Revision 1, dated February 20, 1995. Accomplish these requirements at the applicable time specified in Table 2 of paragraph 1.C.(4) of the service bulletin, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed those specified in Table 2 of paragraph 1.C.(4) of the service bulletin, as applicable. Except as provided by paragraph (t) of this AD, if any discrepancy is found, prior to further flight, perform follow-on corrective actions in accordance with the service bulletin.

(r) For airplanes listed in Airbus Service Bulletin A310–57–2064, dated August 24, 1995: Perform an eddy current inspection to detect cracks of the upper corner angle fitting and the vertical tee fitting at left and right frame 40, in accordance with Airbus Service Bulletin A310–57–2064, dated August 24, 1995. Perform the inspection at the time specified in paragraph (r)(1) or (r)(2) of this AD, as applicable. Except as provided by paragraph (t) of this AD, if any crack is found, prior to further flight, perform corrective actions in accordance with the service bulletin.

(1) For Model A310–200 series airplanes: Prior to the accumulation of 18,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 11,000 flight cycles.

(2) For Model A310–300 series airplanes: Prior to the accumulation of 18,000 total flight cycles, or within 1,700 flight cycles after the effective date of this AD, whichever occurs later; and thereafter at intervals not to exceed 7,700 flight cycles.

(s) For airplanes listed in Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996: Prior to the accumulation of 12,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later, perform a high frequency eddy current (HFEC) or X-ray inspection to detect cracking of the stringer runouts inboard and outboard of rib 14 at stringers 6, 7, 8, and 9, in accordance with Airbus Service Bulletin A310–57–2038, Revision 2, dated January 4, 1996. Thereafter, repeat the inspection at intervals not to exceed those specified in paragraph 1.B.(5) of the service bulletin, as applicable. If any crack is detected, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

(t) If any crack is found during any inspection required by this AD, and the applicable service bulletin specifies to contact Airbus for an appropriate action: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

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

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(v) 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.

(w) Except for the repairs required in paragraphs (h), (j), (k), (m)(2), (n)(2), (s), and (t) of this AD, the actions shall be done in accordance with the following Airbus service bulletins and change notices, as applicable, which contain the specified list of effective pages:

Service bulletin and change notices referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
A310–53–2014, Revision 5, June 9, 1992	1–3, 21, 25	5	June 9, 1992.
	4–6, 14–16, 19, 20, 23, 26	2	February 17, 1987.

Service bulletin and change notices referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
	7–10, 12, 13, 17, 18, 22, 24	3	May 18, 1987.
	11, 27, 28	4	March 1, 1988.
A310–53–2014, Change Notice 5.A., September, 29, 1992.	1	Original	September 29, 1992.
A310–53–2014, Change Notice 5.B., February 5, 1996.	1	Original	February 5, 1996.
A310–53–2016, Revision 5, December 7, 1992	1, 2, 8, 12, 13, 43	5	December 7, 1992.
	3, 4, 6, 7, 9–11, 16–18, 21–34, 39–42, 45	3	April 22, 1987.
	5	1	November 12, 1985.
	14, 15, 19, 20, 35–38, 44	4	November 17, 1987.
A310–53–2054, Revision 2, May 22, 1990	1	2	May 22, 1990.
	2	1	February 19, 1990.
	3–13	Original	January 16, 1990.
A310–53–2057, Revision 1, April 30, 1992	1, 2	1	April 30, 1992.
	3–9	Original	February 26, 1991.
A310–53–2059, Revision 1, January 4, 1996	1–6	1	January 4, 1996.
	7–26	Original	October 4, 1991.
A310–55–2002, Revision 4, April 28, 1989	1, 31, 32	4	April 28, 1989.
	2–30, 33–47	3	August 10, 1988.
A310–55–2004, Revision 2, February 7, 1991	1–4, 6–8	2	February 7, 1991.
	5, 9–17	Original	September 6, 1988.
A310–57–2002, Revision 1, July 2, 1992	1–4	1	July 2, 1992.
	5–11	Original	December 31, 1988.
A310–57–2002, Revision 2, January 4, 1996	1–14	2	January 4, 1996.
A310–57–2006, Revision 3, May 2, 1996	1, 10	3	May 2, 1996.
	2	2	March 28, 1995.
	3, 4, 5–7	1	April 8, 1993.
	8, 9	Original	August 13, 1986.
A310–57–2032, Revision 3, January 4, 1996	1–12	3	January 4, 1996.
A310–57–2037, Revision 3, January 4, 1996	1–10	3	January 4, 1996.
A310–57–2039, September 24, 1990	1–13	Original	September 24, 1990.
A310–57–2046, Revision 4, October 16, 1996	1–14	4	October 16, 1996.
Appendix 1			
	1–6	3	October 17, 1995.
A310–57–2046, Change Notice 4A, October 16, 1996.	1	Original	October 16, 1996.
A310–57–2047, Revision 2, 57–58 January 22, 1997.	1, 4, 7–8, 13, 17–18, 57–58	2	January 22, 1997.
	2, 3, 5–6, 16, 37–39	1	January 4, 1996.
	9–12, 14–15, 19–36, 40–56, 59–89	Original	February 26, 1991.
A310–57–2050, April 23, 1990	1–31	Original	April 23, 1990.
A310–57–2050, Change Notice O.A., September 29, 1992.	1	Original	September 29, 1992.
A310–57–2050, Change Notice O.B., January 6, 1995.	1–2	Original	January 6, 1995.
A310–53–2074, Revision 1, February 20, 1995	1–71	1	February 20, 1995.
A310–57–2064, August 24, 1995	1–25	Original	August 24, 1995.
A310–57–2038, Revision 2, January 4, 1996	1–6	2	January 4, 1996.
	7	Original	November 6, 1989.

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

Note 5: The subject of this AD is addressed in French airworthiness directive 92–106–132(B)R4, dated June 5, 1996.

(x) This amendment becomes effective on January 20, 1999.

Issued in Renton, Washington, on December 8, 1998.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–33105 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–336–AD; Amendment 39–10945; AD 98–26–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires an inspection of the engine fuel shutoff valves (spar valves) to detect leakage of fuel and to ensure that no leakage occurs when the valves are commanded to close. That amendment also requires an alignment procedure of the engine fuel shutoff valves, if necessary. This amendment expands the applicability of the existing AD. This amendment is prompted by additional reports that certain crossfeed valve assemblies and engine shutoff valve assemblies were improperly installed during manufacturing of the airplane. The actions specified in this AD are intended to prevent uncommanded fuel flow from the fuel tanks to the engine nacelle, which could result in reduced airplane fire protection in the event of a leak in the engine fuel line or a fire in the engine nacelle.

DATES: Effective December 31, 1998.

The incorporation by reference of Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998, as listed in the regulations, is approved by the Director of the Federal Register as of December 31, 1998.

The incorporation by reference of Boeing Alert Service Bulletin 757–28A0045, dated July 30, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 28, 1996 (61 FR 41953, August 13, 1996).

Comments for inclusion in the Rules Docket must be received on or before February 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On August 6, 1996, the FAA issued AD 96–17–02, amendment 39–9710 (61 FR 41953, August 13, 1996), applicable to certain Boeing Model 757 series airplanes. That AD requires an inspection of the engine fuel shutoff valves (spar valves) to detect leakage of fuel and to ensure that no leakage occurs when the valves are commanded to close. That AD also requires an alignment procedure of the engine fuel shutoff valves, if necessary. That action was prompted by reports that certain engine shutoff valve assemblies were improperly installed during manufacturing of the airplane. The actions required by that AD are intended to prevent uncommanded fuel flow from the fuel tanks to the engine nacelle, which could result in reduced aircraft fire protection in the event of a leak in the engine fuel line or a fire in the engine nacelle.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received information that certain fuel crossfeed valve assemblies, which are identical to the engine fuel shutoff valves referenced in AD 96–17–02, were installed improperly on one other Boeing Model 757 series airplane during manufacture. Upon further investigation, the manufacturer found several in-service airplanes that were assembled with uncertain processes may have engine fuel shutoff valves that were installed improperly. The line numbers on these airplanes were not included in the applicability of AD 96–17–02, although these airplanes may be subject to the same unsafe condition specified in that AD. Improperly installed crossfeed valve assemblies or engine fuel shutoff valve assemblies, if not corrected, could lead to uncommanded fuel flow from the fuel tanks to the engine nacelle, which could result in reduced airplane fire protection in the event of a leak in the engine fuel line or a fire in the engine nacelle.

Explanation of Relevant Service Information

As a result of these new findings, the manufacturer issued, and the FAA has reviewed and approved, Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998. This revision is essentially identical to the procedures in the original issue but adds airplanes to the effectivity listing and additional instructions for operators with Pratt & Whitney-powered airplanes that have the optional interstage fuel pressure system. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 96–17–02 to continue to require an inspection of the engine fuel shutoff valves (spar valves) to detect leakage of fuel and to ensure that no leakage occurs when the valves are commanded to close. This AD also continues to require an alignment procedure of the engine fuel shutoff valves, if necessary. This new AD revises the applicability of the existing AD to include airplanes that are subject to the same unsafe condition.

Determination of Rule's Effective Date

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following

statement is made: ''Comments to Docket Number 98–NM–336–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9710 (61 FR 41953, August 13, 1996), and by adding a new airworthiness directive (AD), amendment 39–10945, to read as follows:

98–26–04 Boeing: Amendment 39–10945. Docket 98–NM–336–AD. Supersedes AD 96–17–02, amendment 39–9710.

Applicability: Model 757 series airplanes, as listed in Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998; 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)(1) 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 uncommanded fuel flow from the fuel tanks to the engine nacelle in the event of a leak in the engine fuel line or a fire in the engine nacelle, accomplish the following:

Restatement of Requirements of AD 96–17–02

(a) For Model 757 series airplanes having line positions 478 through 699 inclusive: Within 60 days after August 28, 1996 (the effective date of AD 96–17–02, amendment 39–9710), perform an inspection to detect leakage of the fuel shutoff (spar) valves and verify that the valves do not leak when commanded to close, in accordance with Boeing Alert Service Bulletin 757–28A0045, dated July 30, 1996.

(l) If both fuel shutoff valves pass the inspection for leakage and the valves close when commanded, no further action is required by this AD.

(2) If either or both of the fuel shutoff valves do not pass the inspection for leakage: Prior to further flight, adjust the engine fuel shutoff valve(s) in accordance with Part III of the alert service bulletin and repeat the requirements of paragraph (a) of this AD.

New Requirements of This AD

(b) For Model 757 series airplanes, having line positions 700 through 710 inclusive, 712, 718, and 719: Within 60 days after the effective date of this AD, perform an inspection to detect leakage of the fuel shutoff (spar) valves and verify that the valves do not leak when commanded to close, in accordance with Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998.

(l) If both fuel shutoff valves pass the inspection for leakage and the valves close when commanded, no further action is required by this AD.

(2) If either or both of the fuel shutoff valves do not pass the inspection for leakage: Prior to further flight, adjust the engine fuel shutoff valve(s) in accordance with Part III of the alert service bulletin and repeat the requirements of paragraph (b) of this AD.

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(c)(2) Alternative methods of compliance, approved previously in accordance with AD 96–17–02, amendment 39–9710, are approved as alternative methods of compliance with this AD.

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

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

(e) The inspection and adjustment shall be done in accordance with Boeing Alert Service Bulletin 757–28A0045, dated July 30, 1996, or Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998.

(1) The incorporation by reference of Boeing Alert Service Bulletin 757–28A0045, Revision 1, dated November 19, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 757–28A0045, dated July 30, 1996, was approved previously by the Director of the Federal Register as of August 28, 1996 (61 FR 41953, August 13, 1996).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 31, 1998.

Issued in Renton, Washington, on December 8, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–33104 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–302–AD; Amendment 39–10944; AD 98–26–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A321 series airplanes. This action requires modification and re-identification of the evacuation slide systems at left-and right-hand emergency exits 2 and 3. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the loss of the evacuation slides during flight, which could result in damage to the empennage, or inability of airplane occupants to use certain exit doors during an emergency.

DATES: Effective December 31, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 31, 1998.

Comments for inclusion in the Rules Docket must be received on or before January 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–302–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

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

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

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A321 series airplanes. The DGAC advises that two operators of Model A321 series airplanes reported the loss of an evacuation slide during flight. The loss of the slide was attributed to a leak of pressurized cabin air into the inflation line of the evacuation slide, which resulted in detachment of the door to the container in which the slide was stored (''blow out door''). Deployment or separation from the airplane of an evacuation slide during flight could result in damage to the empennage, or inability of airplane occupants to use certain exit doors during an emergency.

Other Relevant Rulemaking

On January 3, 1997, the FAA issued AD 97–01–09, amendment 39–9880 (62 FR 2009, January 15, 1997), which requires repetitive inspections to detect cracking and delamination of the doors that contain the left and right emergency evacuation slides, and repair or replacement, if necessary. That AD requires accomplishment of the actions specified in Airbus Service Bulletin A320–25–1167, dated June 24, 1996, which, among other things, includes procedures for modification of the escape slide system, which constitutes terminating action for the repetitive inspection requirements in that AD.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–25–1199, dated March 25, 1998, which describes procedures for modification and re-identification of the emergency evacuation slide systems at left- and right-hand emergency exits number 2 and 3. The modification includes replacement of the pressure check valve and the O-ring on the aspirator with new or serviceable components. (Airbus Service Bulletin A320–25–1199, dated March 25, 1998, references Air Cruisers Service Bulletin S.B. 005–25–07, dated September 2, 1997, as an additional source of service information for accomplishment of the modification and re-identification.) Accomplishment of the action specified in the Airbus service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified the Airbus service bulletin as mandatory and issued French airworthiness directive 98–292–117(B), dated July 29, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the loss of the evacuation slides during flight, which could result in damage to the empennage, or inability of airplane occupants to use certain exit doors during an emergency. This AD requires accomplishment of the actions specified in the Airbus service bulletin described previously.

Cost Impact

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

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 8 work hours (4 doors at 2 hours each) to accomplish the required modification, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the modification proposed by this AD would be $480 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic

impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–NM–302–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

98–26–03 Airbus Industrie: Amendment 39–10944. Docket 98–NM–302–AD.

Applicability: Model A321 series airplanes, except those on which Airbus Modification 27036 has been installed; or on which the action described in Airbus Industrie Service Bulletin A320–25–1199, dated March 25, 1998, has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of the evacuation slides during flight, which could result in damage to the empennage, or inability of airplane occupants to use certain exit doors during an emergency; accomplish the following:

(a) Within 36 months after the effective date of this AD: Accomplish the modification and re-identification of the evacuation slide systems at left- and right-hand emergency exits 2 and 3, in accordance with Airbus Service Bulletin A320–25–1199, dated March 25, 1998.

(b) The modification required by paragraph (b) of AD 97–01–09, amendment 39–9880 (reference Airbus Service Bulletin A320–25–1167, dated June 24, 1996), must be accomplished prior to or simultaneously with the modification required by this AD.

Note 2: Airbus Service Bulletin A320–25–1199, dated March 25, 1998, references Air Cruisers Service Bulletin S.B. 005–25–07, dated September 2, 1997, as an additional source of service information for accomplishment of the modification and re-identification of the evacuation slide systems specified in this AD.

(c) As of the effective date of this AD, no person shall install on any airplane, an evacuation slide system having part number 62292–101, 62292–102, 62293–101, 62293–102, 62292–103, 62292–104, 62293–103, or 62293–104.

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

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(f) The actions shall be done in accordance with Airbus Service Bulletin A320–25–1199, dated March 25, 1998. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–292–117(B), dated July 29, 1998.

(g) This amendment becomes effective on December 31, 1998.

Issued in Renton, Washington, on December 8, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–33103 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–33]

Establishment of Class E Airspace; Bolivar, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This action establishes the Class E airspace area at Bolivar, MO. The development of Global Positioning System (GPS) Runway (RWY) 18, GPS RWY 36, and VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) RWY 36 Standard Instrument Approach Procedures (SIAPs) have made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet Above Ground Level (AGL) for Instrument Flight Rules (IFR) operations at Bolivar Municipal Airport, Bolivar, MO.

EFFECTIVE DATE: 0901 UTC January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On September 29, 1998, a proposal to amend part 71 of the Federal Regulations (14 CFR part 71) to establish Class E airspace area at Bolivar, MO, was published in the **Federal Register** (63 FR 51867). This proposal was to establish controlled airspace extending upward from 700 feet AGL. The intended effect of the proposal was to provide adequate Class E airspace to contain aircraft executing GPS RWY 18, GPS RWY 36, and VOR/DME RWY 36 SIAPs at Bolivar Municipal Airport, Bolivar, MO.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) establishes the Class E airspace area at Bolivar, MO.

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. Therefore, this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, 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. 289.

§ 71.1 [Amended]

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

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

* * * * *

ACE MO E5 Bolivar, MO [New]

Bolivar Municipal Airport, MO
(Lat. 37°35′43″ N., long. 93°20′52″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Bolivar Municipal Airport.

* * * * *

Issued in Kansas City, MO on November 18, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–33297 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–37]

Amendment to Class E Airspace; West Plains, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at West Plains, MO.

DATE: The direct final rule published at 63 FR 51813 is effective on 0901 UTC, January 28, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on September 29, 1998 (63 FR 51813). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on January 28, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on November 16, 1998.

Christopher R. Blum,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–33295 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes and Bills

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is publishing a final rule to amend its TRADES Commentary (Appendix B of 31 CFR Part 357), to update the list of states that have enacted Revised Article 8 of the Uniform Commercial Code and that were the subject of prior notices published by Treasury in the **Federal Register**. Appendix B provides explanatory information regarding the regulations governing Treasury securities held in the commercial book-entry system, referred to as the Treasury/Reserve Automated Debt Entry System (''TRADES'').

EFFECTIVE DATE: December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Sandra Dyson, Attorney-Advisor (202) 219–3320, or Cynthia E. Reese, Deputy Chief Counsel, (202) 219-3320. Copies of the final rule are being made available for downloading from the Bureau of the Public Debt home page at the following address: www.publicdebt.treas.gov.

SUPPLEMENTARY INFORMATION: The final rule to govern Treasury securities held in the commercial book-entry system, or TRADES, was published August 23, 1996 (61 FR 43626), and was effective January 1, 1997. Appendix B of the rule, the TRADES Commentary, addresses the limited scope of federal preemption of state law under Section 357.11 of the Section-by Section Analysis. If the choice of law rules set forth in TRADES lead to the application of the law of a state that has not yet adopted Revised Article 8 of the Uniform Commercial Code (Revised Article 8) then TRADES applies Revised Article 8 (as approved by the American Law Institute and the National Conference of Commissioners on Uniform State Laws, or the ''uniform version''). Treasury indicated in the preamble to the final rule that if a state passes a version of Revised Article 8 that is substantially identical to the uniform version, then reference to the uniform version would no longer be required. In the TRADES Commentary, Treasury further stated that it had reviewed the laws of those states which had adopted Revised Article 8 as of the date of the publication of the final rule and had concluded that they were substantially identical to the uniform version. Those 28 states were enumerated and listed by name alphabetically in a footnote.

Treasury further indicated that it would publish in the **Federal Register** a notice setting forth its conclusion as to whether additional state enactments of Revised Article 8 are ''substantially identical'' to the uniform version for purposes of the regulations. Treasury has published such notices with respect to 22 states: California (62 FR 26, January 2, 1997), District of Columbia (62 FR 34010, June 18, 1997), Delaware, Hawaii, Maine, Missouri, Montana, Nevada, New Jersey, New York, North Carolina, North Dakota, Ohio, Tennessee and Puerto Rico (62 FR 61912, November 20, 1997), South Dakota (63 FR 20099, April 23, 1998), Georgia, Florida and Connecticut (63 FR 35807, July 1, 1998) and Wisconsin, New Hampshire and Michigan (63 FR 50159, September 21, 1998). The TRADES Commentary further states that Treasury will, on an annual basis, amend the Commentary (Appendix B) to reflect subsequent enactments. The Commentary was amended last year to add California and the District of Columbia to the list. Accordingly, this final rule amends Appendix B to reflect the addition of the other nineteen aforementioned states for which Treasury has published notices to the list of states enumerated therein.

Procedural Requirements

This final rule does not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866. The notice and public comment procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2).

As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information contained in this final rule. Therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Part 357

Bonds, Electronic funds transfer, Federal Reserve System, Government securities, Incorporation by reference, Securities.

For the reasons set forth in the preamble, Title 31, Chapter II, Subchapter B, Part 357 is amended as follows:

PART 357—REGULATIONS GOVERNING BOOK-ENTRY TREASURY BONDS, NOTES AND BILLS

1. The authority citation for Part 357 continues to read as follows:

Authority: 31 U.S.C. Chapter 31; 5 U.S.C. 301; 12 U.S.C. 391.

2. Appendix B to Part 357 is amended in the Section-by-Section Analysis for Section 357.11(b), in the third paragraph, by revising the fourth sentence and footnote 11 to read as follows:

Appendix B to Part 357—TRADES Commentary

* * * * *

Section-by-Section Analysis

* * * * *

Section 357.11—Law Governing Other Interests

* * * * *

(b) *Limited Scope of Federal Preemption* * * *

* * * Treasury has determined that the versions of Article 8 passed by 50[11] states that have enacted Article 8 meet this standard. * * *

Dated: November 10, 1998.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 98–33263 Filed 12–15–98; 8:45 am]

BILLING CODE 4810–39–W

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–017]

RIN 2115–AE47

Drawbridge Operation Regulations; Anacostia River, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is revising the rule currently governing the operation of the Frederick Douglass Memorial (South Capitol Street) bridge

[11] Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

across Anacostia River at mile 1.2 in Washington, DC. This temporary rule again authorizes this bridge to remain closed to navigation until January 31, 1999. This action is necessary to complete on-going extensive mechanical and electrical rehabilitation and maintain the bridge's operational integrity.

DATES: This temporary final rule is effective from December 4, 1998 to 11 p.m. on January 31, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. The Coast Guard was notified of the second extension request on November 10, 1998. Subsequently, publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to address the bridge's present inability to open safely.

Discussion of Regulation

On April 20, 1998, the Coast Guard initially published a Temporary Final Rule entitled ''Drawbridge Operation Regulations; Anacostia River, Washington, DC'' in the **Federal Register** (63 FR 19406). That regulation was effective from April 2, 1998 to 11 p.m. on August 31, 1998.

Due to the unavailability of raw materials and deficiencies in implementing corrective measures, an extension was granted to complete the repairs. On August 26, 1998, the Coast Guard published a Temporary Final Rule; extension of effective date entitled ''Drawbridge Operation Regulations; Anacostia River, Washington, DC'' in the **Federal Register** (63 FR 45396). That regulation extension was effective from 11:01 p.m. August 31, 1998 through 11 p.m. November 23, 1998.

With the continuing unavailability of raw material, a second extension has been requested by the contractor. The Coast Guard has been assured by the contractor and bridge owner by letter that the bridge swing span rehabilitation will be completed by December 31, 1998 with the functional testing completed by January 31, 1999. In addition, the contractor has assured the bridge owner that the contractor will provide the resources, manpower, and additional work shifts as required to ensure that the bridge operation deadline of January 31, 1999 is met. Therefore, the Coast Guard is extending the closure period until January 31, 1999 so the repairs can be completed.

The Coast Guard has notified the affected users of the waterway of this closure extension. The U.S. Navy indicated that it will not be affected by the extension. The Coast Guard also contacted EPA's Office of Water Programs and the local Coast Guard unit (USCG Station St. Inigoes) of the bridge's extended inability to open for vessels, and they did not object. Additionally, vessels docked at a nearby marina can clear the bridge's vertical clearance in the closed position, which is 42 feet at mean high water. Therefore, vessels are not expected to be negatively impacted by this temporary rule.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Due to the small number of requests for openings, the notification of affected public vessels of the United States, and the ability of vessels at the nearby marina to clear the bridge's closed-position vertical clearance, the impact on routine navigation is expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this temporary final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632).

As a result of notifying the affected users of the waterway of the extension, the limited requests for vessel openings and the ability of nearby vessels to clear the bridge's closed-position vertical clearance, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32)(2) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation based on the fact that it is a promulgation of the operating regulations for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Effective December 4, 1998 through January 31, 1999, Section 117.253 paragraph (a) is suspended and a new paragraph (c) is added to read as follows:

§ 117.253 Anacostia River.

* * * * *

(c) From 8 a.m. on March 11, 1998 until 11 p.m. on January 31, 1999, the draw of the Frederick Douglass Memorial (South Capitol Street) bridge

need not be opened for the passage of vessels.

Dated: December 4, 1998.

Thomas E. Bernard,

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

[FR Doc. 98–33223 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–101]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway; Cape May Canal

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Cape May Canal Railroad Bridge across the Intracoastal Waterway (ICW), mile 115.1, in Cape May, New Jersey. From 8 a.m. until 5 p.m., December 16, 17, and 18, 1998, the bridge will be maintained in the closed position. This closure is necessary to facilitate the ongoing reconstruction of the bridge's swing span.

DATES: This deviation is effective from 8 a.m. until 5 p.m. each day on December 16, 17, and 18, 1998.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Cape May Canal Railroad Bridge is owned by New Jersey Transit Corporation (NJT). The current regulations in Title 33 Code of Federal Regulations, Section 117.41 require the draw be maintained in the fully open position to permit the passage of vessels and drawtender service discontinued. The draw shall remain in the fully open position until drawtender service is restored or authorization under Section 117.39 is given for the draw to remain closed and untended.

Under an agreement with NJT and Cape May Seashore Lines, Inc., (CMSL), CMSL would be responsible for reactivation of the rail service, the operation of the drawbridge and the bridge accessories. In December 1997, the Coast Guard approved the reconstruction of the bridge for mechanical, electrical and structural repairs. On November 13, 1998, the Coast Guard received a request from CMSL to schedule daytime closures of the bridge to facilitate the ongoing reconstruction of the drawbridge. No openings were logged, since the bridge has been maintained in the fully open position to vessels since the late 1970's.

The Coast Guard has advised the local Coast Guard units (USCG Group Atlantic City and Station Cape May) of the bridge's inability to open for vessels on the requested times and dates, and they did not object. CMSL has ensured that advance notification of the scheduled closures will be posted in the Atlantic City Press Cape May Edition, Additionally, the Coast Guard will inform the commercial/recreational users of the waterway of the bridge closures in the weekly Notice to Mariners so that these vessels can arrange their transits to avoid being negatively impacted by the temporary deviation.

From 8 a.m. until 5 p.m., on 16, 17, and 18, December 1998, this deviation allows the Cape May Canal Railroad Bridge, ICW mile 115.1 in Cape May to remain closed.

Dated: December 4, 1998.

Thomas E. Bernard,

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

[FR Doc. 98–33222 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ32–183c, FRL–6203–3]

Approval and Promulgation of Implementation Plans; Reasonably Available Control Technology for Oxides of Nitrogen for Specific Sources in the State of New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to receipt of an adverse comment, EPA is withdrawing a portion of the direct final rule which approved revisions to the New Jersey State Implementation Plan. EPA published the direct final rule on October 20, 1998 (63 FR 56086), approving four (4) revisions consisting of fifteen (15) source-specific reasonably available control technology determinations for controlling oxides of nitrogen. As stated in the direct final rule, if adverse comments were received by November 19, 1998, a timely withdrawal would be published in the **Federal Register**. EPA subsequently received an adverse comment concerning one source-specific determination contained in the direct final rule. As a result, EPA is withdrawing its approval of the source-specific SIP revision for the Jersey Central Power & Light Company-52.1570(c)(64)(i)(A)(14). EPA will act on this source-specific SIP revision when New Jersey submits a revised reasonably available control technology determination. EPA's approval of the remaining fourteen source-specific SIP revisions announced in the direct final rule are not affected by today's withdrawal document.

DATES: As of December 16, 1998, EPA withdraws the addition of 40 CFR 52.1570(c)(64)(i)(A)(14) published in the **Federal Register** on October 20, 1998 (63 FR 55949).

FOR FURTHER INFORMATION CONTACT: Ted Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION: The July 10, 1996 submittal included a Conditions of Approval Document (or permit) dated April 6, 1996 for Jersey Central Power and Light (JCP&L) Company's four combined cycle combustion turbines at its Gilbert Generating Station in Holland Township, Hunterdon County, New Jersey. GPU Generation Corporation (Genco), the operator of the JCP&L Gilbert Station, wrote to EPA on November 19, 1998 and stated that the Conditions of Approval Document for the Gilbert Station had been revised subsequent to its submittal to EPA by the State of New Jersey and requested that EPA withdraw the direct final rule as it pertains to the Gilbert Station's turbines.

Conclusion

EPA agrees with Genco's November 19, 1998 request and has determined that withdrawal is warranted. Therefore, this action withdraws 40 CFR 52.1570(c)(64)(i)(A)(14) for JCP&L's four combined cycle combustion turbines at the Gilbert Station. EPA will take action on the currently effective Conditions of Approval Document when New Jersey submits it to EPA.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: December 8, 1998.

Herbert Barrack,

Acting Regional Administrator, Region 2.

[FR Doc. 98–33217 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300764; FRL–6048–4]

RIN 2070–AB78

Tralkoxydim; Time-Limited Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the herbicide tralkoxydim in or on certain raw agricultural commodities. Zeneca Ag Products requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170). These tolerances will expire on February 28, 2003.

DATES: This regulation is effective December 16, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300764], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300764], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300764]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, e-mail: tompkins.jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 2, 1997 (62 FR 35804)(FRL–5722–9), EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a announcing the filing of a pesticide petition (PP 6F4631) for tolerance by Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE 19850–5458. This notice included a summary of the petition prepared by Zeneca Ag Products, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing time-limited tolerances for residues of the herbicide, tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on the raw agricultural commodities barley grain, barley straw, barley hay, wheat grain, wheat forage, wheat straw, and wheat hay at 0.1 parts per million (ppm). Zeneca Ag Products subsequently amended the proposed tolerances to lower the residue levels, as follows; barley grain, barley hay, wheat grain and wheat hay at 0.02 ppm, and barley straw, wheat forage and wheat straw at 0.05 ppm. These tolerances will expire on February 28, 2003.

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

A. Toxicity

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOAEL from the study with the lowest NOAEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the Rfd (expressed as 100% or less of the RfD) is generally considered acceptable by EPA. EPA generally uses

the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOAEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

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

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

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

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

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

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

B. Aggregate Exposure

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

Percent of crop treated estimates are derived from federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent of crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. For this pesticide, the most highly exposed population subgroup children 1-6 years was not regionally based.

II. Aggregate Risk Assessment and Determination of Safety

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

A. Toxicological Profile

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

toxic effects caused by tralkoxydim are discussed below.

1. A rat acute oral study with a LD_{50} of 1,258 milligrams (mg)/kilogram (kg) for males and 934 mg/kg for females.

2. A mouse acute oral study with a LD_{50} of 1,231 mg/kg for males and 1,100 mg/kg for females.

3. A 90-day rat feeding study with a NOAEL of 250 ppm [20.5 mg/kg/day] and a Lowest Observed Adverse Effect Level (LOAEL) of 2,500 ppm [204.8 mg/kg/day] based on decreased food efficacy and minor hematologic changes.

4. A 90-day dog dietary study with a NOAEL of 0.5 mg/kg/day and a LOAEL of 5 mg/kg/day based on increased liver weights in males and increases in APDM in males and females, indicating minimal hepatotoxicity.

5. A 90-day hamster feeding study with a NOAEL of 5,000 ppm [328 mg/kg/day] and a LOAEL of 10,000 ppm [650 mg/kg/day] based on decreased body weight gains and increased liver weights in both sexes.

6. A 21-day rat dermal study with a NOAEL of 1,000 mg/kg/day, the highest dose tested [HDT].

7. A 1-year dog chronic feeding study with a NOAEL of 0.5 mg/kg/day and a LOAEL of 5 mg/kg/day based on changes in liver function and morphology in males.

8. A rat chronic feeding / carcinogenicity study with a NOAEL for systemic toxicity of 500 ppm [23.1 mg/kg/day in males and 30.1 mg/kg/day in females] and a LOAEL for systemic toxicity of 2,500 ppm [117.9 mg/kg/day in males and 162.8 mg/kg/day in females] based on decreased body weight gain, decreased food consumption, increased liver weights, and increased hepatic clear cell areas and increased ALT levels in females. Based on the incidence of Leydig cell tumors of the testes in males, tralkoxydim was considered to have a positive carcinogenic response.

9. A 3-generation rat reproduction study with a parental systemic NOAEL of 200 ppm [20 mg/kg/day] and a systemic LOAEL of 1,000 ppm [100 mg/kg/day] based on reduced body weights and body weight gains in females. No reproductive toxicity was observed. The developmental NOAEL of 200 ppm and a LOAEL of 1,000 ppm based on decreased mean pup weights (F_{1a} and F_{3a}) and pup weight gains (F_{2a}) .

10. A rat developmental study with a maternal NOAEL of 30 mg/kg/day and with a maternal LOAEL of 200 mg/kg/day based on maternal mortality, reduced body weights, and reduced food consumption and a developmental NOAEL of 30 mg/kg/day and a developmental LOAEL of 200 mg/kg/day based on reduced ossification of the centrum and hemicentrum, centrum bipartite, misshapen centra and fused centra.

11. A rabbit developmental study with a maternal NOAEL of 20 mg/kg/day and a maternal LOAEL of 100 mg/kg/day based on reduced food consumption and a developmental NOAEL of 20 mg/kg/day and a developmental LOAEL of 100 mg/kg/day based on abortions and increases in late resorptions.

12. Tralkoxydim was negative for mutagenic/genotoxic effects in a Gene mutation Ames Assay in bacteria, a forward gene mutation in mouse lymphoma cells in culture, chromosome damage/*In vitro* assay in human lymphocyte cells, DNA damage repair *in vivo* assay in rat hepatocytes, and chromosome damage *in vivo* mouse micronuclei.

13. Based on the results of the hamster and rat metabolism studies, tralkoxydim was readily absorbed and excreted within 24 and 48 hours after dosing, respectively. In hamsters, the metabolic profile in urine was similar for males and females; no unchanged tralkoxydim was detected and two major metabolites were identified: tralkoxydim acid and tralkoxydim acid oxazole. The metabolic profile in the urine of rats included two additional metabolites, tralkoxydim alcohol and tralkoxydim diol.

14. Several mechanistic studies and subchronic feeding studies were submitted to support the selection of hamster in preference to the mouse in assessing the carcinogenic potential of tralkoxydim. The submitted data indicate that of all the species tested only the mouse is susceptible to porphydrin accumulation in the liver following treatment with tralkoxydim. The mouse was considered an inappropriate species to use for carcinogenicity testing of tralkoxydim because of its distinctive method of metabolism. However, the submitted hamster cancer study was unacceptable owing to unacceptably high mortality in the females. An acceptable second species carcinogenicity study is required.

B. Toxicological Endpoints

1. *Acute dietary toxicity*. EPA has established an acute RfD for tralkoxydim of 0.3 milligrams/kilogram/day (mg/kg/day). This RfD is based on the NOAEL of 30 mg/kg/day established in the rat developmental study and using an uncertainty factor of 100 based on 10 X for inter-species extrapolation and 10X for intra-species variation.

2. *Short - and intermediate - term toxicity*. EPA could not identify any toxicological effects that could be attributable to short or intermediate-term dietary exposure .

3. *Chronic toxicity*. EPA has established the RfD for tralkoxydim at 0.005 mg/kg/day. This RfD is based on NOAEL of 0.5 mg/kg/day in the chronic toxicity study in dogs with a 100-fold uncertainty factor to account for inter-species extrapolation (10 x) and intra-species variability (10 x).

4. *Carcinogenicity*. The Health Effects Division Cancer Assessment Review Committee has classified Tralkoxydim in accordance with the Agency's Proposed Guidelines for Carcinogen Risk Assessment (April 10, 1996) as a ''likely to be human carcinogen''. This classification is based on the following factors:

i. Occurrence of benign Leydig cell tumors at all dose levels with the incidences at the high dose exceeding the concurrent and historical control range.

ii. Lack of an acceptable carcinogenicity study in a second species as required by Subdivision F Guidelines.

iii. The relevance of the testicular tumors to human exposure can not be discounted

C. Exposures and Risks

1. *From food and feed uses.* The proposed tolerances in or on the raw agricultural commodities: barley grain, barley hay, wheat grain and wheat hay at 0.02 ppm, and barley straw, wheat forage and wheat straw at 0.05 ppm are the first to be established for tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl). There is no reasonable expectation of residues of tralkoxydim occurring in meat, milk, poultry, or eggs from its use on wheat and barley. Risk assessments were conducted by EPA to assess dietary exposures from tralkoxydim as follows:

i. Acute exposure and risk. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute dietary risk assessment was conducted for tralkoxydim based on the NOAEL of 30 mg/kg/day from the rat developmental study. The acute dietary analysis using the DEEM computer program estimates that the distribution of single-day exposures utilizes 0.02% of acute RfD.

ii. *Chronic exposure and risk*. The Reference Dose (RfD) for Tralkoxydim is 0.005 mg/kg/day. This value is based on

the systemic NOAEL of 0.5 mg/kg/day in the dog chronic feeding study with a 100-fold safety factor to account for interspecies extrapolation (10x) and intraspecies variability (10x).

A DEEM chronic exposure analysis was conducted using tolerance levels for wheat and barley and assuming that 100% of the crop is treated to estimate dietary exposure for the general population and 22 subgroups. The chronic analysis showed that exposures from the tolerance level residues in or on wheat, and barley for children 1-6 years old (the subgroup with the highest exposure) would be 1.4% of the Reference Dose (RfD). The exposure for the general U.S. population would be less than 1% of the RfD.

iii. A lifetime dietary carcinogenicity exposure analysis was conducted for tralkoxydim using the proposed tolerances along with the assumption of 100% of the crop treated and a Q* of 1.68×10^{-2} $(mg/kg/day)^{-1}$. A lifetime risk exposure analysis was also conducted using the DEEM computer analysis. The estimated cancer risk (5×10^{-7}) is less than the level that the Agency usually considers for negligible cancer risk estimates.

2. *From drinking water.* Drinking water estimated concentrations (DWECs) for surface water (parent tralkoxydim) were calculated by PRIZM computer models to be an average of 9.1 parts per billion (ppb). the DWECs for ground water based on the computer model SCI-GROW2 were calculated to be an average of .016 ppb.

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

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

EPA does not have, at this time, available data to determine whether tralkoxydim has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Tralkoxydim is structurally a cyclohexanedione. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tralkoxydim does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerances action, therefore, EPA has not assumed that tralkoxydim has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* The acute dietary analysis based on the NOAEL of 30 mg/kg/day from the rat developmental study using the DEEM computer program estimates that the distribution of single-day exposures utilizes 0.02% of acute RfD. The drinking water level of comparisons (DWLOCs) for acute exposure to tralkoxydim in drinking water calculated for females 13+ years old was 9,000 ppb. The estimated average concentration in surface water for tralkoxydim is 9 ppb. EPA's acute drinking water level of comparison is well above the estimated exposures for tralkoxydim in water for the subgroup of concern. For groundwater, the estimated environmental concentrations (EEC's) using the SCI-GROW model were all less than 1 ppb.

2. *Chronic risk.* A DEEM chronic exposure analysis showed that exposure from tolerance level residues in or on wheat, and barley for children 1-6 years old (the subgroup with the highest exposure) would be 1.4% of the Reference Dose (RfD). The exposure for the general U.S. population would be less than 1% of the RfD. The drinking water level of comparisons (DWLOCs) for chronic exposure to tralkoxydim in drinking water calculated for U.S. population was 150 ppb and for children (1–6 years old) the DWLOC was 50 ppb. The estimated average concentration in surface water for tralkoxydim is 9 ppb. EPA's chronic drinking water level of concern is above the estimated exposures for tralkoxydim in water for the U.S. population and the subgroup of concern. Conservative model estimates (SCI-GROW) of the concentrations of tralkoxydim in groundwater indicate that exposure will be minimal.

3. *Cancer risk.* A DWLOC for cancer was calculated as 1 ppb. The estimated concentration in surface water and groundwater for tralkoxydim for chronic exposure are 0.9 ppb [2.8 ppb (the 56-day concentration)/3] and 0.1 ppb, respectively. The model exposure estimates are less than the cancer DWLOC.

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

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

Safety factor for infants and children. In assessing the potential for additional sensitivity of infants and children to residues of tralkoxydim, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. The Agency concluded that an extra safety factor to protect infants and children is not needed based on the following considerations:

- The toxicology data base is complete for the assessment of special sensitivity of infants and children
- The developmental and reproductive toxicity data do not indicate increase susceptibility of rats or rabbits to *in utero* and/or postnatal exposure
- The NOAEL used in deriving the RfD is based on changes in liver function and morphology in male adult dogs (not developmental or neurotoxic effects) after chronic exposure and thus are not relevant for enhanced sensitivity to infants and children
- Unrefined dietary exposure estimates (assuming all commodities contain tolerance level residues) overestimate dietary exposure
- Model data used for ground and surface source drinking water exposure assessments result in estimates considered to be upper-bound concentrations
- There are no registered uses for tralkoxydim that could result in residential exposures.

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

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in barley, wheat, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are parent per se. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of tralkoxydim on wheat and barley.

B. Analytical Enforcement Methodology

An adequate analytical method, gas chromatography/mass spectrometry with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Endocrine Effects

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

D. Magnitude of Residues

Based on the results of animal metabolism studies it is unlikely that significant residues would occur in secondary animal commodities from the use of tralkoxydim on wheat and barley.

The nature of the residue in plants is adequately understood for the purposes of these time-limited tolerances.

E. International Residue Limits

There are no Codex Alimentarius Commission (Codex) or Mexican Maximum Residue Levels (MRLs) for tralkoxydim at this time.

F. Rotational Crop Restrictions.

No tolerances for inadvertent residues of tralkoxydim are required in rotational crops.

IV. Conclusion

Due to the second species carcinogenicity study data gap: EPA believes it is inappropriate to establish permanent tolerances for the uses of tralkoxydim at this time. EPA believes that the existing data support time-limited tolerances to February 28, 2003. Therefore, time-limited tolerances are established for residues of the herbicide, tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl), in or on the raw agricultural commodities: barley grain, barley hay, wheat grain and wheat hay at 0.02 ppm, and barley straw, wheat forage and wheat straw at 0.05 ppm. These time-limited tolerances will expire and be revoked on February 28, 2003.

V. Objections and Hearing Requests

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

Any person may, by February 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i) or a request for a fee waiver. If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300764] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

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

address in ''ADDRESSES'' at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

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 proposed 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 to 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 action 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.

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

List of Subjects in 40 CFR Part 180

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

Dated: December 3, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. By adding § 180.548, to read as follows:

§ 180.548 Tralkoxydim; tolerances for residues.

(a) *General.* Time-limited tolerances are established for residues of the herbicide, tralkoxydim, 2-(Cyclohexen-1-one, 2-[1-(ethoxyimino)propyl]-3-hydroxy-5-(2,4,6-trimethylphenyl)-(9Cl) in or on the raw agricultural commodities:

Commodity	Parts per million	Expiration/Revocation Date
Barley, grain	0.02	2/28/03
Barley, hay	0.02	2/28/03
Barley, straw	0.05	2/28/03
Wheat, forage	0.05	2/28/03
Wheat, grain	0.02	2/28/03
Wheat, hay	0.02	2/28/03
Wheat, straw	0.05	2/28/03

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

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

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

[FR Doc. 98–33121 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300762; FRL–6048–1]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of bifenthrin in or on citrus, whole fruit; citrus oil; and citrus dried pulp. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide bifenthrin on citrus. This regulation establishes a maximum permissible level for residues of bifenthrin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 2000.

DATES: This regulation is effective December 16, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300762], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300762], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300762]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Barbara Madden, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6463, e-mail: madden.barbara@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to sections 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the insecticide bifenthrin in or on citrus, whole fruit at 0.03 parts per million (ppm); 0.3 ppm for citrus oil; and 0.3 ppm for citrus dried pulp. This tolerance will expire and is revoked on December 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996)(FRL–5572–9).

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

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Bifenthrin on Citrus and FFDCA Tolerances

Recently Diaprepes root weevil has spread into citrus areas in Florida. Much of the infested citrus acreage is exhibiting severe decline or is out of production. Registered controls only provide 75% control of Diaprepes root

weevil. That level of control is inadequate to prevent tree or grove losses, and contain the spread of the pest. EPA has authorized under FIFRA section 18 the use of bifenthrin on citrus for control of Diaprepes root weevils. After having reviewed the submission, EPA concurs that emergency conditions exist.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on citrus. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on citrus after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether bifenthrin meets EPA's registration requirements for use on citrus or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of bifenthrin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Florida to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, contact the Agency's Registration Division at the address provided above.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997)(FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action EPA has sufficient data to assess the hazards of bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time-limited tolerances for residues of bifenthrin on citrus, whole fruit at 0.03 ppm; citrus oil at 0.3 ppm; and citrus dried pulp at 0.3 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. The acute reference dose (RfD) of 0.01 milligram/kilogram/day (mg/kg/day) was established based on a maternal no observable adverse effect level (NOAEL) of 1 mg/kg/day from a developmental toxicity study in rats. At the lowest observable adverse effect level (LOAEL) of 2 mg/kg/day, tremors from day 7-17 of dosing were observed. An uncertainty factor of 100 (10X for inter-species extrapolation and 10X for intra-species variability) was applied to the NOAEL of 1 mg/kg/day to calculate the acute RfD of 0.01 mg/kg/day. EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children (as required by FQPA) can be removed. This determination is based on the results of reproductive and developmental toxicity studies. No evidence of additional sensitivity to young rats or rabbits was observed following pre- or post-natal exposure to bifenthrin.

2. *Short - and intermediate - term toxicity*. The maternal NOAEL of 1 mg/kg/day from the oral developmental toxicity study in rats (discussed in Unit A. 1. of this preamble) was also identified as the toxicological endpoints for short- or intermediate-term dermal and inhalation toxicity. A dermal absorption rate of 25%, based on the weight-of-the-evidence available for structurally-related pyrethroids, is appropriate for dermal risk assessments. One-hundred percent absorption is assumed for inhalation risk assessments. Margin of exposures (MOEs) of 100 or greater to account for inter-species extrapolation (10X) and for intra-species variability (10X) are acceptable.

3. *Chronic toxicity*. EPA has established the chronic RfD for bifenthrin at 0.015 mg/kg/day. This RfD is based on the NOAEL of 1.5 mg/kg/day from a chronic toxicity study in dogs. Tremors in both sexes of dogs were observed at the LOAEL of 3.0 mg/kg/day. An uncertainty factor of 100 to account for inter-species extrapolation and intra-species variability was applied to the NOAEL. As discussed in Unit A. 1. of this preamble, EPA has determined that the 10X factor to account for enhanced susceptibility of infants and children can be removed.

4. *Carcinogenicity*. Bifenthrin has been classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice. No Q* was assigned because the RfD approach was recommended for cancer risk assessment. Based on this recommendation, a quantitative dietary cancer risk assessment was not performed since, dietary risk concerns due to long-term consumption of bifenthrin are adequately addressed by the chronic exposure analysis using the RfD.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of bifenthrin on hops; strawberries; corn grain, forage, and fodder; cotton seed; and livestock commodities of cattle, goats, hogs, horses, sheep, and poultry. Additionally, time-limited tolerances associated with emergency exemptions have been established for broccoli, cauliflower, cucurbits, and canola. Risk assessments were conducted by Novigen Sciences, Inc., and reviewed by EPA, to assess dietary exposures and risks from bifenthrin as follows:

i. *Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological

study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. An acute dietary (food) risk assessment was submitted by the petitioner where the Novigen DEEM (Dietary Exposure Evaluation Model) system Tier 3 (Monte Carlo) approach was used. This methodology incorporates distributions of residues and refined percent of crop treated estimates for some crops, and thus results in refined risk estimates. For citrus, it was assumed 100% crop treated and half of the limit of detection (LOD) value, (0.01 ppm) was used in this Monte Carlo analysis. This acute dietary exposure analysis from food sources was conducted using the acute RfD of 0.01 mg/kg/day. The analysis evaluated individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulated exposure to bifenthrin for each commodity and expresses risk as a function of dietary exposure. For the most highly exposed population subgroup, Children 1-6 years old, the resulting high-end exposure (at the 99.9th percentile) results in a dietary (food only) percentage of the acute RfD at 80%. For the overall U.S. Population, the high-end exposure (99.9th percentile) percentage of the acute RfD is 50%.

ii. *Chronic exposure and risk.* This chronic dietary exposure analysis from food sources was conducted using the chronic RfD of 0.015 mg/kg bwt/day. In conducting this chronic dietary (food only) risk assessment, the petitioner used anticipated residue field trial values and percent crop treated information. A mean field trial residue value for citrus of 0.005 ppm was used. The analysis evaluates individual food consumption as reported by respondents in the USDA Continuing Surveys of Food Intake by Individuals conducted in 1989 through 1992. The model accumulates exposure to bifenthrin for each commodity and expresses risk as a function of dietary exposure. The existing bifenthrin tolerances published, pending, and including the necessary section 18 tolerances result in chronic dietary risk estimates (food only) for the U.S. population of 3% of the RfD and the most highly exposed population subgroup, children, (1-6 years) 9% of the RfD.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for bifenthrin. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in groundwater. None of these models include consideration of the impact processing of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Drinking water levels of comparison (DWLOCs) are calculated and compared to the models' estimates for both surface and ground water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. Since DWLOCs address total aggregate exposure to bifenthrin they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Bifenthrin is currently registered for use on the following residential non-food sites: turf, home gardens and pets. Exposure estimates were calculated for the turf use, which is considered the use pattern with the highest exposure potential for adults, children (1-6 years) and infants (<1 year). MOEs were then calculated for each exposure scenario using the following equation: MOE = NOAEL/Exposure. MOEs for short- and intermediate-term oral, dermal and inhalation non-dietary exposure for the U.S. Population, infants (< 1 year) and children (1-6 years) were all greater than 100. As discussed in Unit A. 2. of this preamble, MOEs of 100 or greater are considered acceptable.

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

EPA does not have, at this time, available data to determine whether bifenthrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, bifenthrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that bifenthrin has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* As discussed earlier, no monitoring data are available for drinking water. Therefore, for acute aggregate risk, a DWLOC was calculated for the U.S. population. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. The DWLOCs was calculated for bifenthrin taking into account acute exposure assumptions from food. Exposure from residential uses are not included in acute aggregate risk estimates. For purposes of risk assessment, the estimated maximum concentration of bifenthrin in surface water (0.26 parts per billion (ppb)) was used for comparison to the back-calculated human health DWLOC for the acute endpoint. For bifenthrin, it was determined that an acute dietary exposure (food plus water) of 100% or less of the Acute RfD is acceptable to protect the safety of all population subgroups. The back-calculated DWLOC for the U.S. population is 180 ppb for acute dietary risk. Based on a comparison of the calculated DWLOC and the estimated exposure to bifenthrin in drinking water (0.26 ppb), the Agency does not expect the aggregate exposure to exceed 100% of the acute RfD for adults.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 3% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1-6 years), discussed below. EPA generally has no

concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bifenthrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk*. Short- and intermediate-term aggregate risk takes into account chronic dietary exposure from food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The short- and intermediate-term aggregate risks are estimated by combining exposure from food, water and residential uses (in this case, turf use). For adults, the routes of exposure from turf use include dermal and inhalation. As with the acute dietary aggregate risk estimate, for the short- and intermediate-term aggregate risk, DWLOCs were calculated. For purposes of risk assessment, the estimated chronic concentration of Bifenthrin in surface water (0.018 ppb) were used for comparison to the back-calculated human health DWLOCs for both the short-and intermediate-term endpoints. The back-calculated DWLOC for the U.S. population is 310 ppb for short- and intermediate-term risk. Based on a comparison of the calculated DWLOC and the estimated exposure to bifenthrin in drinking water (0.018 ppb), the Agency concludes that there is a reasonable certainty that no harm will result to adults from short- or intermediate-term aggregate exposure to bifenthrin.

4. *Aggregate cancer risk for U.S. population*. As discussed earlier, cancer risk concerns due to exposure of bifenthrin are adequately addressed by the chronic aggregate risk analysis.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to bifenthrin residues.

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

1. *Safety factor for infants and children*— i. *In general*. In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies*. In a rabbit developmental toxicity study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOAEL of 4 mg/kg/day.

In the rat developmental study, the maternal NOAEL was 1 mg/kg/day, based on tremors at the LOAEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOAEL of 2 mg/kg/day. There were 5/23 (22%) of the litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data (1992–1994) for this strain of rat, background incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study*. In the rat reproduction study, parental toxicity occurred as decreased body weight and tremors at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

iv. *Pre- and post-natal sensitivity*— a. *Pre-natal*. Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal*. Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion*. There is a complete toxicity database for bifenthrin and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk*. The back-calculated DWLOCs for children (1-6 years) and infants (<1 year) are 20 parts per billion (ppb) and 32 ppb, respectively. Based on a comparison of the calculated DWLOC and the estimated exposure to bifenthrin in drinking water (0.26 ppb), the Agency does not expect the aggregate exposure to exceed 100% of the Acute RfD for children and infants.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 9% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to bifenthrin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. The short- and intermediate-term aggregate risks are estimated by combining exposure from food, water and residential uses (in this case, turf use). For infants and children, the routes of exposure from turf use include oral (nondietary), dermal and inhalation. The back-calculated DWLOCs for infants and children are 77 ppb and 70 ppb, respectively. Based on a comparison of the calculated DWLOCs and the estimated exposure to bifenthrin in drinking water (0.018 ppb), the Agency concludes that there is a reasonable certainty that no harm will

result to infants and children from short- or intermediate-term aggregate exposure to bifenthrin.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

IV. Other Considerations

A. Metabolism In Plants and Animals

The residue of concern in citrus is the parent compound only. Therefore, the Agency has determined that only the parent compound, bifenthrin, should appear in the tolerance expression.

B. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

Residues of bifenthrin per se are not expected to exceed 0.05 ppm for citrus whole fruit; 0.3 ppm for citrus oil; and 0.3 ppm for citrus dried pulp as a result of the section 18 use.

D. International Residue Limits

CODEX has established MRL's for bifenthrin on grapefruit, lemon and sweet orange at 0.05 ppm. No Canadian or Mexican MRL's have been established for bifenthrin on citrus. The recommended tolerance levels for bifenthrin in/on citrus are harmonized with CODEX.

E. Rotational Crop Restrictions

Rotational crop restrictions are not applicable for citrus.

V. Conclusion

Therefore, tolerances are established for residues of bifenthrin in citrus, whole fruit at 0.05 ppm; 0.3 ppm for citrus oil; and 0.3 ppm for citrus dried pulp.

VI. Objections and Hearing Requests

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

Any person may, by February 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300762] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C) Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under FFDCA section 408 (l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under

FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

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 to 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 action 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.

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

List of Subjects in 40 CFR Part 180

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

Dated: December 7, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180–[AMENDED]

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

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

2. In § 180.442, by amending paragraph (b), by alphabetically adding the following commodities in the table to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/Revocation Date
*	* *	* *
Citrus, dried pulp	0.3	12/31/00
Citrus oil ..	0.3	12/31/00
Citrus, whole fruit	0.05	12/31/00
*	* *	* *

* * * * *

[FR Doc. 98–33120 Filed 12–15–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300765; FRL 6048–5]

RIN 2070–AB78

Copper Ammonium Complex; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of copper ammonium complex in or on raw agricultural commodities when used in accordance with good agricultural practices as an active ingredient in pesticide formulations applied to growing crops. Chemical Specialties, Inc., submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170), requesting this tolerance exemption.

DATES: This regulation is effective December 16, 1998. Objections and requests for hearings must be received by EPA on or before February 16, 1999.

ADDRESSES: Written objections and hearing requests, identified by the

docket control number [OPP–300765], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300765], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300765]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Registration Division 7505C, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–7740; e-mail: giles-parker.cynthia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 12, 1998 (63 FR 3211) (FRL–5797–7), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition by Chemical Specialties, Inc., One Woodlawn Green, Suite 250, Charlotte, NC 28217. This notice included a summary of the petition prepared by the petitioner Chemical Specialties, Inc. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of copper ammonium complex.

I. Risk Assessment and Statutory Findings

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

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by copper ammonium complex are discussed below:

1. *Acute toxicity*. The acute oral LD_{50} for a 31.4% solution of copper ammonium complex is 2,055 milligrams/kilogram (mg/kg). Accordingly, the acute oral toxicity of copper ammonium complex is relatively low.

2. *Genotoxicity, reproductive and developmental toxicity, subchronic toxicity and chronic toxicity*. Copper is ubiquitous in nature, found naturally in most foods and essential for the well-being of humans: the copper ion is present in the adult human body at levels of 80–150 mg. In addition, humans possess a natural efficient homeostatic mechanism for regulating copper body levels over a wide range of dietary intake. The toxicity of the copper ion is well-characterized in the published literature. There is no evidence of any chronic effects induced by dietary ingestion of copper unless the intake is of such enormous magnitude that there is a disruption of the natural homeostatic mechanism for controlling body levels. Consequently, there is no reason to expect that long-term exposure to the copper ion in the diet is likely to lead to any subchronic, developmental, reproductive or chronic adverse effects. Finally, the toxicity profile of copper ammonium complex should not significantly differ from the numerous other copper compounds which are already exempted from the requirement of a tolerance.

III. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from groundwater or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

1. *Food*. Copper is naturally found in several types of food, such as fruits and vegetables, at levels ranging from 0.3–3.9 ppm. These levels are much higher than the levels of copper, if any, that may occur from the pesticidal application of copper ammonium complex. Copper levels in plants, subsequent to the application of copper ammonium complex or other copper salts, are minimized since high copper levels induce an imbalance with iron which causes plant dwarfing, stunted roots and decreased growth and yields. These effects appear before significant copper buildup takes place. The Agency has waived all residue chemistry studies for copper ammonium complex since copper is an essential trace element critical for the propogration of plants; copper is found in many foods; and it is impossible to distinguish copper residues resulting from naturally

occuring copper or copper ammonium complex.

2. *Drinking water exposure.* The average copper concentration in drinking water is 0.13 ppm. This concentration is substantially below the drinking water standard of 1 ppm.

B. Other Non-Occupational Exposure

Inhalation exposure. Air concentrations of copper are relatively low. A study based on several thousand samples assembled by EPA's Environmental Monitoring Systems Laboratory showed copper levels ranging from 0.003–7.32 μg/m^3. Other studies indicate that air levels of copper are much lower.

IV. Cumulative Effects

Copper has no significant toxicity to humans. Accordingly, the Agency believes that there is no reason to expect any cumulative effects from the use of copper ammonium complex on food crops.

V. Determination of Safety for U.S. Population, Infants and Children

Several copper compounds, such as the copper salts of fatty acids and copper sulfate, are currently approved for use on food crops. Since copper ammonium complex is a substitute for these copper compounds, and under use-conditions, releases equivalent amounts of copper, no increases in dietary exposure will occur from the use of copper ammonium complex on food crops. Moreover, copper is an essential trace element for which the National Academy of Sciences has issued a recommended daily allowance of 0.5–1.0 mg/day for infants, 1.0–2.0 mg/day for small children and 2.0–3.0 mg/day for adolescents and adults. Furthermore, since copper has no significant toxicity and EPA has therefore not used a margin of safety approach to assess any risk posed by copper, the requirement pertaining to an additional margin of safety for infants and children is not applicable to EPA's safety determination for this tolerance exemption. Because use of copper ammonium complex is unlikely to pose a dietary risk under reasonably foreseeable circumstances, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to copper ammonium complex residues. Accordingly, EPA finds that exempting copper ammonium complex from the requirement of a tolerance will be safe.

VI. Other Considerations

A. Endocrine Disruptors

The Agency has no information to suggest that copper will adversely affect the immune or endocrine systems. The Agency is not requiring information on the endocrine effects of copper at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

B. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance without any numeric limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for copper ammonium complex.

C. Existing Tolerances

There are no existing tolerances for copper ammonium complex.

D. International Tolerances

No maximum residue level has been established for copper ammonium complex by the Codex Alimentarius Commission.

VII. Objections and Hearing Requests

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

Any person may, by February 16, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i) or a request for a fee waiver, as noted in 40 CFR 180.33(m). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300765]. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

The official record for this rulemaking, as well as the public version, as described above, is kept in paper form. Accordingly, in the event there are objections and hearing request, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official rulemaking record. The official rulemaking record is the paper record maintained at the Virginia address in **ADDRESSES** at the beginning of this document.

IX. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub.L. 104–4). Nor does it require special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629), February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). In additions, since tolerance exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

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 to 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 action 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.

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

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180— [AMENDED]

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

§180.1001 [Amended]

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

2. In §180.1001, by adding ''copper ammonium complex'' immediately after ''copper acetate,'' in paragraph (b)(1).

[FR Doc. 98–33117 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–247; FCC 98–303]

Fees for Ancillary or Supplementary Use of Digital Television Spectrum

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Report & Order* establishes a fee of five percent of gross revenues received from ancillary or supplementary services for which DTV licensees receive specified

compensation from third parties. This requires the Commission to establish a program to assess and collect fees for digital television (DTV) licensees' use of DTV capacity for the provision of ancillary or supplementary services. The statute requires the imposition of a fee where DTV licensees use their capacity for services for which the payment of a subscription fee is required or where the licensee receives revenues from a third party other than advertising revenues in return for transmitting material furnished by the third party. Licensees will be required to annually report to the Commission whether they provided ancillary or supplementary subject to a fee and the amount of fees to be paid to the Commission.

EFFECTIVE DATE: January 15, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov. Comments may also be filed by using the Commission's Electronic Comment Filing System (ECFS), via the Internet to http://www.fcc.gov.e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Jerry Duvall, Chief Economist, Mass Media Bureau (202) 418–2600, Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418–2140, or Jonathan Levy, Office of Plans and Policy (202) 418–2030.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report & Order*, FCC 98–303, adopted November 19, 1998 and released November 19, 1998. The full text of this Commission *Report & Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Synopsis of Report & Order

I. Introduction

1. With this *Report & Order* (''R&O''), the Commission establishes a program for assessing and collecting fees for the provision of ancillary or supplementary services by commercial digital television (''DTV'') licensees as required by the Telecommunications Act of 1996 (''1996 Act''), Public Law 104–104, 110 Stat. 56, section 201 (1996), codified at 47 U.S.C. 336. The rules promulgated pursuant to this *R&O* implement the criteria of the 1996 Act, establishing a fee of five percent of gross revenues received from certain ancillary or supplementary uses of the DTV bitstream. Consistent with the 1996 Act, the fee will be assessed on revenues from all ancillary or supplementary services for which the licensee receives compensation other than advertising revenues used to support broadcasting.

II. Background

2. The 1996 Act established the framework for licensing DTV spectrum to existing broadcasters, and permitted them to offer ancillary or supplementary services consistent with the public interest. 47 U.S.C. 336. In the 1996 Act, Congress directed the Commission to require that any ancillary or supplementary services carried on DTV capacity: (1) must be consistent with the advanced television technology designated by the Commission (''the DTV Standard''); (2) must avoid derogating any advanced television services that the Commission may require; and (3) must, with specified exceptions, be subject to Commission regulations applicable to analogous services. Congress also gave the Commission discretion to prescribe such other regulations with respect to ancillary or supplementary services ''as may be necessary for the protection of the public interest, convenience, and necessity, 47 U.S.C. 336(b)(5). Moreover, Congress directed the Commission to establish a fee program for any ancillary or supplementary services for which the payment of a subscription fee is required to receive such services or for which the licensee receives any compensation from a third party other than commercial advertisements used to support non-subscription broadcasting (hereinafter referred to as ''feeable ancillary or supplementary services''). 47 U.S.C. 336(e).

3. In a number of recent orders, the Commission adopted rules implementing the transition to DTV pursuant to the 1996 Act. In the *Fourth R&O* in MM Docket No. 87–268, 62 FR 14006 (March, 1997), the Commission adopted the DTV Standard that supports the transmission of High Definition Television (''HDTV''), as well as allowing for the transmission of multiple programs of standard definition television (''SDTV'') and non-video services. This Standard permits the provision of other services, including large amounts of data. For example, a DTV licensee will be able to transmit ''telephone directories, stock market updates, * * * computer software distribution, interactive education materials or virtually any other type of information.'' The DTV Standard ''allows broadcasters to send video, voice and data simultaneously and to provide a range of services dynamically, switching easily and quickly from one type of service to another.''

4. In the *Fifth R&O* in MM Docket No. 87–268, In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 62 FR 26966 (May, 1997), the Commission we assigned the initial DTV licenses and established rules allowing broadcasters to use their DTV capacity to provide ancillary or supplementary services which ''do not interfere with the required free service.'' The Commission stated that the DTV licensees' ability to provide ancillary or supplementary services in addition to the mandated free television service ''allow[s] the broadcasters flexibility to respond to the demands of their audience'' for such services. This flexibility ''should encourage entrepreneurship and innovation'' and will give ''broadcasters the opportunity to develop additional revenue streams from innovative digital services.''

5. The 1996 Act charged the Commission with establishing a means of assessing and collecting fees for feeable ancillary or supplementary services. Last December, the Commission issued a Notice of Proposed Rule Making in MM Docket No. 97–247, In the Matter of Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to section 336(e)(1) of the Telecommunications Act of 1996, 63 FR 00460 (January, 1998), which sought comment on various issues relating to the establishment of a fee program in accordance with the 1996 Act. The Notice of Proposed Rule Making, invited comment on all aspects of the proposed fee program and proposed several methods of assessing such fees, including a fee based upon a percentage of revenues received from the ancillary or supplementary use of the digital bitstream, or a fee based upon a hybrid of a flat rate and a percentage of revenues.

III. Issue Analysis

A. Goals

6. The 1996 Act sets forth general criteria the Commission must follow in assessing fees for ancillary or supplementary services carried on the

DTV bitstream. First, the 1996 Act requires the Commission to establish a program which recovers ''for the public a portion of the value of the public spectrum'' made available for ancillary or supplementary use by DTV licensees. Second, the statute requires that the fee be designed ''to avoid unjust enrichment'' of broadcast licensees through the method used to permit digital use of the spectrum. These provisions recognize that existing DTV licensees received their licenses without charge, while providers of potentially competing services may have paid for the spectrum used to provide these services. Finally, the 1996 Act requires that the fee recover ''for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered'' in an auction. This requirement refers to the competitive bidding provisions of the Communications Act of 1934. As discussed fully below, the fee program established today is consistent with these criteria as set forth in the 1996 Act. In addition, consistent with our goal of promoting the efficient deployment of digital television, in implementing the statutorily mandated fee program, the Commission seeks to avoid dissuading broadcasters from using the DTV capacity to provide feeable ancillary or supplementary services.

7. The 1996 Act also generally defines which ancillary or supplementary uses of the DTV bitstream are subject to a fee. Section 336(e)(1), adopted by the 1996 Act, requires a fee to be assessed upon any services ''for which the payment of a subscription fee is required in order to receive such services'' or ''for which the licensee directly or indirectly receives compensation from a third party in return for transmitting materials furnished by such third party.'' In the latter case, the 1996 Act specifically exempts from the fee any ancillary or supplementary service which relies for its revenues upon ''commercial advertisements used to support broadcasting for which a subscription fee is not required.'' Thus, a fee must be assessed on any ancillary or supplementary service for which a subscription fee is required or for which the licensee receives any compensation for transmission of material other than commercial advertisements used to support broadcasting. These services previously have been defined as ''feeable ancillary or supplementary services.'' The Commission noted that feeable ancillary or supplementary services may be offered simultaneously with other services, including HDTV, SDTV, or other video programming supported entirely by commercial advertisements, or with other non-feeable ancillary or supplementary services. The fact that a feeable ancillary or supplementary service is being transmitted by the DTV licensee does not subject all simultaneously transmitted services to a fee.

8. In establishing fees for the ancillary or supplementary use of DTV capacity, the Commission was cognizant of the administrative burdens which such fees could entail. In order to minimize these burdens both for broadcasters and for the Commission, the fee program established is intended to be simple to understand, and calculable with readily available information. An overly complex fee program could be difficult for licensees to calculate and for the Commission to enforce and could create uncertainty that might undermine a DTV licensee's efficient planning of what services it will provide.

B. Basis of Fee

9. Background. In the Notice of Proposed Rule Making we set forth several fee options which we determined to be consistent with the guidelines of the 1996 Act. The options included a fee akin to the amount that would have been received in an auction of the spectrum, a fee based upon the net revenues or incremental profits from the ancillary or supplementary use of a licensee's DTV capacity, a fee assessed as a percentage of the gross revenues received for the ancillary or supplementary use of this capacity, and a fee based upon a hybrid of a flat rate and a percentage of revenues.

10. In describing the various fee options in the Notice of Proposed Rule Making, the Commission described the advantages and disadvantages of each. The Commission stated that while net revenues or incremental profits could serve as effective proxies for the value of DTV capacity used for feeable ancillary or supplementary services, the process of ascertaining the costs involved in calculation of net revenues or incremental profits would involve the burdensome apportionment of expenses between free television services and feeable ancillary or supplementary services and among ancillary or supplementary services. Another fee approach suggested was a combination of a flat dollar amount and a percentage of gross revenues, which would include a uniform means of preventing unjust enrichment but would also create an up-front cost, which could serve as a disincentive to broadcasters' provision of feeable ancillary or supplementary services.

11. In the Notice of Proposed Rule Making, the Commission expressed an inclination to favor a fee program that incorporates gross revenues. Such a fee would ''foster our goal of creating a fee structure which does not dissuade broadcasters from offering feeable ancillary and supplementary services [and]. * * * would be straightforward to assess and calculate.''

12. Comments. Virtually all of the commenters supported a fee based upon gross revenues. The commenters agreed with the Commssion's assessment that a fee based upon gross revenues could be the simplest to calculate and enforce. Commenters also agreed that a fee based upon gross revenues would satisfy the statutory criteria of preventing unjust enrichment, recovering for the public a portion of the value of the spectrum, and approximating, without exceeding, the amount which would have been received at auction.

13. Decision. The Commission adopted a fee based upon a percentage of the gross revenues generated by feeable ancillary or supplementary services. We believe this approach is consistent with the 1996 Act, supported by sound economic principles, and grounded in simplicity. We also believe it will afford broadcasters flexibility in developing new and innovative DTV services. A gross revenues approach is consistent with the 1996 Act because it enables the Commission to assess a fee that recovers for the public a portion of the value of the spectrum and prevents the unjust enrichment of broadcasters through the use of the DTV bitstream for feeable ancillary or supplementary services. While the amount recovered will be more a result of the percentage rate of the fee than of the nature of revenues on which the fee is based, commenters overwhelmingly support a fee based upon gross revenues as a means of achieving these important statutory goals.

14. The Commission stated that a fee based upon gross revenues is consistent with the statutory directive that it assess a fee that ''to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed'' at auction. As stated in the Notice of Proposed Rule Making, and as echoed in many comments, it would be difficult if not impossible to determine the amount that would have been received at auction. To the extent possible, however, the Commission stated that a fee based upon gross revenues can function as a proxy for auction value.

15. The microeconomic theory supporting this determination is laid out in the Notice of Proposed Rule Making. Briefly, economic theory indicates that gross revenues received from the ancillary or supplementary use of DTV capacity are related to the implicit value of that DTV capacity. The postulated relationship between gross revenues received from ancillary or supplementary services and the value of the bitstream used to provide those services was supported by a number of commenters, who found this economic rationale to be ''theoretically sound.''

16. In determining the basis of the fee, the Commission sought not only to comply with the criteria set forth in the Act, but also to foster the important goal that the fee program be simple to comply with and to enforce. As discussed above, a fee program based upon net revenues or incremental profits would have entailed burdensome accounting by the licensees and enforcement and auditing by the Commission. Using gross revenues as the basis of the fee will minimize the accounting and auditing required, permitting licensees to calculate the fee based upon readily available information. It will also make the Commission's administration of the fee program much more efficient, and impose considerably fewer paperwork and compliance burdens on licensees.

17. Finally, the Commission stated that a gross revenues approach will serve the public interest goal of giving broadcasters flexibility to develop new uses of the DTV bitstream. In the Notice of Proposed Rule Making, the Commission stated its intention to establish a fee program which allows broadcasters the flexibility to provide new services and made clear that it is not its intention to dissuade broadcasters from using the DTV capacity to provide feeable ancillary or supplementary services. Commenters generally supported this goal and, given the costs of implementing and enforcing a program based on net revenues, agreed that a fee based upon a percentage of gross revenues would be the least likely to discourage the development of new uses of broadcast spectrum. Accordingly, the Commission rejected the net revenues approach. A fee based upon a percentage of gross revenues received would not involve up-front costs, such as those that would be incurred by a hybrid fee based on a flat fee coupled with a percentage of gross revenues, that could dissuade broadcasters from initiating new services. In addition, the uniform application of a fee based upon gross revenues to all feeable ancillary or supplementary services (as opposed to a varying fee based on the type of service provided) will minimize the potential of the fee program to affect broadcasters' choice of one service over another. Finally, the percentage rate of the fee, not the revenues on which the fee is based, will ultimately affect broadcasters' decisions as to whether or not to offer feeable ancillary or supplementary services at all.

C. Percentage of Revenues

18. Background. As stated in the Notice of Proposed Rule Making, the percentage rate of the fee must reflect the statutory requirements that the fee recover a portion of the value of the spectrum used for these services, avoid unjust enrichment, and approximate the revenue that would have been received had these services been licensed through an auction. The Notice of Proposed Rule Making also indicated our disinclination to set the percentage rate so high that it would dissuade broadcasters from providing feeable ancillary or supplementary services.

19. Comments. Commenters advocated percentages for the fee that ranged from less than one percent to more than ten percent. Those commenters who proposed a low fee—two percent or less of gross revenues—based their proposal on the declining auction values of the nonbroadcast spectrum, and on the possibility that a higher fee would discourage broadcasters from offering innovative services. Commenters proposing a high fee—ten percent or more—argued that such a fee would be consistent with other government licensing fees, and would be necessary to prevent unjust enrichment, as required by the 1996 Act.

20. Decision. The Commission set the fee for feeable ancillary or supplementary services provided on the DTV bitstream at five percent of gross revenues received from these services. The Commission stated that a fee of five percent of gross revenues fulfills its statutory obligations to impose a fee which recovers for the public some portion of the value of the spectrum, prevents the unjust enrichment of broadcasters providing feeable ancillary or supplementary services, and approximates, to the extent possible, the revenues that would have been received had the spectrum on which these services are provided been licensed through an auction. The Commission also stated that a five percent fee will not dissuade broadcasters from using their DTV capacity to provide new and innovative services that can greatly benefit consumers.

21. As stated in the Notice of Proposed Rule Making, the Commission must carefully balance potentially competing requirements and goals in establishing a percentage rate of the fee. On the one hand, a fee set too high might dissuade broadcasters from providing feeable ancillary or supplementary services, and could therefore reduce the benefits that consumers receive from efficient deployment of DTV capacity. On the other hand, a fee set too low might not prevent the unjust enrichment of DTV licensees as required by the 1996 Act and might not recover an amount approximating the amount that would have been recovered at auction, although it could recover for the public a ''portion of the value'' of the spectrum.

22. The Commission stated that a fee of five percent of gross revenues best serves its goals and the requirements of the statute. The 1996 Act gives the Commission broad discretion in setting the amount of the fee for ancillary or supplementary services, relying upon the predictive judgment of the agency in that regard. In addition, no commenter has pointed to any obvious or commonly accepted formula for setting a fee in these circumstances. Therefore, the Commission must use its best judgment in balancing the relevant goals.

23. The five percent fee satisfies the statutory mandate that the fee be high enough to prevent the unjust enrichment of the licensees and to recover compensation for the DTV capacity used by the licensees. The Commission takes seriously the intent of the 1996 Act that broadcasters providing feeable ancillary or supplementary services on the DTV bitstream be required to pay more than a nominal fee. We believe that a five percent fee is appropriate.

24. A fee set at five percent of gross revenues also satisfies the statutory requirement that the fee recover ''an amount that, to the extent feasible, equals but does not exceed'' the amount that would have been recovered at auction. Looking at this mandate through the prism of economic theory, the reference to auctions invokes a system designed to foster the efficient allocation of resources and suggests that we should set a fee that fosters efficient resource allocation. The efficient allocation of the resource of DTV bitstream will allow the marketplace to provide those feeable ancillary or supplementary services demanded by consumers. A fee based on gross revenues will allow such efficient allocation so that it meets the statutory requirement.

25. In setting the fee at five percent of gross revenues, the Commission takes into account the costs broadcasters will incur in the development of digital ancillary or supplementary services. While we note the comments of NCTA stating that a fee set too low would unfairly subsidize broadcasters, we are conscious of the financial burdens faced by digital television broadcasters in the coming years. As will be discussed at greater length below, the Commission anticipates that the fee assessment program established here will be reviewed and possibly adjusted within the five year period prescribed by the 1996 Act, and that such review will take into account the actual costs of the development of digital ancillary or supplementary services.

26. Commenters advocating a higher fee have argued that fees for the ancillary or supplementary use of the DTV bitstream are analogous to mineral and oil royalty rates, which range from 12 to over 17 percent. The Commission rejected this analogy, stating that the policy and economic considerations in setting DTV ancillary and supplementary fees are quite distinct from the considerations that would be relevant for leasing resources such as minerals or oil. The economic analysis detailed in the Notice of Proposed Rule Making specifically addresses the efficient allocation of DTV spectrum between free, over-the-air television service and feeable ancillary services, not the general issue of royalty rates. That economic analysis also addresses the unjust enrichment which may result from the provision of comparable services by competitors, such as multichannel video service providers and other competing service providers, which have incurred sunk costs that do not accrue to DTV licensees.

27. The Commission also rejected commenters' analogy to recent auction rates for non-broadcast spectrum. Commenters argued that the Commission should set the fee at a rate lower than five percent based upon analyses they have submitted that purport to demonstrate that the value of non-broadcast spectrum available at auction has been declining in recent months. These commenters argue that these studies demonstrate that the fees for the ancillary or supplementary use of the broadcast spectrum should be set very low, as the fees should recover approximately the amount which would have been received at an auction of the spectrum.

28. In arguing for very low fees, some commenters have drawn an analogy to copyright royalty rates, which are very low, rather than royalties for mining and oil, which are higher. The Commission stated that the policy concerns and economic considerations of our analysis here are quite distinct from the considerations of privately-contracting parties negotiating copyright royalty rates.

29. Based upon the foregoing, the Commission determined that a fee set at five percent of gross revenues received from the ancillary or supplementary use of the DTV bitstream will best satisfy the requirements of the 1996 Act and will not discourage the provision of these new services by DTV licensees.

D. Services on Which Fee is to be Assessed

30. In establishing a fee assessment program, the Commission determined which services are subject to the fee. The fee program established today applies only to ancillary or supplementary services. While it specifically refers to ancillary or supplementary services, section 336 does not define these services. Consistent with the 1996 Act and Commission precedent, Commission rules specify that ancillary or supplementary services ''include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, [or] subscription video.'' Our rules also specify that ''any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.'' 47 CFR 73.624(c).

31. Pursuant to the 1996 Act, not all ancillary or supplementary services are feeable. We determine that all revenue from subscription services will be subject to a fee. In addition, as required by the statute, ancillary or supplementary services for which the licensee directly or indirectly receives compensation from a third party in exchange for the transmission of material provided by the third party, other than commercial advertisements used to support broadcasting, will be subject to a fee.

32. Commenters provided very little guidance as to what services DTV licensees will provide. With this *R&O*, the Commission resolved several questions raised by commenters regarding particular types of services, and set out general principles that may be used to determine whether other non-subscription ancillary or supplementary services are subject to fees.

Viewer-paid Subscription Services

33. As discussed above, the 1996 Act requires the Commission to establish a fee program for any ancillary or supplementary services ''for which the payment of a subscription fee is required in order to receive such services.'' The legislative history of the 1996 Act indicates that the statute requires that a fee be assessed on ''any ancillary or supplementary service if subscription fees or any other compensation fees apart from commercial advertisements are required in order to receive such services.''

34. The Commission stated that consistent with the 1996 Act, it will assess fees on all revenue—both subscription and advertising revenue—from all ancillary or supplementary services for which viewers must pay subscription fees to receive. The Commission rejected commenters' argument that advertising revenues from subscription services should not be subject to the fee. First, section 336(e)(1)(A) makes clear that those services for which ''the payment of a subscription fee is required in order to receive such services'' are feeable. The exclusion in section 336(e)(1)(B) for ''commercial advertisements used to support broadcasting for which a subscription fee is not required'' does not support NAB's position. Advertising revenues from services that cannot be received without payment of subscription fees do not fit within this exemption. The Commission therefore declined to allow DTV licensees to exclude from gross revenues subject to a fee advertising revenues received from services for which a subscription fee is also required. The Commission stated that such an approach would not be consistent with the statute and would unduly complicate the fee program.

Non-Subscription Ancillary or Supplementary Services for Which Licensee Receives Compensation From a Third-Party

35. The 1996 Act directs that fees be assessed on ancillary or supplementary services ''for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than for commercial advertisements used to support broadcasting for which a subscription fee is not required.)'' The Commission's rules state that over-the-air video programming provided at no charge to viewers is not an ancillary or supplementary service. This provision therefore applies to ancillary or supplementary services, consisting of material which does not originate with the licensee, which the viewer can receive without payment of a fee. These ancillary or supplementary services may

include data, audio, or any other ancillary or supplementary services that may be established in the future.

Home Shopping and Other Direct Marketing Programming

36. Commenters argued that the statute requires fees to be imposed when broadcasters receive payments from sales on home shopping channels, infomercial and direct marketing programming. The Commission declined to impose fees on revenues received from home shopping, infomercial or direct marketing programming. The Commission stated that the purpose of this proceeding is not to exact fees from existing broadcasters for existing services but, rather, to design a program for the assessment of fees on ancillary or supplementary services which will be provided on the DTV bitstream. The Commission agreed with the commenters who argued that home shopping and infomercials are commercial advertisements, excluded by statute from the scope of ancillary and supplementary services as they are video services received by viewers without a fee. The Commission found that home shopping channels and infomercials are free, over-the-air television services, supported by commercial advertisements, and not subject to a fee.

Retransmission Consent Agreements

37. Commenters raised the issue of whether in-kind consideration, in the form of retransmission consent agreements, constitutes compensation from a third party for the purposes of the 1996 Act. The Commission stated that a retransmission consent agreement constitutes the payment of compensation by a third party to a licensee in exchange for the transmission of material provided by that third party. A retransmission consent agreement involves in-kind consideration given to a licensee by a cable system operator for carriage of the licensee's programming on the cable system. It is not compensation given to the licensee for carriage of programming provided by a third party on that licensee's frequency.

Noncommercial Licensees

38. In the Notice of Proposed Rule Making the Commission sought comment on the question of whether noncommercial television licensees should be exempt from fees or subject to lower fees. This argument was raised initially in the Petition for Reconsideration of the *Fifth R&O* filed by the Association of America's Public Television Stations and the Public Broadcasting Service. Petitioners further sought a determination as to whether they might offer feeable ancillary or supplementary services on their DTV capacity as a source of funding for their public television operations. Because the Commission has not yet determined whether or to what extent noncommercial licensees may provide revenue-generating ancillary or supplementary services, it stated that it is premature to determine whether such services would be subject to a fee and whether that fee should be lower than that paid by commercial broadcasters. The Commission instead initiated a proceeding in which it will build a record on noncommercial licensees' remunerative use of the DTV bitstream and whether and in what circumstances such uses would be subject to fees. The Commission stated that it will address the comments received on this issue in that proceeding.

E. Commencement of Fee Assessment

39. Some commenters asked that the Commission delay imposing a fee on ancillary or supplementary services and proposed several different plans for such delay. The Commission stated that it would not delay the imposition of fees for ancillary or supplementary services. Even assuming that the Commission has authority to impose such a delay, a delay in the imposition of a fee would not serve the public interest. In addition, the Commission stated that a delay in the imposition of a fee would result in unjust enrichment during the time the broadcasters were providing feeable ancillary or supplementary services but were not paying a fee. A delayed fee would not effectively recover the value of the spectrum. The fee program established today is designed to minimize any detrimental effect the fee might have on the development of new and innovative services. A delay in the imposition of a fee would therefore be superfluous. Indeed, with a revenue based approach, as opposed to a flat fee, licensees will not have to commence paying a fee until they begin to collect revenues.

F. Other Issues

Cap on the Amount of the Fee

40. One commenter argued that the Commission should cap the aggregate payments made by any broadcaster for feeable services. The statutory provision referenced is the provision which states that the fee shall recover an amount that ''equals but does not exceed'' the amount that would have been recovered at auction. This statutory provision does not require us to establish a cap on the fee amount. As discussed above, gross revenues from feeable ancillary or supplementary services are related to the implicit value of the DTV spectrum used to provide such services. If the Commission were to establish an upper limit on the total fees that it collected, then the theoretical linkage established in our analysis would no longer hold, and the Commission would fail to satisfy its mandate from Congress. The Commission also declined to adopt this proposal as it would unduly complicate the implementation and enforcement of the fee assessment program. Establishing a cap on the amount of the fee might involve a calculation that takes into account the size of a station, the market it serves, the amount of feeable ancillary or supplementary services provided, and numerous other factors which would certainly complicate the establishment and enforcement of the fee assessment program. It would be difficult, if not impossible, to determine on a license by license basis what the auction value of that spectrum should be and thus where a cap should be placed. Thus, ease of administration of the fee program would be compromised by a cap on the total amount of fee payments.

Variable Fee Rate Depending Upon the Type of Service

41. The Commission sought comment as to whether the percentage rate of the fee should vary with the type of service provided. Commenters argued that the Commission should not take into account preferences for one type of service over another in setting the fee and that varying the level of the fee depending upon the service could discourage new services and would exceed the Commission's authority. The percentage rate of the fee will be fixed at five percent, for all services subject to a fee. The Commission agreed that a varying fee rate could have the effect of dissuading licensees from providing particular services. To the extent that the fee is set lower for one service than for another, it would create an incentive for a licensee to provide the service with a lower fee rate over a service subject to a higher fee. The Commission stated that it wished to establish a fee program that does not affect broadcasters' decisions to provide one service over another, other than the mandated free, over-the-air television service, and therefore did not establish a fee which varies based upon the type of services provided. In addition, a varying fee rate would be difficult to adhere to and to enforce, in contravention of the Commission's goal of a fee program that

is simple to comply with and administer.

Review of Fee Assessment Program

42. The 1996 Act requires the Commission to adjust the fee ''from time to time in order to continue to comply with the requirements of'' the statute and to ''report to the Congress on the implementation of the program'' within five years of the enactment of the 1996 Act.

43. The fee program established concerns services which are not yet available to consumers. Once digital television licensees have implemented ancillary or supplementary services, the Commission and the licensees will have a better concept of what these services might include and of the profit-making capacity of these services. The Commission intends to review the fee assessment program established herein by the time of our mandated report to Congress. Also, the Commission may adjust our fee program as necessary to continue to comply with the requirements of the statute.

IV. Collection of Fees

44. The 1996 Act requires that the Commission ''establish a program to assess and collect . . . an annual fee or other schedule or method of payment that promotes the objectives described'' above and that the fee ''be adjusted by the Commission from time to time in order to continue to comply with [these] requirements.'' The statute requires that ''all proceeds obtained pursuant to the regulations required by this subsection . . . be deposited in the Treasury.'' In addition, the 1996 Act requires that ''within 5 years after the date of enactment of the [1996 Act] . . . the Commission shall report to the Congress on the implementation of the program required by this subsection, and shall annually thereafter advise the Congress on the amounts collected pursuant to such program.'' Commenters did not address the collection of fees pursuant to this program.

45. In order that the Commission fulfill its statutory obligation to report to Congress on the program established here, and in order that the Commission have the information necessary to adjust the fee program as appropriate consistent with the use of the spectrum, as discussed above, we will require all commercial DTV licensees to report to the Commission on their use of the DTV bitstream. Each DTV licensee will be required to file a new FCC form annually on December 1.

46. Pursuant to a Public Notice to be issued as soon as possible, the Mass Media Bureau will issue a new reporting form, to be filed by each DTV licensee on December 1 of each year. Beginning on December 1, 1999 all licensees will annually file the new reporting form electronically with the Mass Media Bureau. For the report filed December 1, 1999 only, licensees are to report on services provided from the effective date of this *R&O* through September 30, 1999.

47. In filing licensees will report whether they provided ancillary or supplementary services in the twelve-month period ending on the preceding September 30. Licensees will further report, for the applicable period: (1) a brief description of the services provided; (2) which services were feeable ancillary or supplementary services; (3) whether any ancillary or supplementary services provided were not subject to a fee; (4) gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and (5) the amount of bitstream used to provide ancillary or supplementary services during the applicable period. The licensee's signature on the form will certify under penalty of perjury the accuracy of the information reported. Failure to file the form regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.

48. If a licensee has provided feeable ancillary or supplementary services at any point during any twelve-month period ending on September 30, the licensee must additionally annually file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable twelve-month period and will remit the payment of the required fee. For revenues reported December 1, 1999 only, licensees are to certify revenues received from feeable ancillary or supplementary services provided from the effective date of this *R&O* through September 30, 1999 and remit payment of the required fee for that period.

49. The instructions for Form 159 will be amended by Public Notice to require DTV licensees to specify the amount of gross revenues received from feeable ancillary or supplementary services and the fees due. Pursuant to this *R&O,* section 1 of the Commission's rules is amended to specify that licensees file Form 159 annually. The instructions for Form 159 will be amended to require commercial DTV licensees providing feeable ancillary or supplementary services to annually file Form 159 on December 1 and to specify on line 19A the call sign by which they are registered with the Commission; on line 20A the payment type code; on line 23A the amount of gross revenues received from feeable ancillary or supplementary services; on line 22A the fee which they remit with Form 159, in the amount of five percent of the amount specified on line 23A; and on line 24A the facility identification number assigned to them by the Commission. The licensee's signature on line 27 certifies under penalty of perjury the accuracy of the information reported on Form 159.

50. The Mass Media Bureau will issue a Public Notice amending the Advice Reference Guide for FCC Form 159, and the Mass Media Services Fee Filing Guide. The Commission delegates authority to the Office of the Managing Director to specify by Public Notice procedures for filing and processing the fees required by this *R&O*. The Commission reserves the right to audit each licensee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee, therefore, is required to retain such records for three years from the date of remittance of fees pursuant to this *R&O*.

51. While the Commission does not here include automatic confidentiality for information submitted pursuant to this *R&O,* submission of the required reporting form, and/or remittance of fee payment may be accompanied by a request for confidentiality pursuant to 47 CFR 0.459.

V. Conclusion

52. By this *R&O* and the accompanying rule, the Commission establishes a program to assess a fee of five percent of gross revenues received from the provision of feeable ancillary and supplementary services as defined herein.

VI. Administrative Matters

53. Paperwork Reduction Act of 1995 Analysis. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act. *Accordingly, it is ordered* that, pursuant to the authority contained in section 4(i), 303, 336 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303, 336 and 403, part 73 of the Commission's Rules is amended.

54. It is further ordered that, pursuant to the Contract with America Advancement Act of 1996, the rule amendments shall be effective the later of either thirty days after publication in the **Federal Register**, or upon receipt by Congress of a report in compliance with the Contract with America Advancement Act of 1996, Public Law 104–121, or as soon thereafter as may be approved by the Office of Management and Budget.

55. *It is further ordered* that the Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

56. *It is further ordered* that this proceeding *is terminated*.

Final Regulatory Flexibility Analysis

57. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making is *R&O*. The Commission sought written public comment on the proposals in the Notice of Proposed Rule Making, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order: The 1996 Act directed the Commission to adopt regulations allowing licensees to use a portion of the DTV spectrum to provide feeable ancillary or supplementary services and to establish a program to assess and collect a fee for these services. In the *Fifth R&O* we established rules permitting broadcasters to offer feeable ancillary or supplementary services on the DTV spectrum. As directed by Congress, in this proceeding we adopt a program for assessing and collecting a fee for the feeable ancillary or supplementary use of the DTV spectrum.

Summary of Significant Issues Raised by Public Comments In Response to the IRFA: No comments were received specifically in response to the IRFA attached to the Notice of Proposed Rule Making.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply Definition of a ''Small Business''

58. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term ''small business'' as having the same meaning as the term ''small business concern'' under the Small Business Act, 15 U.S.C. 632. A small business concern is one which: (1) is 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''). Pursuant to 4 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' As discussed below, the SBA defines a television broadcast station that has no more than $10.5 million in annual receipts as a small business.

Issues in Applying the Definition of a ''Small Business''

59. The estimates, below, reflect the Commission's best judgments based on the data available to us. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any radio or television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated.

60. With respect to applying the revenue cap, the SBA has defined ''annual receipts'' specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

61. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the databases available to us to provide us with that information.

Estimates Based on Census Data

62. The rules adopted in this Report and Order will apply to commercial DTV licensees. The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials are classified under another SIC number.

63. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,583 operating television broadcasting stations in the nation as of September 1998. For 1992, the (approximately 77%) number of television stations that produced less than $10.0 million in revenue, and we estimate that was approximately 1,155 establishments. Thus, the rules adopted here may affect approximately 1,583 television stations; approximately 77%, or 1,219 of those stations are considered small businesses. These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements: The *R&O* adopts modifications to existing reporting and recordkeeping requirements. The fee program established here will require

licensees annually to file a new reporting form to be issued later. Licensees will be required to report whether they provided ancillary or supplementary services, the ancillary or supplementary services provided, the services provided which are subject to a fee, gross revenues received from all feeable ancillary and supplementary services, and the amount of bitstream used to provide ancillary or supplementary services. Licensees providing services subject to a fee will additionally be required annually to file FCC Form 159 in remittance of the fee. So that the Commission may audit licensees' records supporting the calculation of the fees due, each licensee will be required to retain such records for three years from the date of remittance of fees.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

64. This Report and Order establishes a program for assessing and collecting fees for the ancillary or supplementary use of the digital television spectrum. In the Notice of Proposed Rule Making, a variety of alternatives were proposed and we additionally sought comment on whether any of the proposed approaches would have a significant economic impact on any class of small licensee or permittee. We considered all alternatives presented in the comments. The rules adopted here are required to implement provisions of the 1996 Act. These proposed rules and policies may affect broadcast television licensees, some of which are small businesses. The Commission believes that the rules adopted here are necessary to the recovery of a portion of the value of the public spectrum and to promote the development of innovative uses of the DTV capacity.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

65. Adoption of this Report and Order will necessitate the revision of 47 CFR 73.624 to add a new § 73.624(g).

Report to Congress:

66. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. See 5 U.S.C. 604(b).

List of Subjects in 47 CFR Part 73

Television, television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows: 47 U.S.C. 154, 303, 334, 336

2. Section 73.624 is revised by adding a new paragraph (g) to read as follows:

§ 73.624 Digital Television Broadcast Stations

* * * * *

(g) Commercial DTV licensees must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) hereof, which are *feeable*, as defined in paragraphs (i) through (ii) hereof.

(1)(i) All ancillary or supplementary services for which payment of a subscription fee or charge is required in order to receive the service are feeable. The fee required by this provision shall be imposed on any and all revenues from such services, including revenues derived from subscription fees and from any commercial advertisements transmitted on the service.

(ii) Any ancillary or supplementary service for which no payment is required from consumers in order to receive the service is feeable if the DTV licensee directly or indirectly receives compensation from a third party in return for the transmission of material provided by that third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required). The fee required by this provision shall be imposed on any and all revenues from such services, other than revenues received from a third party in return for the transmission of commercial advertisements used to support broadcasting for which a subscription fee is not required.

(2) *Payment of fees.* (i) Each December 1, all commercial DTV licensees will electronically report whether they provided ancillary or supplementary services in the twelve-month period ending on the preceding September 30. Licensees will further report, for the applicable period: (A) a brief description of the services provided; (B) which services were feeable ancillary or supplementary services; (C) whether any ancillary or supplementary services provided were not subject to a fee; (D) gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and (E) the amount of bitstream used to provide ancillary or supplementary services during the applicable period. Licensees will certify under penalty of perjury the accuracy of the information reported. Failure to file regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.

(ii) If a commercial DTV licensee has provided feeable ancillary or supplementary services at any point during a twelve-month period ending on September 30, the licensee must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable twelve-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's records which support the calculation of the amount specified on line 23A of Form 159. Each licensee, therefore, is required to retain such records for three years from the date of remittance of fees.

[FR Doc. 98–33065 Filed 12–15–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 801, 803, 805, 806, 808, 814, 817, 819, 822, 825, 828, 831, 832, 833, 836, 837, 842, 846, 847, 849, 852, 853, 870, and 871

RIN 2900–AJ29

VA Acquisition Regulation: Title and Reference Updates

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs Acquisition Regulation (VAAR): to update office names and job titles due to administrative changes within the Department; correct references and typographical errors; delete obsolete material; delete material which duplicates material in the Federal Acquisition Regulation (FAR); and to

revise and update section numbers and titles to correspond with the FAR.

DATES: Effective Date: December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Don Kaliher, Acquisition Policy Team (95A), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–8819.

SUPPLEMENTARY INFORMATION: This rule consists of nonsubstantive changes and, therefore, is not subject to the notice and comment and effective date provisions of 5 U.S.C. 553. Also, this final rule is not a significant revision as defined in FAR 1.501–1.

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, since it does not contain any substantive provisions. This rule would not cause a significant effect on any entities. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

List of Subjects

48 CFR Parts 801, 833, 836 and 852

Government procurement, Reporting and recordkeeping requirements.

48 CFR Part 803

Antitrust, Conflict of interests, Government procurement.

48 CFR Parts 805, 806, 814, 817, 832, 837, 846, 849, and 853

Government procurement.

48 CFR Part 808

Government procurement, Utilities.

48 CFR Part 819

Administrative practice and procedure, Government procurement, Reporting and recordkeeping requirements, Small businesses, Veterans.

48 CFR Part 822

Government procurement, Labor.

48 CFR Part 825

Foreign currencies, Foreign trade, Government procurement.

48 CFR Part 828

Government procurement, Insurance, Surety bonds.

48 CFR Parts 831 and 842

Accounting, Government procurement.

48 CFR Part 847

Government procurement, Transportation.

48 CFR Part 870

Asbestos, Frozen foods, Government procurement, Telecommunications.

48 CFR Part 871

Government procurement, Loan programs-social programs, Loan programs-veterans, Reporting and recordkeeping requirements, Vocational rehabilitation.

Approved: December 4, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 48 CFR Chapter 8 is amended as follows:

PART 801—VETERANS AFFAIRS ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 801 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

801.000 [Amended]

2. Section 801.000 is amended by removing ''Regulations'' both times it appears and adding, in its place, ''Regulation''.

801.101 [Amended]

3. In 801.101 paragraph (a) is amended by removing ''Veterans Affairs Acquisition Regulations'' and adding, in its place, ''Veterans Affairs Acquisition Regulation''.

801.103 [Redesignated as 801.104]

4. Section 801.103 is redesignated as 801.104; and newly redesignated 801.104 is amended by removing ''5021'' in paragraph (a) and adding, in it place, ''8121''.

801.102 [Redesignated as 801.103]

5. Section 801.102 is redesignated as 801.103; and newly redesignated 801.103 is amended by removing ''210'' and by adding, in its place, ''501''.

801.301–70 [Amended]

6. In 801.301–70, paragraph (b)(2) is amended by removing ''(93)'' and adding, in its place, ''(95)''.

801.303 [Amended]

7. The heading for 801.303 is revised to read as follows: *801.303 Publication and codification.*

8. The heading for subpart 801.6 is revised to read as follows:

Subpart 801.6—Career Development, Contracting Activity, and Responsibilities

801.602–3 [Amended]

9. In 801.602–3, paragraph (a)(2) is amended by removing ''supplies, and services'' and adding, in its place, ''supplies, services,''; and paragraph (b)(2) is amended by removing ''Office of General Counsel'' and adding, in its place, ''Office of the General Counsel''.

801.603–71 [Amended]

10. In 801.603–71, paragraph (b) is amended by removing ''Chief, Central Office Library Division,'' and adding, in its place, ''Director, Library Services, VA Central Office,'' and paragraphs (c), (d), and (e) are removed.

801.670–1 [Amended]

11. Section 801.670–1 is amended by removing ''Service, at a Department of Veterans Affairs medical center, or the person acting in that capacity,'' and adding, in its place, ''Service (MAS), or the person designated by the medical center director to perform MAS functions, at a Department of Veterans Affairs medical center,''.

801.670–2 [Amended]

12. Section 801.670–2 is amended by removing paragraph (a)(1); and by redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2), respectively.

801.670–3 [Amended]

13. In 801.670–3, paragraph (a) is amended by removing ''Service,'' and adding, in its place, ''Service (MAS), or the person designated by the medical center director to perform MAS functions,''.

801.670–4 [Amended]

14. In 801.670–4, paragraph (a)(1) is amended by removing ''Chief, Acquisition Division, Monument Service'' and adding, in its place, ''Chief, Centralized Contracting Division, Office of Operations Support''; paragraph (a)(2) is amended by removing ''Chief, Transportation Section, Monument Service, and Freight Rate Specialist'' and adding, in its place, ''Freight Rate Specialist, Office of Operations Support''; paragraph (b)(1) is amended by removing ''Deputy Director'' and adding, in its place, ''Director, Office of Field Operations''; paragraph (b)(2) is amended by removing ''and Deputy Director''; and paragraph (c) is amended by removing ''Voucher, (FAR 13.505–3)'' and adding, in its place, ''Voucher (FAR 13.306)''.

801.670–5 [Amended]

15. In 801.670–5, paragraph (a)(3) is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''; paragraph (a)(4) is amended by removing ''Chief Benefits Director'' and adding, in its place, ''Under Secretary for Benefits''; paragraph (a)(5) is amended by removing ''Chief Memorial Affairs Director'' and adding, in its place, ''Under Secretary for Memorial Affairs''; paragraph (a)(6) is amended by removing ''Deputy Assistant Director'' and adding, in its place, ''Deputy Assistant Secretar'y''; paragraph (a)(8) is amended by removing ''4122'' and adding, in its place, ''7471''; paragraph (a)(9) is amended by removing ''Assistant Chief Medical Director for Research and Development'' and adding, in its place, ''Chief Research and Development Officer''; and paragraph (b) is amended by removing ''execute the same duties and responsibilities'' and adding, in its place, ''execute letters of agreement'' and by removing ''Review Division'' and adding, in its place, ''Administration Team''.

801.680 [Amended]

16. In 801.680, paragraph (c) is amended by removing ''Supply Service'' and adding, in its place, ''Acquisition and Materiel Management Service or the local purchase and contract activity''; and paragraph (d) is amended by removing ''Regulations'' and adding, in its place, ''Regulation''.

801.690–3 [Amended]

17. In 801.690–3, paragraph (c) introductory text is amended by removing ''Deputy Director'' and adding, in its place, ''Associate Deputy Assistant Secretary for Acquisitions''; paragraph (c)(1) is amended by removing ''Director for Administration (VHS&RA)'' and adding, in its place, ''Chief Administrative Officer (VHA)''; and paragraph (c)(2) is amended by removing ''Deputy Director, Office of Facilities'' and adding, in its place, ''Deputy Facilities Management Officer''.

18. In 801.690–4, paragraph (c)(1)(i) is amended by removing ''on the job in formalized'' and adding, in its place ''on the job or in formalized''; and paragraph (c)(3)(ii) is revised to read as follows:

801.690–4 Selection.

* * * * *

(c) * * *

(3) * * *

(ii) *Experience.* Three years of progressive assignments in an acquisition related field within the last five years and demonstrated broad technical ability related to acquisition.

* * * * *

801.690–6 [Amended]

19. In 801.690–6, paragraph (b) is amended by removing ''Personnel Office'' and adding, in its place, ''Human Resources Service''.

PART 803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

20. The authority citation for part 803 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

803.101–3 [Amended]

21. In 803.101–3, paragraph (b) is amended by removing ''subpart D'' and adding, in its place, ''subpart B''.

803.409 [Redesignated as 803.405]

22. Section 803.409 is redesignated as 803.405.

803.7000 [Amended]

23. The introductory text of 803.7000 is amended by removing ''It is the'' and adding, in its place, ''It is''; and by adding an apostrophe onto the word ''Affairs''.

PART 805—PUBLICIZING CONTRACT ACTIONS

24. The authority citation for part 805 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

805.205 [Amended]

25. Section 805.205 is amended by removing ''To facilitate the use of the alternative procedure in FAR 5.205(c)(2), contracting'' and adding, in its place, ''Contracting''.

PART 806—COMPETITION REQUIREMENTS

26. The authority citation for part 806 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

806.302–3 [Amended]

27. Section 806.302–3 is amended by removing ''4101, will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount.'' and adding, in its place, ''7303 will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount).''.

28. In 806.302–5, paragraph (a) is amended by removing ''4117'' and adding, in its place, ''''7409''; and by removing ''4101'' and adding, in its place, ''7302''; paragraph (b) is amended by removing ''5053'' and adding, in its place, ''8153''; paragraph (c) introductory text is amended by removing ''small purchase limitation'' and adding, in its place, ''simplified acquisition threshold''; paragraph (c)(1) is amended by removing ''5023'' and adding, in its place, ''8123''; paragraph (c)(2) is amended by removing ''4202'' and adding, in its place, ''7802''; paragraph (c)(4) is amended by removing ''5022(c)'' and adding, in its place, ''8122(c)''; paragraph (c)(5) is amended by removing ''213'' and adding, in its place, ''513''; paragraph (c)(6) is amended by removing ''620'' and adding, in its place, ''1720''; and paragraph (c)(3) is revised to read as follows:

806.302–5 Authorized or required by statute

* * * * *

(c) * * *

(3) Contracts or leases for the operation of parking facilities established under the authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee. 38 U.S.C. 8109(f).

* * * * *

806.304 [Amended]

29. In 806.304, paragraph (a)(1)(i) is amended by removing ''Veterans Health Services and Research Administration (VHS&RA) medical centers'' and adding, in its place, ''Veterans Health Administration (VHA) medical facilities''; and paragraph (a)(2)(i) is amended by removing ''VHS&RA medical centers'' and adding, in its place, ''VHA medical facilities''.

806.501 [Amended]

30. In 806.501, paragraph (b) is amended by removing ''Director, VA Marketing Center'' and adding, in its place, ''Executive Director and Chief Operating Officer, VA National Acquisition Center''.

31. Section 806.570 introductory text is amended by removing ''an initial Competition Plan for their respective activities by August 15, 1985. The plan should be formally incorporated'' and adding, in its place, ''a Competition Plan and incorporate the Plan''; and the section heading is revised to read as follows:

806.570 Planning requirements.

PART 808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

32. The authority citation for part 808 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

808.001 [Amended]

33. In 808.001, paragraph (a)(4) is amended by removing ''from the Blind and Other Severely Handicapped'' and adding, in its place, ''From People Who Are Blind or Severely Disabled''.

808.401 [Amended]

34. Section 808.401 is amended by removing ''Director, VA Marketing Center'' and adding, in its place, ''Executive Director and Chief Operating Officer, VA National Acquisition Center'' and by removing ''Director issues'' and adding, in its place, ''Executive Director and Chief Operating Officer issues''.

808.404–1 [Amended]

35. Section 808.404–1 is amended by removing ''Director, VA Marketing Center'' each time it appears in paragraphs (a) and (b) and adding, in its place, ''Executive Director and Chief Operating Officer, VA National Acquisition Center''; and paragraph (b)(1) is amended by removing ''subject to the requirements set forth in FAR 8.404–1(e)''.

808.404–3 [Amended]

36. Section 808.404–3 is amended by removing ''Director, VA Marketing Center'' and adding, in its place, ''Executive Director and Chief Operating Officer, VA National Acquisition Center''.

PART 814—SEALED BIDDING

37. The authority citation for part 814 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

814.201 [Amended]

38. In 814.201, paragraph (a) is amended by removing ''marketing division'' and adding, in its place, ''National Acquisition Center division''.

814.304–4 [Amended]

39. Section 814.304–4 is amended by removing ''at VA'' and adding, in its place, ''at the VA''.

814.403 [Amended]

40. Section 814.403 is amended by removing ''SF 1419'' and adding, in its place, ''OF 1419''.

814.404–1 [Amended]

41. In 814.404–1, paragraph (b) is amended by removing ''prepared as prescribed in Subpart 801.7''.

814.404–70 [Amended]

42. Section 814.404–70 is amended by removing ''Acquisition Review Division'' and adding, in its place, ''Acquisition Administration Team''.

814.407 [Redesignated as 814.408]

43. Section 814.407 is redesignated as 814.408.

814.408 [Redesignated as 814.409]

44. Section 814.408 is redesignated as 814.409.

814.407–70 [Redesignated as 814.408–70]

45. Section 814.407–70 is redesignated as 814.408–70.

814.407–71 [Redesignated as 814.408–71]

46. Section 814.407–71 is redesignated as 814.408–71.

814.406 [Redesignated as 814.407]

47. Section 814.406 is redesignated as 814.407.

814.406–3 [Amended]

48. Section 814.406–3 is redesignated as 814.407–3; paragraph (a) is amended by removing ''14.406–3(e)'' and adding, in its place, ''14.407–3(e)''; by removing ''14.406–3(a)'' and adding, in its place, ''14.407–3(a)''; and by removing ''redelegation to'' and adding, in its place, ''redelegation, to''; paragraph (b) is amended by removing ''14.406–3'' and adding, in its place, ''14.407–3'' and by removing ''Acquisition Review Division'' and adding, in its place, ''Acquisition Administration Team,''; and paragraph (c) is amended by removing ''Acquisition Review Division'' and adding, in its place, ''Acquisition Administration Team''.

814.406–4 [Amended]

49. Section 814.406–4 is redesignated as 814.407–4; paragraph (a) is amended by removing ''14.406–4(a)'' and adding, in its place, ''14.407–4(a)'' and by removing ''Acquisition Review Division'' and adding, in its place, ''Acquisition Administration Team''; paragraph (b) is amended by removing ''14.406–4'' and adding, in its place, ''14.407–4'', by removing ''Acquisition Review Division for'' and adding, in its place, ''Acquisition Administration Team, for'', and by removing ''Acquisition Review Division. The final'' and adding, in its place, ''Acquisition Administration Team. The final''; and paragraph (c) is amended by removing ''Acquisition Review Division'' and adding, in its place, ''Acquisition Administration Team,'' and by removing ''14.406–4'' and adding, in its place, ''14.407–4''.

PART 817—SPECIAL CONTACTING METHODS

50. The authority citation for part 817 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

817.102 [Redesignated as 817.105]

51. Section 817.102 is redesignated as 817.105.

52. Section 817.102–1 is redesignated as 817.105–1; paragraph (b)(2) is amended by removing *''Assistant Secretary''* and adding, in its place, *''Deputy Assistant Secretary''*; and paragraph (c) is amended by removing ''FAR 17.103–1 and VAAR 817.103–1'' and adding, in its place, ''FAR 17.106–1''.

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

53. The authority citation for part 819 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

819.201 [Amended]

54. In 819.201, paragraph (a) is amended by removing ''(005SB)'' and adding, in its place, ''(00SB)''; paragraph (b) is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer''; and paragraph (d) is amended by removing ''Chief Benefits Director; Deputy Assistant Secretary for Facilities; Deputy Assistant Secretary for Administration; Director, Acquisitions Operations Service; Director, VA Marketing Center;'' and adding, in its place, ''Under Secretary for Benefits; Chief Facilities Management Officer; Deputy Assistant Secretary for Administration; Director, Acquisition Operations and Analysis Service; Executive Director and Chief Operating Officer, VA National Acquisition Center;''.

819.202–5 [Amended]

55. In 819.202–5, paragraph (c) introductory text is amended by removing ''(c)(9)'' and adding, in its place, ''(c)(8)'', by removing ''VA Marketing Center and the Office of Facilities'' and adding, in its place, ''VA National Acquisition Center and the Office of Facilities Management'', and by removing ''(c)(12)'' and adding, in its place, ''(c)(11)''; paragraph (c)(6) is removed; paragraphs (c)(7) through (c)(12) are redesignated as paragraphs

(c)(6) through (c)(11), respectively; paragraph (g) is amended by removing ''(c)(9)'' and adding, in its place, ''(c)(8)''; and paragraph (h) is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management'', and by removing ''VA Marketing Center'' and adding, in its place, ''VA National Acquisition Center''.

819.202–70 [Amended]

56. In 819.202–70, the section introductory text is amended by removing ''and Labor Surplus Area (LSA) programs'' and adding, in its place, ''program''; paragraph (a) is amended by removing ''Vietnam era and disabled veteran-owned, and LSA concerns'' and adding, in its place, ''and Vietnam era and disabled veteran-owned concerns''; paragraph (c) is amended by removing ''and LSA set-asides''; paragraph (j) is amended by removing ''and LSA''; and paragraph (k) is amended by removing ''labor surplus area set-asides,''.

819.502–2 [Amended]

57. Section 819.502–2 is amended by removing paragraph (b); and by redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

58. Section 819.502–3 is revised to read as follows:

819.502–3 Partial set-asides.

When, in accordance with the provisions of FAR 19.502–3, it is determined that a particular procurement will be partially set aside for exclusive small business participation, the solicitation for bids shall state the appropriate product or service classification and appropriate size standard and the following statement shall be placed on the face page:

Notice of partial small business set-aside, page ____, applies to Item _____ through Item _____ in this solicitation.

819.602–3 [Amended]

59. In 819.602–3, paragraphs (a), (b) and (c) are amended by removing ''(93B)'' each time it appears and adding, in its place, ''(95B)''; and paragraph (d) is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management''.

819.801 [Amended]

60. Section 819.801 is redesignated as 819.800; paragraph (b) is amended by removing ''(005SB)'' and adding, in its place, ''(00SB)''; and paragraph (d) is amended by removing ''15.804–2'' and adding, in its place, ''15.403–4''.

61. Section 819.804 is amended by removing ''19.804(b)'' and adding, in its place, ''19.804–2''; and by revising the section heading to read as follows:

819.804 Evaluation, offering, and acceptance.

62. Section 819.806–2 is redesignated 819.807; paragraph (b) is amended by removing ''19.806–2(a)'' and adding, in its place, ''19.807''; and the section heading is revised to read as follows:

819.807 Estimating fair market price.

63. Section 819.806–3 is redesignated as 819.806; and the section heading is amended to read as follows:

819.806 Pricing the 8(a) contract.

819.807–70 [Amended]

64. Section 819.807–70 is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management''; by removing ''the Veterans Health Services and Research Administration'' and adding, in its place, ''VHA medical facilities''; and by removing ''(005SB)'' each time it appears and adding, in its place, ''(00SB)''; and the section heading for 819.807–70 is revised to read as follows:

819.807–70 Commitments of Office of Facilities Management funded projects for the 8(a) program.

819.7004 [Amended]

65. Section 819.7004 is amended by removing ''and Labor Surplus Area set-asides''.

PART 822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

66. The authority citation for part 822 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

822.478 [Amended]

67. Section 822.478 is amended in paragraphs (a) and (b) by removing ''Office of Facilities'' each time it appears and adding, in its place, ''Office of Facilities Management''; and in paragraphs (b) and (c) by removing ''Deputy Assistant Secretary for Facilities'' each time it appears and adding, in its place, ''Chief Facilities Management Officer''.

PART 825—FOREIGN ACQUISITION

68. The authority citation for part 825 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

825.102–70 [Amended]

69. Section 825.102–70 is amended by removing ''(93)'' in paragraphs (b) and (c) and adding, in its place, ''(95)''.

825.105 [Amended]

70. Section 825.105 is amended by removing ''(93)'' and adding, in its place, ''(95)''.

825.202–70 [Amended]

71. Section 825.202–70 is amended by removing ''(93)'' in paragraphs (b) and (c) and adding, in its place, ''(95)''; and in paragraph (c) by removing ''Deputy Assistant Secretary for Facilities (08)'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management,''.

825.203 [Amended]

72. Section 825.203 is amended by removing ''(93)'' and adding, in its place, ''(95)''; and by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management,''.

825.302–70 [Amended]

73. Section 825.302–70 is amended by removing ''(93)'' and adding, in its place, ''(95)''.

825.701 [Removed]

74. Section 825.701 is removed.

825.703 [Amended]

75. Section 825.703 is amended by removing ''(93)'' and adding, in its place, ''(95)''.

825.870 [Amended]

76. Section 825.870 is amended by removing ''Director, VA Marketing Center'' and adding, in its place, ''Executive Director and Chief Operating Officer, VA National Acquisition Center''.

825.902 [Redesignated as 825.901]

77. Section 825.902 is redesignated as 825.901; the text is designated as paragraph (a); paragraph (a) is amended by removing '''Examination of Records Clause'' should be omitted after all reasonable efforts to include the clause have failed, and providing that omission'' and adding, in its place, '''Audit and Records—Negotiation'' clause with Alternate III should be used after all efforts to include the basic clause have failed, and provided that use of Alternate III''; by removing ''25.903'' and adding, in its place, ''25.901''; by removing ''(93)'' and adding, in its place, ''(95)''; by removing ''25.903(a)(1),'' and adding, in its place, ''25.901(c)(1).''; by removing ''or submit the report required by FAR 25.903(b)'';

and the section heading is revised and paragraph (b) is added, to read as follows:

825.901 Omission of audit clause.

* * * * *

(b) All determinations to omit the ''Audit and Records—Negotiation'' clause will be supported by a determination and findings prepared by the contracting officer containing the information set forth in FAR 25.901(d). The completed determination and findings will be made a part of the contract file. One copy of the determination and findings will be forwarded to the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

825.904 [Removed]

78. Section 825.904 is removed.

PART 828—BONDS AND INSURANCE

79. The authority citation for part 828 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

828.106–6 [Amended]

80. Section 828.106–6 is amended by removing ''Office of Facilities'' each time it appears and adding, in its place, ''Office of Facilities Management''.

828.7100 [Amended]

81. In 828.7100, paragraph (a) is amended by removing ''4101'' and adding, in its place, ''7317'' and paragraph (c) is amended by removing ''4101(c)(3)(A)'' and adding, in its place, ''7317''.

828.7101 [Amended]

82. In 828.7101 paragraph (b) is amended by removing ''(93)'' and adding, in its place, ''(95)''.

828.7102 [Amended]

83. In 828.7102, paragraph (a) introductory text is amended by removing ''4101'' and adding, in its place, ''7303''; paragraph (a)(1) is amended by removing ''Workmen's Compensation Acts'' and adding, in its place, ''worker's injury compensation laws''; and paragraph (b) introductory text is amended by removing ''will'' and adding, in its place, ''must''.

PART 831—CONTRACT COST PRINCIPLES AND PROCEDURES

84. The authority citation for part 831 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

831.7001–4 [Amended]

85. In 831.7001–4, paragraph (a) is amended by removing ''The VA'' and adding, in its place, ''VA'' and by removing ''Veterans Health Services and Research Administration'' and adding, in its place, ''Veterans Health Administration''; and paragraph (b)(2) is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''.

831.7001–5 [Amended]

86. In 831.7001–5 paragraph (b) is amended by removing ''part 813 of this chapter or FAR 15.210(a)(1)'' and adding, in its place, ''the applicable provisions of parts 812, 813 or 815 of this chapter and FAR parts 12, 13, or 15''.

PART 832—CONTRACT FINANCING

87. The authority citation for part 832 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

832.502–2 [Amended]

88. Section 832.502–2 is amended by removing ''(93)'' and adding, in its place, ''(95)''.

832.805–70 [Amended]

89. In 832.805–70, paragraph (b) is amended by removing ''Marketing Divisions'' and adding, in its place, ''VA National Acquisition Center divisions''.

PART 833—PROTESTS, DISPUTES, APPEALS

90. The authority citation for part 833 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

833.104 [Amended]

91. Section 833.104 is amended by removing ''Acquisition Review Division'' each time it appears in paragraphs (a)(1), (b), and (c), and adding, in its place, ''Acquisition Resources Service''; by removing ''33.104(a)(2)'' in paragraph (a)(1) and adding, in its place, ''33.104(a)(3)(ii)''; and by removing ''33.104(a)(3)'' in paragraph (a)(2) and adding, in its place, ''33.104(a)(2)''.

833.212 [Amended]

92. In 833.212, paragraph (a) is amended by removing ''Acquisition Review Division'' each time it appears and adding, in its place, ''Acquisition Resources Service''; and paragraph (b)(4) is amended by removing ''VABC'' and adding, in its place, ''VABCA''.

PART 836—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

93. The authority citation for part 836 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

836.208 [Amended]

94. Section 836.208 is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health'' and by removing ''Management for'' and adding, in its place, ''Management, for''.

836.209 [Amended]

95. Section 836.209 is amended by removing ''Chief Medical Director'' and adding, in its place, ''Under Secretary for Health''.

836.602–2 [Amended]

96. In 836.602–2, paragraph (a) is amended by removing ''Management will'' and adding, in its place, ''Management, will''; and paragraph (b) is amended by removing ''Chief, Acquisition and Materiel Management Service,'' and adding, in its place, ''head of the contracting activity''.

836.606–72 [Amended]

97. Section 838.606–72 is amended by removing ''Management or'' and adding, in its place, ''Management, or'' and by removing ''15.808'' and adding, in its place, ''15.406–3''.

PART 837—SERVICE CONTRACTING

98. The authority citation for part 837 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

99. The heading for subpart 837.2 is revised to read as follows:

Subpart 837.2—Advisory and Assistance Services

100. Section 837.203 is revised to read as follows:

837.203 Policy.

For the purpose of this subpart the definition of advisory and assistance services shall, in addition to examples listed in FAR 37.203, include services to obtain peer review of research proposals.

101. In 837.270, paragraph (a) introductory text is amended by removing ''consultant services'' and adding, in its place, ''advisory and assistance services'' and by removing ''801.670–14(a)'' and adding, in its place, ''801.670–5''; paragraph (a)(1) is amended by removing ''Consultant services'' and adding, in its place,

''Advisory and assistance services''; paragraph (a)(3) is amended by removing ''4122'' and adding, in its place, ''7472''; paragraph (c) is amended by removing ''Consulting services'' and adding, in its place, ''Advisory and assistance services''; paragraph (d) is amended by removing ''In lieu of the requirements outlined in appendix A of this subpart 837.2, justifications'' and adding, in its place, ''Justifications''; and paragraph (e) is revised to read as follows:

837.270 Special controls for letters of agreement.

* * * * *

(e) Copies of all advisory and assistance services procurements accomplished through letters of agreement shall be provided to the local servicing purchase and contract office for entry into the Federal Procurement Data System.

837.271 through 837.271–4 [Removed]

102. Section 837.271 is removed including 837.271–1 through 837.271–4.

837.403 [Amended]

103. Section 837.403 is amended by removing ''FAR part 13 and (VAAR) 48 CFR part 813'' and adding, in its place, ''FAR parts 12, 13, 14, or 15 and (VAAR) 48 CFR parts 812, 813, 814, or 815''.

837.7001 [Amended]

104. Section 837.7001 is amended by removing ''903'' and adding, in its place, ''2303''.

837.7002 [Amended]

105. Section 837.7002 is amended by removing ''personnel,'' and adding, in its place, ''personnel or other personnel designated by the medical center director to perform these functions,''.

106. In 837.7003, paragraph (a) is amended by removing ''will forward to the Chief, Supply Service'' and adding, in its place, ''or the person designated by the medical center director to perform these functions, will forward to the head of the contracting activity''; paragraph (b) introductory text is amended by removing ''Services, as follows'' and adding, in its place, ''Services, or VA Form 90–2138–ADP, Purchase Order for Supplies or Services, as follows''; paragraph (b)(5) is amended by removing ''Veterans Health Services and Research Administration'' and adding, in its place, ''Veterans Health Administration''; paragraph (c) is amended by removing ''903(a)(2)'' and adding, in its place, ''2303(a)(1)(B)''; paragraph (d) is amended by removing ''Veterans Health Services and Research Administration'' and adding, in its place, ''Veterans Health Administration'' and is further amended by removing ''representative, to be'' and adding, in its place ''representative, or the person designated by the medical center director to perform these functions, to be''; and paragraph (e) is revised to read as follows:

837.7003 Funeral authorization.

* * * * *

(e) The head of the contracting activity will assist the Chief, Medical Administration Service, or the person designated by the medical center director to perform these functions, in developing the local procedures specified in Veterans Health Administration Manual M–1, Part I, paragraph 14.37c.

PART 842—CONTRACT ADMINISTRATION

107. The authority citation for part 842 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

842.102 [Amended]

108. In 842.102, paragraph (b) is amended by removing ''(91)'' and adding, in its place, ''(93)''.

842.202 [Amended]

109. Section 842.202 is amended by removing ''(91)'' and adding, in its place, ''(95)'' and by removing ''FAR 30.401 for'' and adding, in its place, ''48 CFR 9904 (FAR Appendix B) for policy on''.

842.705 [Amended]

110. In 842.705, paragraph (b) is amended by removing ''Office of Facilities'' and by adding, in its place, ''Office of Facilities Management'', by removing ''General for Policy, Planning and Resources (53C)'' each time it appears and adding, in its place, ''General, Office of Departmental Reviews and Management Support (53C)'', by removing ''Marketing Center'' and adding, in its place, ''VA National Acquisition Center'', and by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer''.

842.801–70 [Amended]

111. 842.801–70 is amended by removing ''15.804–2'' and adding, in its place, ''15.403–4'', by removing ''(93)'' and adding, in its place, ''(95)'', and by removing ''General for Auditing'' and adding, in its place, ''General, Office of Audit''.

842.1203 [Amended]

112. Section 842.1203 is amended by removing ''Office of General Counsel'' and adding, in its place, ''Office of the General Counsel''.

PART 846—CONTRACT CLAUSES

113. The authority citation for part 846 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

846.408–70 [Amended]

114. In 846.408–70, paragraph (b) introductory text is amended by removing ''Chief, Dietetics Service'' and adding, in its place, ''Chief, Nutrition and Food Service''.

846.408–71 [Amended]

115. In 846.408–71, paragraph (a) is amended by removing ''Federal Hospital Subsistence Guide G–1'' each time it appears and adding, in its place, ''Part IV of the Federal Supply Catalog, Stock List, FSC Group 89, Subsistence, Publication No. C8900–SL''.

846.471 [Amended]

116. In 846.471, paragraph (a) is amended by removing ''Director, Office of Construction,'' and adding, in its place, ''Chief Facilities Management Officer, Office of Facilities Management,'', and paragraph (b) is amended by removing ''VHS&RA,''.

PART 847—TRANSPORTATION

117. The authority citation for part 847 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

847.303–1 [Amended]

118. In 847.303–1, paragraph (b) is amended by removing ''Director, Monument Service'' and adding, in its place, ''Chief, Centralized Contracting Division''; and by removing ''VA Form 40–4951, Order for Flat Bronze Marker'' and adding, in its place, ''VA Form 40–4952, Order for Headstone or Marker''.

847.305–70 [Amended]

119. Section 847.305–70 is amended by removing ''VA Marketing Center'' and adding, in its place, ''VA National Acquisition Center''.

PART 849—TERMINATION OF CONTRACTS

120. The authority citation for part 849 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

849.106 [Amended]

121. Section 849.106 is amended by removing ''Materiel Management will forward the submission'' and adding, in its place, ''Materiel Management or the

Chief Facilities Management Officer, Office of Facilities Management, will forward the submission''; by removing ''(93)'' each time it appears and adding, in its place, ''(95)'', by removing ''Deputy Assistant Secretary for Facilities (08)'' and adding, in its place, ''Chief Facilities Management Officer'', by removing ''from the Office of Facilities'' and adding, in its place, ''from the Office of Facilities Management'', and by removing ''or the Office of Facilities'' each time it appears and adding, in its place, ''or the Chief Facilities Management Officer, Office of Facilities Management,''.

849.107 [Amended]

122. Section 849.107 is amended by removing ''Office of Facilities'' and adding, in its place, ''Office of Facilities Management'', by removing ''General for Policy, Planning and Resources (53C)'' each time it appears and adding, in its place, ''General, Office of Departmental Reviews and Management Support (53C)'', by removing ''Office of General Counsel'' and adding, in its place, ''Office of the General Counsel'; and by removing ''(93D)'' and adding, in its place, ''(95)''.

849.111–70 [Amended]

123. Section 849.111–70 is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer''.

849.111–72 [Amended]

124. In 849.111–72, paragraph (c) is amended by removing ''Deputy Assistant Secretary for Facilities'' and adding, in its place, ''Chief Facilities Management Officer''.

PART 852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

125. The authority citation for part 852 continues to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

852.203–71 [Amended]

126. Section 852.203–71 is amended by removing ''Office of the Inspector General'' and adding, in its place, ''Office of Inspector General''.

852.211–70 [Amended]

127. In 852.211–70, paragraph (d) is amended by removing ''852.210–70(a)'' each time it appears and adding, in its place, ''852.211–70(a)'' and by removing ''VA Supply Depot,''.

852.216–70 [Amended]

128. In 852.216–70 paragarph (a) is amended by removing ''Marketing Center'' and adding, in its place, ''VA National Acquisition Center''.

852.222–70 [Amended]

129. Section 852.222–70 is amended by removing ''620'' and adding, in its place, ''1720''.

852.236–88 [Amended]

130. Section 852.236–88 is amended in the introductory text by removing ''15.804–2(a)(2)'' and adding, in its place, ''15.403–4(a)(2)'' and in paragraphs (a) and (b) by removing ''15.804'' each time it appears and adding, in its place, ''15.403'', by removing ''on Standard Form 1411 (SF 1411), Contract Pricing Proposal Cover Sheet, in accordance with FAR 15.804–6'' each time it appears and adding, in its place, ''in accordance with FAR 15.403–5''.

131. In § 852.236–89, the introductory paragraph is amended by removing ''Special Notice'' will be inserted into the bid package, in front of SF 20, Invitation for Bids'' and adding, in its place, ''provision will be included in solicitations for construction that include FAR clause 52.225–5, Buy American Act—Construction Materials''; and paragraph (a) of the clause is revised to read as follows:

852.236–89 Buy American Act.

* * * * *

Buy American Act (Nov 1984)

(a) Reference is made to the clause entitled ''Buy American Act—Construction Materials,'' FAR 52.225–5.

* * * * *

852.247–70 [Amended]

132. Section 852.247–70 is amended in the clause by removing ''for not other'' and adding, in its place, ''for no other''.

133. The section heading for 852.270–3 is revised to read as follows:

852.270–3 Purchase of shellfish.

852.271–73 [Amended]

134. Section 852.271–73 is amended in the clause by removing ''Chief Benefits Director'' and adding, in its place, ''Under Secretary for Benefits''.

PART 853—FORMS

135. The authority citation for part 853 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

853.107 [Amended]

136. Section 853.107 is amended by removing ''(91)'' and adding, in its place, ''(97)''.

PART 870—SPECIAL PROCUREMENT CONTROLS

137. The authority citation for part 870 is revised to read as follows:

Authority: 38 U.S.C. 501 and 40 U.S.C. 486(c).

870.114–3 [Amended]

138. Section 870.114–3 is amended in the introductory text by removing ''Director, Facilities Engineering Service (085E)'' and adding, in its place, ''Director, Network Program Support (10NB)''.

870.114–4 [Amended]

139. Section 870.114–4 is amended by removing ''VA Central Office, Facilities Engineering Service (085E),'' and adding, in its place, ''The Director, Network Program Support (10NB), VA Central Office,''.

870–115 [Amended]

140. Section 870.115 is amended in paragraph (a) by removing ''Dietetic Service'' and adding, in its place, ''Nutrition and Food Service''.

PART 871—LOAN GUARANTY AND VOCATIONAL REHABILITATION AND COUNSELING PROGRAMS

141. The authority citation for part 871 continues to read as follows:

Authority: 10 U.S.C. ch. 106, 107, 1606; 38 U.S.C. 501, ch. 30, 32, 35, 36, 37; 40 U.S.C. 486(c).

871.102 [Amended]

142. Section 871.102 is amended in paragraph (a) by removing ''Officers VA'' and adding, in its place, ''Officers, VA''.

[FR Doc. 98–33163 Filed 12–15–98; 8:45 am]
BILLING CODE 8320–01–P

Proposed Rules

Federal Register
Vol. 63, No. 241
Wednesday, December 16, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 114

[Notice 1998—17]

Definition of ''Member'' of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is seeking comments on further proposed revisions to its rules governing who qualifies as a ''member'' of a membership association. A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. The revised proposal would largely address the internal characteristics of an association that, coupled with certain financial or organizational attachments, would be sufficient to confer this status.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to members@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Although the Federal Election Campaign Act of 1971 as amended (''FECA'' or ''Act''), 2 U.S.C. 431 *et seq.*, prohibits direct corporate contributions in connection with federal campaigns, 2 U.S.C. 441b(a), it permits corporations, including incorporated membership associations, to solicit contributions from their restricted class to a separate segregated fund (''SSF''). In the case of membership associations, the restricted class consists of the members of each association, their executive and administrative personnel, and their families. These contributions can be used for federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications that include express electoral advocacy. 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's implementing regulations defining who is a ''member'' of a membership association are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

The Commission's original ''member'' rules, which had been adopted in 1977, were the subject of a 1982 United States Supreme Court decision, *FEC* v. *National Right to Work Committee* (''*NRWC*''), 459 U.S. 196 (1982). In 1993, following a series of advisory opinions in this area, the Commission revised the text of the rules to reflect that decision. 58 FR 45770 (Aug. 30, 1993), effective Nov. 10, 1993. 58 FR 59640. The revised rules were held to be unduly restrictive by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States (''Chamber'')* v. *FEC*, 69 F.3d 600 (D.C. Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996). This rulemaking followed.

History of the Rulemaking

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its member rules to reflect the *Chamber* decision. The Commission published a Notice of Availability (''NOA'') in the **Federal Register** on March 29, 1997, 62 FR 13355, and received two comments in response.

On July 31, 1997, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (''ANPRM'') addressing these rules. 62 FR 40982. Because the *Chamber* decision, the petition for rulemaking, and the comments received in response to the NOA provided few specific suggestions as to how the rules should be amended to comport with the decision, the Commission did not propose specific amendments to the rules. Rather, it sought general guidance on the factors to be considered in determining the existence of this relationship. The Commission received 14 comments in response to the ANPRM.

On December 22, 1997, the Commission published a Notice of Proposed Rulemaking (''NPRM'') on this matter, 62 FR 66832, and received 22 comments in response. Comments were received from the Alliance for Justice; the American Federation of State, County and Municipal Employees (''AFSCME''); the American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), the American Hospital Association and Political Action Committee (''AHAPAC''); the American Hotel and Motel Association (''AH&MA''); the American Society of Association Executives (''ASAE''); the Americans Back in Charge Foundation; Jan Witold Baran; The Chicago Mercantile Exchange; the College of American Pathologists (''CAP''); the Free Speech Coalition, Inc.; the James Madison Center for Free Speech; the National Lumber and Building Material Dealers Association; the National Citizens Legal Network; the National Rural Electric Cooperative Association; the National Right to Work Committee; the Opticians Association of America (''OAA''); Daniel M. Schember; Donald J. Seaman; the U.S. Chamber of Commerce; the Washington State Farm Bureau; and the Wholesaler-Distributor Political Action Committee.

On April 29, 1998, the Commission held a public hearing on this rulemaking at which 10 witnesses testified. The witnesses included representatives from AFSCME; the AFL–CIO; AH&MA; ASAE; Americans Back in Charge, Inc.; the Free Speech Coalition, Inc.; the James Madison Center for Free Speech; the National Citizens Legal Network; OAA; and Mr. Schember.

After further considering this matter, the Commission has now decided to reconsider the rules with a slightly different focus from that proposed in the original NPRM. Accordingly, the Commission is seeking comments on a second NPRM proposing further revisions to these rules. This new proposal primarily addresses the required characteristics of membership associations. The Commission is publishing this second NPRM because it did not propose any changes to these provisions in the original NPRM. *See* 62 FR 68834 (Dec. 22, 1997).

Background

In its *NRWC* decision, the Supreme Court rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members individuals who had at one time responded, not necessarily financially, to an NRWC advertisement, mailing, or personal contact. The Supreme Court rejected this definition of ''member,'' saying that to accept it ''would virtually excise from the statute the restriction of solicitation to 'members.' '' *Id*. at 203. The Court determined that ''members'' of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that ''some relatively enduring and independently significant financial or organizational attachment is required to be a 'member' '' for these purposes. *Id*. at 204. The NRWC's asserted members did not qualify under this standard because they played no part in the operation or administration of the corporation, elected no corporate officials, attended no membership meetings, and exercised no control over the expenditure of their contributions. *Id*. at 206. The 1993 revisions to the Commission's rules were intended to incorporate this standard.

The Current Rules

The current rules require an organization to meet three preliminary requirements before it can qualify as a membership association. These requirements are that it (1) expressly provide for ''members'' in its articles and by-laws; (2) expressly solicit members; and (3) expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1). If these preliminary requirements are met, a person may qualify as a member either by having a significant financial attachment to the membership association (not merely the payment of dues), or the right to vote directly for all members of the association's highest governing body. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the association's highest governing body is required. The term ''membership association'' includes membership organizations, trade associations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

The Chamber of Commerce Decision

The United States District Court for the District of Columbia held that the current rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States* v. *FEC*, Civil Action No. 94–2184 (D.D.C. Oct. 28, 1994)(1994 WL 615786). However, the D.C. Circuit Court of Appeals reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association (''AMA''), two associations that do not provide their asserted ''members'' with the voting rights necessary to confer this status under the current rules. The circuit court held that the ties between these members and the Chamber and the AMA are nonetheless sufficient to comply with the Supreme Court's *NRWC* criteria, and therefore concluded that the Commission's rules are invalid because they define the term ''member'' in an unduly restrictive fashion. 69 F.3d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 ''direct business members.'' The members pay annual dues ranging from $65 to $100,000 and may participate on any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self-perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for any members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 ''direct'' members, those who do not belong to a state medical association. Direct members pay annual dues ranging from $20 to $420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber* court, in an Addendum to the original decision, noted that the Commission ''still has a good deal of latitude in interpreting'' the term ''member.'' 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious as applied to the Chamber, since under the current rules even those paying $100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to $420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment ''might be thought, [] for a professional, [to be] the *most* significant organizational attachment.'' 69 F.3d at 605 (emphasis in original).

The current rules provide a ''safe harbor'' for membership associations, since those who meet the requirements set forth in these rules clearly enjoy ''member'' status. Associations can also seek advisory opinions pursuant to 2 U.S.C. 437f to determine how the rules, as interpreted in the *Chamber of Commerce* decision, apply to their particular situations. However, the Commission believes it is appropriate to include in the text of the rules additional guidance consistent with the *Chamber* decision.

The December 1997 NPRM

The 1997 NPRM sought comments on three alternative proposals, referenced as Alternatives A, B, and C. None of the alternatives proposed any changes to the three preliminary requirements, or to the provisions in the current rules that recognize as members persons who have a stronger financial interest in an association than the payment of annual dues, such as those who own or lease seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(1), 114.1(e)(2)(i), AO 1997–5.

Under Alternative A, all persons who paid $50 in annual dues or met specified organizational attachments would be considered members. The NPRM suggested such attachments as

the voting rights contained in the current rules; the right to serve on policy-making boards of the association; eligibility to be elected to the governing positions in the association; and the possibility of disciplinary action against the member by the association. A lesser dues obligation coupled with weaker organizational attachments would also be sufficient for this purpose.

Alternative B distinguished between the types of organizations addressed by the *Chamber* decision, i.e., those formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce; and ideological, social welfare, and political organizations. Persons paying any amount of annual dues would be considered members of the first category of organizations, while annual dues of $200 or more would be required for membership in the second category, unless the purported members had the same voting rights required by the current rule.

Under Alternative C, an organization that qualified as a membership association by meeting the three preliminary requirements could consider as members all persons who paid the amount of annual dues set by the association, regardless of amount.

The 1997 NPRM also proposed that direct membership in any level of a multitiered association be construed as membership in all tiers of the association for purposes of these rules. All three alternatives set out in that NPRM would adopt this approach, and the Commission is not now proposing further changes in this area.

As was the case with the ANPRM, the comments and testimony received in response to the NPRM expressed a wide range of views—there was no consensus on how best to address this situation. After further consideration, the Commission is now seeking comments on a slightly different approach, one that would address more fully the attributes of membership associations, in addition to members' required financial or organizational attachments.

The New Proposal

First, the Commission is proposing that the term ''membership association'' in 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1) be replaced by ''membership organization.'' The Commission believes it is appropriate to refer to the covered entities as ''membership organizations'' because that is the term used in the Act. *See*, 2 U.S.C. 431(9)(B)(iii) and 441b(b)(4)(C). ''Membership organization'' is also referred to in 11 CFR 100.8(b)(4), which describes the entities entitled to the ''internal communication'' exception to the Act's definition of expenditure.

The Commission is therefore proposing to replace the term ''membership association'' with ''membership organization'' in paragraphs 100.8(b)(4)(iv)(A) and 114.1(e)(1). The revised definitions would provide that, for purposes of these rules, *membership organization* means a trade association, cooperative, corporation without capital stock, or local, national or international labor organization.

The other newly-proposed revisions to the member rules primarily focus on attributes of membership organizations, the term used in current 11 CFR 100.8(b)(4). Since the purpose of the Act's ''membership communications'' exception is to allow bona fide membership organizations to engage in political communications with their members, the new rule would prevent individuals from establishing ''sham'' membership organizations in an effort to circumvent the Act's contribution and expenditure limits. The Commission believes it is appropriate to focus on the structure of the membership organization as well as on who qualifies as a member, and is therefore proposing the following amendments to 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1), the so-called ''preliminary requirements'' an entity must meet to qualify as a membership organization.

First, since it is axiomatic that membership organizations should be composed of members, the Commission is proposing to replace the language at 11 CFR 100.8(b)(4)(iv)(A)(*1*) and 114.1(e)(1)(i), stating that an organization must expressly provide for members in its articles and bylaws, with this more general requirement.

The second additional requirement would be that the organization be self-governing, that is, that the power and authority to direct and control the organization be vested in some or all members, pursuant to the organization's articles, bylaws, and other formal organizational documents. However, the organization would be able to delegate these responsibilities to smaller committees or other groups of members—the Commission is not proposing that all members be required to approve all organization actions. Membership associations with self-perpetuating boards would meet this requirement as long as all members of the board were themselves members of the organization, assuming that the organization had chosen this structure and that it met all other requirements of these regulations.

Further, as noted above, the Supreme Court's language in the *NRWC* decision, 459 U.S. at 204, pointed to the need for members to have ''relatively enduring and independently significant financial or organizational attachments.'' However, those attachments can hardly be meaningful if the members are unaware of their rights and obligations. Therefore, as a corollary to the proposal that only members constitute the organization, the Commission is proposing that membership organizations be required to inform members of their rights, qualifications and obligations under the organization's articles, bylaws and other formal organizational documents. In addition, organizations would be required to make their articles, bylaws and other formal organizational documents freely available to their members.

The Commission's rules currently list at 11 CFR 100.8(b)(4) the entities entitled to the expenditure exemption and the types of communications (i.e., express advocacy) that an exempted organization may engage in without those communications being classified as an expenditure. As this paragraph states, entities ''organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office'' are not entitled to the membership communications exemption.

The Commission is proposing that this paragraph be revised to delete the aforementioned language. In its place, this phrase would be re-inserted in new paragraphs 11 CFR 100.8(b)(4)(iv)(A)(*7*) and 114.1(e)(1)(vii), the provisions that explicitly define a ''membership organization.'' This would insure that an organization primarily organized to influence a Federal election could not, by definition, be classified as a membership organization under the Act.

Consistent with these changes, the Commission is also proposing to amend 11 CFR 100.8(b)(4) to clarify that the membership communications exception established by that section applies only to those communications made at the direction and control of the membership organization, and not of any other person.

As for the definition of ''member,'' the Commission believes that the *NRWC* requirement that members of membership organizations have a ''relatively enduring and independently significant financial or organizational'' attachment, *supra*, mandates that members have a continuous, long term bond with the organization itself. As Alternatives A and B in the 1997 NPRM suggest, ''relatively enduring'' attachments can be interpreted to mean

that an individual renews membership annually by meeting the organization's dues requirement, so long as he or she continues to satisfy the organization's provisions for membership. Similarly, the Commission proposes that this requirement could be satisfied where a member affirmatively and voluntarily renews his or her membership in writing on an annual basis. In the Commission's view, the annual payment of dues or voluntary annual reaffirmation of membership would satisfy the ''relatively enduring'' aspect of the *NRWC* Court's test. The proposal does not contain any threshold dues requirement, as the Commission believes this decision is best made by the individual membership organizations.

In reformulating the organizational attachments prong of this test, the Commission is mindful of the broader implications of the *Chamber* decision and the Supreme Court's decision in *FEC* v. *Akins*, 118 S.Ct. 1777, 1778 (1998). These decisions indicate that overly restrictive definitions are less likely to survive judicial scrutiny.

Further, the comments and testimony received up to this point on the rulemaking indicate that models of governance within membership organizations are nearly as numerous as the number of organizations themselves. Taking this organizational diversity into account, and in the wake of the *Akins* and *Chamber* decisions, the Commission believes it should avoid prescribing an extensive list of permissible organizational attachments. For this reason the Commission is proposing that, while certain types of activities included in Alternatives A and B of the 1997 NPRM be included in the rules as instructive examples, the new rule simply provides that members be given the right to play a significant, non-advisory role in the organization's governance. Under this approach, 11 CFR 100.8(b)(4)(iv)(B)(*3*) and 114.1(e)(2)(iii) would be amended to require ''direct and enforceable participatory and governing rights'' in the organization. The Commission notes that such rights would be required only in the situation where members did not pay a specific, predetermined amount of annual dues to the organization.

Alternatives A and B would both provide that students and lifetime members of certain entities could qualify as ''members'' of a membership organization upon payment of lesser annual dues, and without reference to voting rights. 62 FR 66837. The Commission is now proposing to revise 11 CFR 100.8(b)(iv)(D) and 114.1(e)(5) to expressly provide the same treatment to retired union members who have paid dues as active members for at least ten years (in satisfaction of the requirement of a significant financial attachment) but who are no longer required to do so. The Commission believes that, upon retirement, union members maintain a significant ''organizational attachment'' to their unions by virtue of insurance policies and other retirement benefits.

Finally, in those cases where state law does not allow certain organizations to have ''members'' for policy reasons unrelated to the FECA, the revised NPRM would add language to clarify that those organizations still could be recognized as ''membership organizations'' for FECA purposes. The Commission is seeking specific comments on the implications of this proposal and the relationship between state and Federal law in this area.

In addition, the Commission is proposing that the definition of ''membership organization,'' for purposes of section 100.8(b)(4) only, also include unincorporated associations. The term ''unincorporated association'' would cover those entities that are not trade associations, cooperatives, corporations without capital stock, or labor organizations, that nevertheless met the requirements set forth in these rules. This change would address the situation under the current rules in which, if an unincorporated membership group wishes to support one of its member's campaign for Congress with a mailing to the organization's members, the costs of that mailing would constitute a contribution to that candidate, subject to the limit established at 2 U.S.C. 441a(a)(1)(A).

The application of the membership organization ''internal communication'' exception to an unincorporated association is a potentially significant change from current Commission policy, on which the Commission welcomes comment. One possible ramification of this proposal concerns the manner in which the costs of these communications are reported. If a membership communication was made independently of any candidate's campaign, section 431(9) only requires that the costs be reported if they exceed $2000 per election and the communication is not part of a publication that is primarily devoted to topics other than express advocacy of a candidate's election or defeat. 11 CFR 100.8(b)(4). Moreover, only the costs, and not the sources of the funds expended, must be reported. 11 CFR 104.6(c). In contrast, section 434(c) of the Act requires a person (other than a political committee) to report independent expenditures once the costs exceed $250.

A second possible effect concerns internal communications that are coordinated with a candidate. The Commission's current rules allow corporations and labor organizations that wish to make internal communications to their restricted class to coordinate the communication with a candidate, although such coordination could compromise the independence of later activity by that entity or its SSF. *See* 11 CFR 114.2(c). An unincorporated association, unlike corporations and labor organizations, is permitted to make contributions from its treasury funds to candidates. If these unincorporated associations are permitted to coordinate express advocacy communications to their ''members'', the amount they could spend on such communications would be unlimited rather than subject to the Act's contribution limits under section 441a.

An argument can be made that the proposed addition of unincorporated associations to the internal communications exception is in conflict with the balancing approach adopted by Congress in crafting the current statutory scheme. Under this approach, Congress gave the corporations and unions who were subject to section 441b certain rights in return for other obligations and restrictions, which are balanced by other rights and restrictions in the law for individuals and unincorporated entities.

Please note, however, that the Commission does not intend by this proposed change to signal that unincorporated associations could begin establishing, and paying the unlimited costs of, a separate segregated fund. See 2 USC 441b(b)(2)(C). *Cf. California Medical Association* v. *FEC*, 453 U.S. 182 (1981). For this reason, the proposal to add unincorporated associations would only be made in section 100.8(b)(4) of the regulations. To avoid any confusion, the Commission will make conforming changes to Part 114 in the final rules to clarify that membership organizations referred to in that part are limited to ''incorporated'' entities, if the proposal to add unincorporated groups is approved by the Commission at the final rule stage.

The Commission also welcomes comments on any related topic.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These proposed rules would not, if promulgated, have a significant economic impact on a substantial

number of small entities. The basis for this certification is that the rules would broaden the current definition of who qualifies as a member of a membership association, thus expanding the opportunity for such associations to send electoral advocacy communications and solicit contributions to their separate segregated funds, but would not require any expenditure of funds. Therefore, no significant impact would result for purposes of this requirement.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraphs (b)(4) introductory text and (b)(4)(iv) to read as follows:

§ 100.8 Expenditure (2 U.S.C. 431(9)).

* * * * *

(b) * * *

(4) Any cost incurred for any communications by a membership organization, including a labor organization, to its members, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, as long as the communication is subject to the direction and control of that entity and not any other person, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

* * * * *

(iv) (A) For purposes of paragraph (b)(4) of this section *membership organization* means an unincorporated association, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(*1*) Is composed of members;

(*2*) Expressly states the rights, qualifications, obligations and requirements for membership in its articles, bylaws and other formal organizational documents;

(*3*) Is self-governing, such that the power and authority to direct, and control the association is vested in some or all members, pursuant to its articles, by laws and other formal organizational documents;

(*4*) Makes its articles, bylaws and other formal organizational documents freely available to its members;

(*5*) Expressly solicits members;

(*6*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list; and

(*7*) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

(B) For purposes of paragraph (b)(4) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, affirm their membership on at least an annual basis and either:

(*1*) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake;

(*2*) Are required to pay on a regular basis a specific amount of annual dues of an amount predetermined by the organization; or

(*3*) Have a significant organizational attachment to the membership organization which includes direct and enforceable participatory and governing rights. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; or the right to participate directly in similar aspects of the organization's governance.

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership organization for purposes of this section have a significant organizational or financial attachment to the organization under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*3*) of this section, retired members of a local union who have paid dues for a period of at least ten years are considered members of the union; and members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(E) In the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraph (b)(4)(iv)(B)(*1*), (*2*), (*3*) or (*4*) of this section shall also qualify as a member of all affiliates for purposes of paragraph (b)(4)(iv) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(F) The status of a membership organization, and of members, for purposes of paragraph (b)(4) of this section, shall be determined pursuant to paragraph (b)(4)(iv) of this section and not by provisions of state law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock, or labor organizations.

* * * * *

PART 114—CORPORATE AND LABOR UNION ACTIVITY

3. The authority citation for Part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph 114.1(e) to read as follows:

§ 114.1 Definitions.

* * * * *

(e)(1) For purposes of paragraph (e) of this section *membership organization* means a trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Is composed of members;

(ii) Expressly states the rights, qualifications, obligations and

requirements for membership in its articles, bylaws and other formal organizational documents;

(iii) Is self-governing, such that the power and authority to direct, and control the association is vested in some or all members, pursuant to its articles, by laws and other formal organizational documents;

(iv) Makes its articles, bylaws and other formal organizational documents freely available to its members;

(v) Expressly solicits members;

(vi) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list; and

(vii) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

(2) For purposes of paragraph (e) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, affirm their membership on at least an annual basis and either:

(i) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake;

(ii) Are required to pay on a regular basis a specific amount of annual dues of an amount predetermined by the organization; or

(iii) Have a significant organizational attachment to the membership organization which includes direct and enforceable participatory and governing rights. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; or the right to participate directly in similar aspects of the organization's governance.

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership organization for purposes of this section have a significant organizational or financial attachment to the organization under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

(4) Notwithstanding the requirements of paragraphs (e)(2) (i) through (iii) of this section, retired members of a local union who have paid dues for a period of at least ten years are considered members of the union; and members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

(5) In the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraph (e)(2) (i), (ii), (iii) or (iv) of this section shall also qualify as a member of all affiliates for purposes of paragraph (e)(1) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

(6) The status of a membership organization, and of members, for purposes of this part, shall be determined pursuant to paragraph (e)(1) of this section and not by provisions of state law governing trade associations, cooperatives, corporations without capital stock, or labor organizations.

* * * * *

§ 114.7 [Amended]

5. In § 114.7, paragraph (k) would be removed.

§ 114.8 [Amended]

6. In § 114.8, paragraph (g) would be removed and reserved.

Dated: December 11, 1998.

Scott E. Thomas,

Acting Chairman, Federal Election Commission.

[FR Doc. 98–33317 Filed 12–15–98; 8:45 am]

BILLING CODE 6715–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611, 614, and 618

RIN 3052–AB87

Organization; Loan Policies and Operations; General Provisions; Chartered Territories

AGENCY: Farm Credit Administration.

ACTION: Proposed rule; comment period extension.

SUMMARY: The Farm Credit Administration (FCA) Board extends the comment period on the proposed rule that would allow Farm Credit System (FCS) customers to do business with the FCS association of their choice. The FCA Board extends the comment period on the proposed rule for 90 more days so interested parties have additional time to provide comments.

DATES: Please send your comments to us on or before May 10, 1999.

ADDRESSES: You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of the FCA's interactive website at ''www.fca.gov.'' Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

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

SUPPLEMENTARY INFORMATION: On November 9, 1998, we published a proposed rule in the **Federal Register** to amend regulations in parts 611, 614, and 618 so farmers, ranchers, and other eligible customers could seek financing and related services from any FCS lender operating under title I or II of the Farm Credit Act of 1971, as amended. The rule proposes to eliminate geographic barriers that often prevent a Farm Credit System lender from serving customers beyond its designated territory. At the same time, the rule continues to ensure that every eligible customer will have access to FCS credit and related services. The comment period will expire on February 8, 1999. *See* 63 FR 60219, November 9, 1998. In response to several requests, we now extend the comment period until May 10, 1999, so you will have more time to respond.

Dated: December 10, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–33340 Filed 12–15–98; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Orlando Class B Airspace Area, FL; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces two fact-finding informal airspace meetings. The purpose of these meetings is to provide interested parties the opportunity to present views, recommendations, and comments on the proposal to modify the Orlando Class B airspace area, FL.

DATES: *Meeting:* The informal airspace meetings will be held on Wednesday, February 17, and Thursday, February 18, 1999, starting at 7:00 p.m. *Comments:* Comments must be received on or before March 31, 1999.

ADDRESSES: On February 17, 1999, the meeting will be at the Kissimmee Municipal Airport Terminal Building, 301 N. Dyer Blvd., Kissimmee, FL. On February 18, 1999, the meeting will be at Hangar 241, Orlando Executive Airport, 241 N. Crystal Lake Dr., Orlando, FL.

COMMENTS: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Nancy Shelton, Air Traffic Division, ASO–500, FAA, Southern Regional Office, telephone (404) 305–5585.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meeting:

(a) The meetings will be informal in nature and will be conducted by a representative of the FAA Southern Region. Representatives from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) The meeting will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of the meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) The meetings will not be formally recorded. However, a summary of the comments made at the meetings will be filed in the docket.

Agenda for the Meetings

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Background for Proposals.
Public Presentations and Comments.
Closing Comments.

Issued in Washington, DC, on December 7, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–32966 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–21]

Proposed Establishment of Class E Airspace; Barter Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Barter Island, AK. The establishment of Global Positioning System (GPS) and Nondirectional Radion Beacon (NDB) instrument approaches at Barter Island, AK, has made this action necessary. The Barter Island Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in the provision of adequate controlled airspace for IFR operations at Barter Island, AK.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–21, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; e-mail: Robert.van.Haastert@faa.dot.gov. Internet address: http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for

examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Barter Island, AK, through the establishment of GPS and NDB instrument approaches to Barter Island, AK. The Barter Island Airport status will be upgraded from VFR to IFR. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Barter Island, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace listed in this document would be published in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Barter Island, AK [New]

Barter Island Airport, AK
(Lat. 70° 08′ 02″ N., long. 143° 34′ 55″ W.)
Barter Island NDB
(Lat. 70° 07′ 50″ N., long. 143° 38′ 38″ W.)

That airspace extending upward from 700 feet above the surface within a 4.7 mile radius of the Barter Island Airport; and that airspace extending upward from 1,200 feet above the surface within the area bounded by a line beginning at lat. 70° 17′ 07″ N., long. 142° 47′ 30″ W. to lat. 69° 59′ 40″ N., long. 142° 55′ 45″ W. to lat. 69° 41′ 50″ N., long. 143° 39′ 55″ W. to lat. 69° 42′ 25″ N., long. 144° 03′ 50″ W. to lat. 70° 05′ 20″ N., long. 144° 30′ 00″ W. to lat. 70° 14′ 31″ N., long. 144° 35′ 00″ W., thence east 12 miles away and parallel to the shoreline to the point of beginning.

* * * * *

Issued in Anchorage, AK, on December 7, 1998.

Joseph F. Woodford,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–33294 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–22]

Proposed Revision of Class E Airspace; Soldotna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Soldotna, AK. The establishment of Global Positioning System (GPS) instrument approaches to runway (RWY) 07 and RWY 25 at Soldotna, AK, have made this action necessary. Adoption of this proposal would result in the provision of adequate controlled airspace for Instrument Flight Rules (IFR) operations at Soldotna, AK.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 98–AAL–22, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Robert van Haastert, Operations Branch, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5863; fax: (907) 271–2850; email: Robert.van.Haastert@faa.dot.gov. Internet address: http://

www.alaska.faa.gov/at or at address http://162.58.28.41/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AAL–22.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su__docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Soldotna, AK, through the establishment of GPS instrument approaches to RWY 07 and RWY 25. The intended effect of this proposal is to provide adequate controlled airspace for IFR operations at Soldotna, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as a 700/1200 foot transition area, are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace listed in this document would be revised and published in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

AAL AK E5 Soldotna, AK

Soldotna Airport, AK
(Lat. 60°28′34″ N., long. 151°01′57″ W.)
Kenai VOR/DME
(Lat. 60°36′53″ N., long. 151°11′43″ W.)
Soldotna NDB
(Lat. 60°28′30″ N., long. 150°52′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Soldotna Airport and within 4 miles each side of the 150° and 330° radial of the Kenai VOR/DME extending from the 6.4-mile radius airport to 10 miles west of the airport and within 4 miles either side of the 270° bearing from the Soldotna NDB extending from the 6.4-mile radius to 21 miles west of the airport and within 4.6 miles north and 4 miles south of the 090° bearing from the Soldotna NDB extending from the 6.4-mile radius to 14.3 miles east of the airport.

* * * * *

Issued in Anchorage, AK, on December 7, 1998.

Joseph F. Woodford,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 98–33293 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 423

Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods

AGENCY: Federal Trade Commission.

ACTION: Announcement of public workshop-conference.

SUMMARY: The Federal Trade Commission (''the Commission'') will hold a public workshop-conference in

connection with the notice of proposed rulemaking published May 8, 1998 proposing amendments to its Trade Regulation Rule on Care Labeling of Textile Wearing Apparel and Certain Piece Goods, 16 CFR Part 423 (''the Care Labeling Rule'' or ''the Rule''). The workshop-conference will be for discussion of issues related to care labeling instructions for home laundering and professional wetcleaning of textile wearing apparel.

DATES: The public workshop-conference will take place on Friday, January 29, 1999, from 9:00 a.m. until 5:30 p.m. Members of the public who are interested in participating in the public workshop-conference must notify the Commission's staff in writing on or before January 14, 1999.

ADDRESSES: Notification of interest in participating in the public workshop-conference should be submitted in writing on or before January 14, 1999, to James G. Mills, Division of Enforcement, Rm. 4616, Federal Trade Commission, Washington, DC 20580. The public workshop-conference will take place in Room 432 of the Federal Trade Commission Headquarters Building, 600 Pennsylvania Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Constance M. Vecellio, (202) 326–2966, or James G. Mills, (202) 326–3035, Attorneys, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Care Labeling Rule

The Care Labeling Rule was promulgated by the Commission on December 16, 1971, 36 FR 23883. In 1983, the Commission amended the Rule to clarify its requirements by identifying in greater detail the washing or dry cleaning information to be included on care labels. 48 FR 22733 (1983). The Care Labeling Rule, as amended, requires manufacturers and importers of textile wearing apparel and certain piece goods to attach care labels to these items stating what regular care is needed for the ordinary use of the product. 16 CFR 423.6(a) and (b). The Rule also requires that the manufacturer or importer possess, prior to sale, a reasonable basis for the care instructions. 16 CFR 423.6(c).

B. Procedural History

1. Regulatory Review of the Rule

As part of its continuing review of its trade regulation rules to determine their current effectiveness and impact, the Commission published a **Federal Register** notice on June 15, 1994, seeking comment on the costs and benefits of the Rule, and related questions, such as what changes in the Rule would increase the Rule's benefits to purchasers and how those changes would affect the costs the Rule imposes on firms subject to its requirements. 59 FR 30733 (''the 1994 Notice''). The comments in response to the 1994 Notice generally expressed continuing support for the Rule, stating that correct care instructions benefit consumers by extending the useful life of the garment, by helping the consumer maximize the appearance of the garment, and/or by allowing the consumer to take the ease and cost of care into consideration when making a purchase.

2. The ANPR

Based on this review, the Commission determined to retain the Rule, but to seek additional comment on possible amendments to the Rule. To begin the process, the Commission published an Advance Notice of Proposed Rulemaking on December 28, 1995, 60 FR 67102 (''the ANPR''). In the ANPR, the Commission discussed and solicited comment on standards for water temperature, the desirability of a home washing instruction and a wet cleaning instruction for items for which such processes are appropriate, and the Rule's reasonable basis standard. The Commission received 64 comments in response to these issues.

3. The NPR

Based on the comments responding to the ANPR, and on other evidence, the Commission published a Notice of Proposed Rulemaking in May 1998, 63 FR 25417 (May 8, 1998) (''the NPR''), in which the Commission proposed the following specific amendments to the Rule and sought comments thereon:

1. An amendment to require that an item that can be safely cleaned by home washing be labeled with instructions for home washing;

2. An amendment to establish a definition in the Rule for ''professional wetcleaning'' and to permit manufacturers to label a garment that can be professionally wetcleaned with a ''professionally wetclean'' instruction;

3. An amendment to clarify that manufacturers must establish a reasonable basis for care instructions for an item based on reliable evidence for each component of the item in conjunction with reliable evidence for the garment as a whole; and

4. An amendment changing the definitions of ''cold,'' ''warm'' and ''hot'' water to be consistent with those of the American Association of Textile Chemists and Colorists (''AATCC''), and adding a new term—''very hot''—and corresponding definition consistent with AATCC's term and definition.

The NPR also included six specific questions to elicit information on the proposed amendments.

In the NPR, the Commission made the following announcement:

> The Commission has determined, pursuant to 16 CFR 1.20, to follow the procedures set forth in this notice for this proceeding. The Commission has decided to employ a modified version of the rulemaking procedures specified in Section 1.13 of the Commission's Rules of Practice. The proceeding will have a single Notice of Proposed Rulemaking, and disputed issues will not be designated.
>
> The Commission will hold a public workshop-conference to discuss the issues raised by this NPR. Moreover, if comments in response to this NPR request hearings with cross-examination and rebuttal submissions, as specified in Section 18(c) of the Federal Trade Commission Act, 15 U.S.C. 57a(c), the Commission will also hold such hearings. After the public workshop, the Commission will publish a notice in the **Federal Register** stating whether hearings will be held in this matter, and, if so, the time and place of hearings and instructions for those desiring to present testimony or engage in cross-examination of witnesses.

63 FR 25425–26 (May 8, 1998).

The Commission also stated in the NPR that it would announce the time and place of the workshop-conference after the comment period, which closed on July 27, 1998. Today's notice announces that the workshop-conference will take place on January 29, 1999, from 9:00 a.m. until 5:30 p.m. in room 432 of the Commission's Headquarters Building at 600 Pennsylvania Avenue, NW, Washington, DC.

There were no requests for hearings in the 38 comments received in response to the NPR.[1] Therefore, the Commission

[1] The comments were from: five consumers; one consumer group; one academician; two textile fiber manufacturer associations; two apparel manufacturer associations; one apparel manufacturer; one apparel retailer; five professional cleaner associations; eight professional cleaners; one international association for textile care labeling; three laundry equipment manufacturers; two manufacturers of cleaning products; one environmental protection group; one non-profit research and technical assistance organization; one non-profit clearinghouse for information on emissions control; one home appliance manufacturer trade association; one home appliance repairman; and one foreign nation. The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 6th

Continued

will not hold public hearings in this matter. Six comments contained requests to participate in the workshop-conference.

II. Comments on the Issues in the NPR That Will Form the Basis of the Workshop-Conference

As a result of its initial analysis of the comments responding to the NPR, the Commission has concluded that the comments addressing two of its proposals—to require a home washing instruction for home-washable products and to permit a ''Professionally Wetclean'' instruction for items for which that care method would be appropriate—express points of view that merit further discussion. The Commission will base its analysis of the other two proposals (relating to water temperature standards and the Rule's reasonable basis requirement) on the written comments in the record, and will include a discussion of these proposals in the Statement of Basis and Purpose that the Commission will publish along with any final amendments to the Rule. Those proposals will not be discussed at the workshop-conference.

A. The Home-Washing Instruction

The 17 comments responding to the proposal to require washing instructions for items that could be home-laundered (with a ''Dryclean'' instruction optional, if appropriate) expressed divergent views. Some supported the proposal as stated. Others favored requiring both drycleaning and home laundering instructions if both were appropriate. Still others opposed the proposal altogether, contending that it would necessitate additional testing by manufacturers in order to have a reasonable basis for both methods of care, instead of only one, and recommended that the Rule remain unchanged in this regard.

Twelve comments addressed how consumers interpret a ''Dryclean'' instruction. Many said there was no empirical evidence on this point, but they believed that consumers think it means that an item so labeled cannot be washed at home. The Clorox Company (comment no. 22) submitted a random digit dial telephone interview survey of 1,000 nationally representative adult consumers conducted by an independent market research firm. Half the consumers interviewed in the survey had laundered items labeled ''Dryclean,'' and 60% of these respondents were generally satisfied with the results. The study showed that nearly 90% of consumers interviewed would prefer care labels to include washing instructions. This suggests that a significant percentage of garments that are labeled ''Dryclean'' may be home laundered; moreover, consumers expressed an overwhelming preference to be given such information. In addition, the survey suggests that consumers may not treat ''Dryclean'' and ''Dryclean Only'' instructions differently, although under the current Rule they have distinctly different meanings.[2] This research, which was not available to the other commentors when they filed their comments, provides empirical evidence of consumers' views and their behavior when they make decisions on how to care for a garment labeled for drycleaning. Accordingly, the Commission requests that participants in the workshop-conference review this study and be prepared to discuss its findings. This research is now on the public record with the other comments.

B. The ''Professionally Wetclean'' Instruction

The NPR proposed an amendment that would include a definition for wetcleaning and permit (but not require) a wetcleaning instruction together with the item's fiber content, a recommendation of at least one type of cleaning equipment (unless all types of commercially available professional cleaning equipment would be appropriate), and one other appropriate method of cleaning (or a warning that the item cannot be washed or drycleaned, if such is the case). The NPR also asked for information on the number of domestic businesses that provide professional wetcleaning to the public on a regular basis and the appropriateness of the proposed wetcleaning amendment.

Twenty-five comments addressed the proposed wetcleaning instruction and/or responded to the question in the NPR relating to it. A few opposed the proposal, maintaining that the technology and availability of wetcleaning are not yet advanced enough to justify a wetcleaning instruction. Most favored some kind of wetcleaning instruction, but recommended varying circumstances under which the instruction should be allowed. Some comments favored the proposed requirement to include another appropriate care method with the wetcleaning instruction, while others thought the alternative (*i.e.*, the non-wetcleaning instruction) should be permitted, but not required. Several favored *requiring* the professional wetcleaning instruction when the method would be appropriate, maintaining that, if the instruction were only permitted, not all manufacturers would use it, which would lead consumers to conclude erroneously that, when it was not used on a garment with a ''Dryclean'' label, the garment could not be professionally wetcleaned. Several commentors addressed the proposal that the label specify a type of wetcleaning equipment. Of these, most thought this requirement would be unnecessary and too limiting, with some contending that it would appear to be an endorsement of certain kinds of laundering equipment.

Of the six comments that addressed the proposal to include fiber content on care labels that show a ''Professionally Wetclean'' instruction, five favored the idea, with most suggesting that all care labels be required to include fiber content. These commentors maintained that the resulting extra label size requirement (to accommodate the fiber content information) should apply equally to labels with all types of instructions. To do otherwise, they contended, would create a disincentive for manufacturers to elect to include the ''Professionally Wetclean'' instruction, which would necessitate the larger label.

In the NPR, the Commission proposed the following definition for ''professional wetcleaning'':

> (h) *Professional wet cleaning* means a system of cleaning by means of equipment consisting of a computer-controlled washer and dryer, wet cleaning software, and biodegradable chemicals specifically formulated to safely wet clean wool, silk, rayon, and other natural and man-made fibers. The washer uses a frequency-controlled motor, which allows the computer to control precisely the degree of mechanical action imposed on the garments by the wet cleaning process. The computer also controls time, fluid levels, temperatures, extraction, chemical injection, drum rotation, and extraction parameters. The dryer incorporates a residual moisture (or humidity) control to prevent overdrying of delicate garments. The wet cleaning chemicals are formulated from constituent chemicals on the EPA's public inventory of approved chemicals pursuant to the Toxic Substances Control Act.

St. and Pennsylvania Avenue, NW, Washington, D.C. The comments also are available for inspection on the Commission's website at <www.ftc.gov/bcp/rulemaking/carelabel/comments/comlist.htm>.

[2] The Rule currently requires either a washing instruction or a drycleaning instruction for items that can be safely subjected to both processes; it does not require both instructions. Thus, a manufacturer using a ''Dryclean'' instruction needs to be able to substantiate only that drycleaning is an acceptable method of care. In contrast, a manufacturer that uses a ''Dryclean Only'' instruction must be able to substantiate both that drycleaning refurbishes the garment without damage and that home washing would result in damage to the garment.

Eleven comments addressed this proposed definition. A few favored the proposed definition, some agreeing with the text as it appeared in the NPR, and some suggesting minor modifications. Others rejected the proposed language outright with no further comment. Several comments maintained that the proposal was too narrow because it encompassed only the newest technology without including the more traditional knowledge and expertise of the individual cleaner relying on personal experience and using simpler equipment. Most of these comments offered their own, simpler definitions that incorporated their concerns; two of these agreed with a definition that was submitted by the Center for Neighborhood Technology:

> Wetcleaning is the cleaning of clothes in a commercial setting with a water-based system that utilizes specially formulated detergents, and precise control (either manual or computerized) over the mechanical action, water temperature and level, and carefully regulated drying. Wetcleaning spotting is done by using products designed for the process that can be safely discharged to sewer systems. Pressing of wetcleaned garments may be done either with conventional professional pressing equipment, or with tensioning finishing equipment and/or drying cabinets for greater productivity.

There was little agreement among the 12 comments that addressed the question in the NPR as to the number of domestic cleaning establishments that provide wetcleaning services to the public. Several stated specific numbers, ranging from ''very few—around 100,'' to 200 and up to 350. Some suggested that the number is low enough that permitting a wetcleaning instruction under any circumstances would be premature. Other comments pointed out that the number of establishments devoted exclusively to wetcleaning understates the actual availability of wetcleaning, because the service is often available from cleaners that also use other methods of refurbishing.

III. Specific Issues for Discussion at the Workshop-Conference

The following issues will form the basis for discussion at the workshop-conference:

1. a. Should the Rule be amended to require a washing instruction for all items that can safely be washed at home, even if drycleaning would be an appropriate alternative care method?

b. Should a washing instruction be required if the item can be successfully refurbished by washing but its useful life would be extended by drycleaning?

c. Can criteria be identified that would assist manufacturers in determining when a home-laundering instruction, although technically feasible, should not be used because it would result in a less than ideally refurbished garment?

2. a. Should the Commission amend the Rule to permit, or to require, a ''Professionally Wetclean'' instruction?

b. Should the requirement include the statement of a type of professional wetcleaning equipment?

c. Should the inclusion of other appropriate care methods be mandatory or optional?

d. How should the Rule define ''professional wetcleaning''?

The Commission asks that all prospective participants identify which of these issues are of particular interest to them when they submit their written request to participate in accordance with the instruction in the **ADDRESSES** paragraph, above. Prospective participants who wish to address issues not appearing above must identify in their request the issues they wish to raise.

IV. Procedures Governing the Workshop-Conference

The Commission's staff will conduct the workshop-conference to afford Commission staff and affected interests an opportunity to discuss the issues identified above and, in particular, to examine areas of significant controversy of divergent opinions. The workshop-conference will be facilitated by a Commission staff member. Those who are interested in participating in the workshop-conference must notify the Commission's staff by January 14, 1999, as directed in the **ADDRESSES** heading, above. Prospective participants must include with their notification a copy of any statement that they intend to make at the beginning of the proceeding and must indicate which issues in particular are of interest to them. Affected interests may, if they wish, designate a specific party to represent their shared group interests in the workshop-conference. Prior to the workshop-conference, participants will be provided with a tentative agenda.

While the workshop-conference will address primarily those issues identified in the discussion above, participants also will be afforded an opportunity to address such additional related issues as are raised during the proceeding. Commission staff will consider the views and suggestions made during the workshop-conference in conjunction with the written comments in formulating a final recommendation to the Commission concerning the NPR.

If the number of parties who request to participate in the workshop-conference is so large that it would inhibit effective discussion, the Commission staff will select parties to participate from among those who ask. The selections will be made on the basis of the following criteria:

1. The party must have submitted a written comment in response to the 1994 Notice, the ANPR, or the NPR;

2. The party must have notified the Commission's staff of its interest and identified the issues it wishes to discuss by January 14, 1999;

3. The party's attendance would promote a balance of interests being represented at the workshop-conference;

4. The party's participation would promote the consideration and discussion of the issues identified above;

5. The party has expertise in areas affected by the Care Labeling Rule; and

6. The party has been designated by one or more of the affected interests (who have filed written comments and timely requests to participate) as a party who shares group interests with the designator(s).

If it is necessary to limit the number of participants, those not selected to participate, but who have submitted written comments and requests to participate in accordance with the instructions above, will be afforded an opportunity at the end of the conference to present their views during a limited time period. The time allotted for these statement will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make such statements. If any person cannot complete the presentation of his or her statement in the allotted time, that person will be allowed, within 72 hours thereafter, to file a written statement covering those relevant matters that he or she did not present orally. The discussion during the workshop-conference will be transcribed and the transcription will be placed on the public record. After the conclusion of the workshop, the record will remain open for 30 days for additional or rebuttal comments.

V. Legal Authority

This notice is being published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a *et seq.* (''FTC Act''), the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7, and 5 U.S.C. 551 *et seq.* This authority permits the Commission to promulgate, modify, and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting

commerce within the meaning of Section 5(a)(1) of the FTC Act, 15 U.S.C. 45(a)(1).

VI. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's Rules of Practice, 16 CFR 1.18(c) (1997), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized, at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 423

Care labeling of textile wearing apparel and certain piece goods, Trade practices.

Authority: 15 U.S.C. 57a(d)(2)(B).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–33280 Filed 12–15–98; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 270 and 274

[Release No. IC–23588; File No. S7–31–98]

RIN 3235–AG29

Deregistration of Certain Registered Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing for public comment amendments to the rule and form under the Investment Company Act of 1940 that govern the deregistration of registered investment companies. The Commission also is proposing to require that investment companies file the form electronically through the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system. The proposed amendments are designed to expedite the process for deregistering investment companies.

DATES: Comments must be received on or before February 5, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Mail Stop 6–9, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–31–98; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Robin Gross Lehv, Staff Attorney, or Penelope W. Saltzman, Assistant Chief, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Mail Stop 5–6, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is requesting public comment on proposed amendments to rule 8f–1 (17 CFR 270.8f–1) and Form N–8F (17 CFR 274.218) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the ''Investment Company Act'' or ''Act''), and to rule 101 of the Commission's Regulation S–T (17 CFR 232.101).

I. Discussion

A registered investment company (''fund'') that ceases to do business, including one that merges into another fund, generally will file an application requesting that the Commission terminate its registration under the Investment Company Act (*i.e.*, ''deregister'').[1] Under section 8(f) of the Act, the Commission may deregister the fund if it determines the fund is no longer an ''investment company.''[2]

In order to expedite the deregistration process and assist funds in preparing their applications, the Commission adopted rule 8f–1 and Form N–8F in 1978.[3] The rule and form were designed to provide a convenient means for funds, in the most common situations, to apply for a Commission order of deregistration. Rule 8f–1 describes the circumstances in which funds may use Form N–8F to apply for a deregistration order, and Form N–8F specifies the information a fund must provide. Generally, the form may be used by any fund that: (i) Is liquidating; (ii) is merging into another fund; or (iii) has no more than 100 investors, has not made (and does not propose to make) a public offering of its securities, and does not intend to engage in business of any kind.

The Commission is proposing to revise Form N–8F to simplify the form, eliminate unnecessary items,[4] and refocus the questions to better elicit the information the Commission needs to make the finding under section 8(f) to deregister a fund.[5] By refocusing the questions, the proposed amendments are intended to reduce the need for funds to amend their initial applications to provide additional information. The Commission also is proposing to amend rule 8f–1 to expand the types of circumstances in which a fund may use Form N–8F to apply for a deregistration order. These circumstances would include a fund that is deregistering because it (i) qualifies for the exclusion from the definition of investment company provided by section 3(c)(7) of the Act[6] or (ii) has decided to become

[1] If the fund did not deregister, it would continue to have obligations under the Act such as filing annual reports with the Commission. *See* 15 U.S.C. 80a–29(a).

[2] 15 U.S.C. 80a–8(f).

[3] *See* Deregistration of Certain Investment Companies and Quarterly Reports of Management Investment Companies, Investment Company Act Release No. 10237 (May 11, 1978) (43 FR 21664 (May 19, 1978)).

[4] Among other things, the proposed amendments would eliminate descriptions of: (i) Registration statements previously filed by the fund with the Commission, (ii) actions taken by the fund to distribute any proxy materials, and (iii) actions taken under state law with respect to the merger, including documents that have been filed with the state in which the fund is registered. *See* Form N–8F, items 2, 17(c), and 17(e).

[5] For example, the proposed amendments replace the broad question about the circumstances and details of the merger with a specific question about the exchange ratio used to distribute assets to investors and how the ratio was calculated. *See* Form N–8F, item 19; Proposed Form N–8F, item 17(d).

[6] 15 U.S.C. 80a–3(c)(7). Section (c)(7) was added to the Act in 1996. *See* National Securities Markets Improvement Act of 1996, Pub. L. 104–290, sec.

a business development company (''BDC'').[7] Finally, the proposed amendments would require that Form N–8F, like most other documents filed by funds, be submitted electronically through the Commission's EDGAR system.[8] These amendments are designed to simplify and expedite the process for deregistering a fund.

II. General Request for Comment

Any persons wishing to submit comments on the proposed rule and form changes, to suggest additional changes (including changes to provisions of the rule and form that the Commission is not proposing to amend), or to submit comments on other matters that might affect the proposals, are requested to do so. The Commission encourages commenters suggesting alternative approaches to submit proposed rule and form text. The Commission requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission in satisfying its responsibilities under section 2(c) of the Investment Company Act.[9] The Commission encourages commenters to provide data to support their views.

III. Cost-Benefit Analysis

The proposed rule and form amendments are designed to decrease the regulatory burdens for funds that apply for a deregistration order. The amendments would (i) revise the content and format of Form N–8F, making it easier to understand and complete, (ii) expand the circumstances under which funds may use the form to apply to deregister, and (iii) require the form to be filed electronically.

The Commission believes these changes will result in cost and time savings for registered investment companies. The Commission estimates that the proposed amendments to the form would reduce by approximately fifty percent the average time it takes each applicant to complete the form.[10] In addition, the proposed amended form is designed to improve the quality of the information applicants provide. As a result, the Commission expects to reduce by half the number of applications that require additional or clarifying information from applicants.[11] Based on previous cost estimates, the Commission believes the proposed amendments to Form N–8F would save the funds over $5,000 annually.[12]

The Commission requests comment on this cost-benefit analysis. Commenters are encouraged to provide empirical data relating to any costs and benefits associated with the proposed rule and form amendments.

IV. Paperwork Reduction Act

Certain provisions of the proposed amendments to rule 8f–1 and Form N–8F contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is ''Form N–8F.'' The OMB control number for this collection of information is 3235–0157. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The proposed collection of information is not mandatory, but is recommended for all funds that seek to deregister under the circumstances described in rule 8f–1. The responses will not be kept confidential.

The proposed amended form requests applicants to provide information the Commission needs to determine that the applicant has ceased to be an investment company under the Act. This information includes: (i) General identifying information; (ii) information about distributions made to shareholders; (iii) information about assets and liabilities; (iv) information about events leading to the request to deregister; and (v) information about the conclusion of fund business.

Based on Commission staff estimates the reporting and recordkeeping burden for current Form N–8F is approximately six hours.[13] The Commission estimates that if the form is amended as proposed, the amendments will reduce the reporting and recordkeeping burden to three hours per respondent. Based on past experience, the Commission estimates that each year approximately 130 funds will apply to deregister, and that each applicant will apply only once. Therefore, the Commission estimates that the annual reporting and recordkeeping burden for the proposed amended form will be 3 hours per applicant, and 390 hours total for all applicants.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (iii) enhance the quality, utility, and clarity of the information to

209(a)(7)(A) (1996). The Commission also is clarifying that any fund that qualifies for the exclusion from the definition of ''investment company'' under section 3(c)(1) of the Act (15 U.S.C. 80a–3(c)(1)) may use Form N–8F to apply to deregister.

[7] *See* 15 U.S.C. 80a–2(a)(48). A registered investment company that elects to become a BDC is not required to file an application for deregistration. Instead, the Commission generally issues an order on its own motion deregistering the fund. *See* Interim Notification Forms for Business Development Companies, Investment Company Release No. 11703 (Mar. 26, 1981) (46 FR 19459 (Mar. 31, 1981)). The Commission believes, however, that making Form N–8F available to funds that have elected to become BDCs would provide a convenient method for those funds to notify the Commission of the need to deregister them.

[8] Proposed Regulation S–T rules 232.101(a)(1)(iv), .101(c)(11). EDGAR is the Commission's computer system for the receipt, acceptance, review and dissemination of documents submitted to the Commission in electronic format. *See* Regulation S–T rules 232.10, .11(c) (17 CFR 232.10, .11(c)).

[9] Section 2(c) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 80a–2(c).

[10] The proposed amended form would eliminate many of the questions asked by the current form. The amended form also would break up many of the existing compound questions into several separate questions. Therefore, although the actual number of questions on the amended form would be more than the number on the current form, the amended form should take less time to complete.

[11] When the Commission does not have sufficient information to determine whether it can deregister a fund, the staff sends a comment letter to the applicant requesting additional or clarifying information. Applicants provide the information by letter or by amendment to the application. In 1997, for example, out of a sample of 123 applications filed on Form N–8F, the staff issued comment letters regarding 97 applications, and the Commission received amendments to 105. Based on a review of comment letters sent to applicants from August 5, 1996 through September 15, 1997, the Commission estimates that, by eliminating some items on the form and clarifying other items, half of these comment letters would be unnecessary in the future.

[12] The Commission believes the form typically is completed by support staff. Based on an estimated cost of $15 per hour for a clerical worker to complete Form N–8F and an estimate of 130 applications filed each year, the Commission estimates the current total annual cost of filing the form is $11,700 (130 × $15 × 6 hrs.), while the total annual cost of filing the proposed amended form would be $5,850 (130 × $15 × 3 hrs.).

[13] In connection with previous Paperwork Reduction Act submissions to the Office of Management and Budget, the Commission requested comment on the staff's estimate that the time required to complete Form N–8F ranges from approximately two to 12 hours, with an average of six hours. *See, e.g.*, Proposed Collections; Request For Public Comment (62 FR 3721 (Jan. 24, 1997)). This estimate included any amendments to the application that may have been required. The Commission received no comments on these estimates.

be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology. Persons who wish to submit comments on the collection of information requirements should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503; and (ii) Jonathan G. Katz, Secretary, Mail Stop 6–9, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC, 20549 with reference to File No. S7–31–98. OMB is required to make a decision concerning the collections of information between thirty and sixty days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within thirty days of publication.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed amendments to rule 8f–1 and Form N–8F. The following summarizes the IRFA.

Applications currently filed on Form N–8F often do not contain the information needed by the Commission to make its determination under section 8(f) that the fund has ceased to be an investment company. In addition, funds that qualified for an exception from the definition of ''investment company'' under section 3(c)(7) of the Act (''section 3(c)(7) funds'') and BDCs did not exist when rule 8f–1 and Form N–8F were adopted, and therefore are not covered by the rule and form. To address these problems, the Commission is proposing amendments to the rule and form to (i) simplify and clarify their language and format and (ii) permit section 3(c)(7) funds and BDCs to use Form N–8F. These amendments are designed to improve the quality of information provided on the form and to reduce the time and effort required to complete the form. The Commission also is proposing to require funds to file Form N–8F electronically through the EDGAR system to facilitate the filing and availability of applications.

A small business or small organization for purposes of the Investment Company Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[14] Of approximately 3900 active registered investment companies (including BDCs), 339 funds are small entities. Any of these 339 funds that applies to deregister under circumstances described in proposed amended rule 8f–1 could use Form N–8F.

The IRFA states that the proposed rules would not impose any new reporting or recordkeeping requirements. The Commission also believes that there are no rules that duplicate, overlap or conflict with the proposed amendments.

The IRFA discusses the various alternatives considered by the Commission in connection with the proposed amendments that might minimize the effect on small entities. These include: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (b) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rule or any part thereof, for small entities.

The Commission believes that the proposed amendments would decrease burdens on small investment companies by facilitating and expediting the deregistration process. The Commission expects that the proposed amendments to Form N–8F will reduce the time and costs involved in deregistering for all funds that use the form, including small entities. The proposed amendments do not impose new burdens on respondents other than the requirement that the form be filed through the EDGAR system. The Commission believes this requirement would not be a burden for small entities, and may reduce the time it takes to file an application. Like all registered investment companies, small funds currently must file disclosure and other forms on EDGAR.

The IRFA states that the Commission believes that further clarification, consolidation, or simplification of the compliance requirements is not necessary. In addition, the IRFA notes that performance standards are not feasible for applications for deregistration orders and that the proposed amendments would reduce the compliance burdens for all funds, including small entities. The IRFA notes that an exemption from any of the proposed requirements for small entities would likely increase the time to file and process deregistration applications and, therefore, would increase their regulatory burden.

The IRFA includes information concerning the solicitation of comments with respect to the IRFA generally, and in particular, the number of small entities that would be affected by the proposed rules. Cost-benefit information reflected in the ''Cost-Benefit Analysis'' section of this Release also is reflected in the IRFA. A copy of the IRFA may be obtained by contacting Robin Gross Lehv, Mail Stop 5–6, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

VI. Statutory Authority

The Commission is proposing to amend rule 8f–1 and Form N–8F pursuant to the authority set forth in section 38(a) (15 U.S.C. 80a–37(a)) of the Investment Company Act.

List of Subjects

17 CFR Part 232

Reporting and recordkeeping requirements.

17 CFR Part 270

Investment companies, Securities.

17 CFR Part 274

Investment companies, Reporting and recordkeeping requirements.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

1. The authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80–30 and 80a–37.

2. Section 232.101 is amended in paragraph (a)(1)(iv) by removing the phrase '', 8(f)'' and by removing the phrase '', 80a–8(f)''.

3. Section 232.101 is amended in paragraph (c)(11) by removing the phrase ''8(f),'' and by removing the phrase ''80a–8(f),''.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

4. The authority citation for part 270 continues to read, in part, as follows:

[14] Rule 0–10 (17 CFR 270.0–10).

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted;

* * * * *

5. Section 270.8f–1 is revised to read as follows:

§ 270.8f–1 Deregistration of certain registered investment companies.

A registered investment company that seeks a Commission order declaring that it is no longer an investment company may file an application with the Commission on Form N–8F (17 CFR 274.218) if the investment company:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of ''investment company'' under section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act; or

(d) Has become a business development company.

Note to § 270.8f–1: Applicants who are not eligible to use Form N–8F to apply to deregister may apply under rule 0–2 (17 CFR 270.0–2).

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

7. Section 274.218 and Form N–8F are revised to read as follows:

§ 274.218 Form N–8F, application for deregistration of certain registered investment companies.

This form is to be used as the application for an order of the Commission in cases in which the applicant is a registered investment company that:

(a) Has sold substantially all of its assets to another registered investment company or merged into or consolidated with another registered investment company;

(b) Has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs;

(c) Qualifies for an exclusion from the definition of ''investment company'' under section 3(c)(1) (15 U.S.C. 80a–3(c)(1)) or section 3(c)(7) (15 U.S.C. 80a–3(c)(7)) of the Act; or

(d) Has become a business development company.

[Form N–8F does not, and the amendments will not, appear in the Code of Federal Regulations. A copy of Form N–8F is attached as an Appendix to this document.]

Dated: December 4, 1998.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

BILLING CODE 8010–01–U

OMB APPROVAL
OMB Number: 3235-0157
Expires: _____
Estimated average burden hours per response.....3

APPENDIX

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

Form N-8F

Application for Deregistration of Certain Registered Investment Companies.

Instructions for using Form N- 8F

This form may be filed by an investment company ("fund") that is currently registered with the Securities and Exchange Commission under the Investment Company Act of 1940 ("Act"), is seeking to deregister, and is in one of the four categories in Instruction 1 below.

1. To use this form, the fund must be seeking to deregister under one of the following circumstances identified in rule 8f-1 [17 CFR 270.8f-1]:

   (a) The fund has (i) sold substantially all of its assets to another fund or (ii) merged into or consolidated with another fund (**"Merger"**);

   (b) The fund has distributed substantially all of its assets to its shareholders and has completed, or is in the process of, winding up its affairs (**"Liquidation"**);

   (c) The fund qualifies for an exclusion from the definition of "investment company" under section 3(c)(1) or section 3(c)(7) of the Act (**"Abandonment of Registration"**); or

   (d) The fund has become a business development company (**"Business Development Company"**).

2. If the fund is not eligible to use this form, refer to rule 0-2 under the Act [17 CFR 270.0-2] for general instructions on filing an application with the Commission.

3. This form and all exhibits must be submitted electronically to the Commission in accordance with rule 101(a)(1)(iv) of Regulation S-T [17 CFR 232.101(a)(1)(iv)] and the EDGAR filer manual.

4. Amendments to this form also must be filed electronically (see Instruction 3 above), and must include a verification identical to the one that appears at the end of this form.

5. No fee is required to submit this form or any amendments.

6. Funds are reminded that the issuance of an order of deregistration does not eliminate the requirement to timely file a final Form N-SAR [17 CFR 274.101] with the Commission.

SEC's Collection of 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. A fund that wishes to deregister and is in one of the four categories in Instruction 1 may use this form. The principal purpose of this collection of information is to enable the Commission to determine that a registered investment company has ceased to be an investment company as defined by the Act or is a business development company. The Commission estimates that the burden for completing this form will be approximately 3 hours per filing. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate of this form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. § 3507. Responses to this collection of information will not be kept confidential.

TEXT OF THE FORM BEGINS ON THE NEXT PAGE

I. General Identifying Information

1. Reason fund is applying to deregister (check only one; for descriptions, *see* Instruction 1 above):

   [ ] **Merger**

   [ ] **Liquidation**

   [ ] **Abandonment of Registration**
   (Note: Abandonments of Registration answer only questions 1 through 16, 25 and 26 of this form and complete verification at the end of the form.)

   [ ] Election of status as a **Business Development Company**
   (Note: Business Development Companies answer only questions 1 through 11 of this form and complete verification at the end of the form.)

2. Name of fund:

3. Securities and Exchange Commission File No.: 811-

4. Is this an initial Form N-8F or an amendment to a previously filed Form N-8F?

   [ ] Initial Application [ ] Amendment

5. Address of Principal Executive Office (include No. & Street, City, State, Zip Code):

6. Name, address, and telephone number of individual the Commission staff should contact with any questions regarding this form:

7. Name, address and telephone number of individual or entity responsible for maintenance and preservation of fund records in accordance with rules 31a-1 and 31a-2 under the Act [17 CFR 270.31a-1, .31a-2]:

   NOTE: Once deregistered, a fund is still required to maintain and preserve the records described in rules 31a-1 and 31a-2 for the periods specified in those rules.

8. Classification of fund (check only one):

   [ ] Management company;

   [ ] Unit investment trust; or

   [ ] Face-amount certificate company.

9. Subclassification if the fund is a management company (check only one):

[ ] Open-end [ ] Closed-end

10. Date the fund filed a notification of registration under section 8(a) of the Act [15 U.S.C. 80a-8(a)]:

11. State law under which the fund was organized or formed (*e.g.*, Delaware, Massachusetts):

12. Provide the name and address of each investment adviser of the fund (including subadvisers) during the last five years, even if the fund's contracts with those advisers have been terminated:

13. Provide the name and address of each principal underwriter of the fund during the last five years, even if the fund's contracts with those underwriters have been terminated:

14. If the fund is a unit investment trust ("UIT") provide:

(a) Depositor's name(s) and address(es):

(b) Trustee's name(s) and address(es):

15. Is there a UIT registered under the Act that served as a vehicle for investment in the fund (*e.g.*, an insurance company separate account)?

[ ] Yes [ ] No

If Yes, for each UIT state:
Name(s):

File No.: 811-

Business Address:

16. (a) Did the fund obtain approval from the board of directors concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?

[ ] Yes [ ] No

If Yes, state the date on which the board vote took place:

If No, explain:

(b) Did the fund obtain approval from the shareholders concerning the decision to engage in a Merger, Liquidation or Abandonment of Registration?

[ ] Yes [ ] No

If Yes, state the date on which the shareholder vote took place:

If No, explain:

II. Distributions to Shareholders

17. Has the fund distributed any assets to its shareholders in connection with the Merger or Liquidation?

[ ] Yes [ ] No

(a) If Yes, list the date(s) on which the fund made those distributions:

(b) Were the distributions made on the basis of net assets?

[ ] Yes [ ] No

(c) Were the distributions made pro rata based on share ownership?

[ ] Yes [ ] No

(d) If No to (b) or (c) above, describe the method of distributions to shareholders. For Mergers, provide the exchange ratio(s) used and explain how it was calculated:

(e) Liquidations only:
Were any distributions to shareholders made in kind?

[ ] Yes [ ] No

If Yes, indicate the percentage of fund shares owned by affiliates, or any other affiliation of shareholders:

18. Closed-end funds only:
Has the fund issued senior securities?

[ ] Yes [ ] No

If Yes, describe the method of calculating payments to senior securityholders and distributions to other shareholders:

19. Has the fund distributed **all** of its assets to the fund's shareholders?

[ ] Yes [ ] No

If No,

(a) How many shareholders does the fund have as of the date this form is filed?

(b) Describe the relationship of each remaining shareholder to the fund:

20. Are there any shareholders who have not yet received distributions in complete liquidation of their interests?

[ ] Yes [ ] No

If Yes, describe briefly the plans (if any) for distributing to, or preserving the interests of, those shareholders:

III. Assets and Liabilities

21. Does the fund have any assets as of the date this form is filed?

[ ] Yes [ ] No

If Yes,

(a) Describe the type and amount of each asset retained by the fund as of the date this form is filed:

(b) Why has the fund retained the remaining assets?

(c) Will the remaining assets be invested in securities?

[ ] Yes [ ] No

22. Does the fund have any outstanding debts (other than face-amount certificates if the fund is a face-amount certificate company) or any other liabilities?

[ ] Yes [ ] No

If Yes,

(a) Describe the type and amount of each debt or other liability:

(b) How does the fund intend to pay these outstanding debts or other liabilities?

IV. Information About Event(s) Leading to Request For Deregistration

23. (a) List the expenses incurred in connection with the Merger or Liquidation:

(i) Legal expenses:

(ii) Accounting expenses:

(iii) Other expenses (list and identify separately):

(iv) Total expenses (sum of lines (i)-(iii) above):

(b) How were those expenses allocated?

(c) Who paid those expenses?

(d) How did the fund pay for unamortized expenses (if any)?

24. Did the fund file an application for an order of the Commission regarding the Merger or Liquidation?

[ ] Yes [ ] No

If Yes, cite the release numbers of the Commission's notice and order or, if no notice or order has been issued, the file number and date the application was filed:

V. Conclusion of Fund Business

25. Is the fund a party to any litigation or administrative proceeding?

[ ] Yes [ ] No

If Yes, describe the nature of any litigation or proceeding and the position taken by the fund in that litigation:

26. Is the fund now engaged, or intending to engage, in any business activities other than those necessary for winding up its affairs?

[ ] Yes [ ] No

If Yes, describe the nature and extent of those activities:

VI. Mergers Only

27. (a) State the name of the fund surviving the Merger:

(b) State the file number of the fund surviving the Merger: 811-

(c) If the merger or reorganization agreement has been filed with the Commission, state the file number and date the agreement was filed:

(d) If the merger or reorganization agreement has **not** been filed with the Commission, attach a copy of the agreement as an exhibit to this form.

VERIFICATION

The undersigned states that (i) he or she has executed this Form N-8F application for an order under section 8(f) of the Investment Company Act of 1940 on behalf of _____, (Name of Fund) (ii) he or she is the _____ (Title) of _____ (Name of Fund), and (iii) all actions by shareholders, directors, and any other body necessary to authorize the undersigned to execute and file this Form N-8F application has been taken. The undersigned also states that the facts set forth in this Form N-8F application are true to the best of his or her knowledge, information, and belief.

(Signature)

_____

[FR Doc. 98–33137 Filed 12–15–98; 8:45 am]
BILLING CODE 8010–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 20

[REG–114663–97]

RIN 1545–AV45

Marital Deduction; Valuation of Interest Passing to Surviving Spouse

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the effect of certain administration expenses on the valuation of property which qualifies for the estate tax marital or charitable deduction. The proposed regulations define estate transmission expenses and estate management expenses and provide that estate transmission expenses, but not estate management expenses, reduce the value of property for marital and charitable deduction purposes. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by February 16, 1999. Outlines of topics to be discussed at the public hearing scheduled for April 21, 1999, at 10 a.m., must be received by March 31, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–114663–97), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–114663–97), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax__regs/comments.html. The public hearing will be held in Room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Deborah Ryan (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1997, the Supreme Court of the United States issued its decision in *Commissioner* v. *Estate of Hubert*, 520 U.S. 93 (1997) (1997–32 I.R.B. 8), in which it considered the proper interpretation of § 20.2056(b)–4(a) of the Estate Tax Regulations. On November 24, 1997, the IRS issued Notice 97–63 (1997–47 I.R.B. 6), requesting comments on alternatives for amending § 20.2056(b)–4(a) in light of the Supreme Court's *Estate of Hubert* decision. Section 2056(b)(4) provides that, in determining the value of an interest in property which passes from the decedent to the surviving spouse for purposes of the marital deduction, account must be taken of any encumbrance on the property or any obligation imposed on the surviving spouse by the decedent with respect to the property. Section 20.2056(b)–4(a) of the Estate Tax Regulations amplifies this rule by providing that account must be taken of the effect of any material limitations on the surviving spouse's right to the income from the property. The regulation provides, for example, that there may be a material limitation on the surviving spouse's right to the income from marital trust property where the income is used to pay administration expenses during the period between the date of the decedent's death and the date of distribution of the assets to the trustee.

The facts in *Estate of Hubert* are similar to a common fact pattern wherein the decedent's will provides for a residuary bequest to a marital trust which qualifies for the marital deduction and also provides that estate administration expenses are to be paid from the residuary estate. Further, the will (or state law) permits the executor to use the income generated by the residuary estate (otherwise payable to the marital trust) to pay administration expenses, and the executor does so. The issue before the Supreme Court in *Estate of Hubert* was whether the executor's use of the income to pay estate administration expenses was a material limitation on the surviving spouse's right to the income which would reduce the marital deduction under § 20.2056(b)–4(a).

The issue in *Estate of Hubert* also involved the estate tax charitable deduction, and the proposed regulations relate to the valuation of property for both marital and charitable deduction purposes. However, for simplicity and clarity, this discussion focuses on the provisions of the estate tax marital deduction.

In *Estate of Hubert*, the Commissioner argued that the payment of administration expenses from income is, per se, a material limitation on the surviving spouse's right to income for purposes of § 20.2056(b)–4(a), and, therefore, the value of the marital bequest should be reduced dollar for dollar by the amount of income used to pay administration expenses. The Court agreed that the value of the marital bequest should be reduced if the use of income to pay administration expenses is a material limitation on the spouse's right to income. The Court found, however, that the regulation does not define material limitation and that the Commissioner had not argued that the use of income in this case was a material limitation. Thus, the Court held for the taxpayer.

In Notice 97–63 (November 24, 1997), the IRS requested comments on possible approaches for proposed regulations in light of the *Estate of Hubert* decision. Notice 97–63 suggested three alternative approaches for determining when the use of income to pay administration expenses constitutes a material limitation on the surviving spouse's right to income. One approach distinguished between administration expenses that are properly charged to principal and those that are properly charged to income and provided that there is a material limitation on the surviving spouse's right to income if income is used to pay an estate administration expense that is properly charged to principal. A second approach provided a de minimis safe harbor amount of income that may be used to pay administration expenses without constituting a material limitation on the surviving's spouse's right to income. A third approach provided that any charge to income for the payment of administration expenses constitutes a material limitation on the spouse's right to income.

Notice 97–63 also asked for comments on whether the test for materiality should be based on a comparison of the relative amounts of the income and the expenses charged to the income; whether materiality should be based on projections as of the date of death rather than on the facts that develop afterwards; and whether present value principles should be applied.

In response to Notice 97–63, several commentators suggested that local law should be determinative of whether an expense is a proper charge to income or principal. If the testamentary document directs the executor to charge expenses to income, and the charge is allowed under applicable local law, then the charge to income should not be treated

as a material limitation on the spouse's right to income.

This approach was not adopted because statutory provisions relating to income and principal may vary from state to state, and this would result in disparate treatment of estates that are similarly situated but governed by different state law. Moreover, in states that have adopted some form of the Uniform Principal and Income Act, the definitions of principal and income, and the allocation of expenses thereto, can be specified in the will or trust instrument and given the effect of state law. Thus, simply following state law was thought to be too malleable to protect the policies underlying the marital and charitable deductions.

Several commentators agreed with the de minimis safe harbor approach whereby a certain amount of income could be used to pay administration expenses without materially limiting the surviving spouse's right to the income. Under this approach, the safe harbor amount is determined in two steps: first, the present value of the surviving spouse's income interest for life is determined using actuarial principles and, second, the resulting amount is multiplied by a percentage, for example, 5 percent.

The proposed regulations do not adopt this approach. Although a de minimis safe harbor approach would provide a bright line test for determining materiality in the context of the marital deduction, it is unclear how this approach would apply for charitable deduction purposes because there is no measuring life for valuing the income interest.

One commentator suggested that, consistent with the plurality opinion in *Estate of Hubert*, the test for materiality should be quantitative, based upon a comparison between the amount of income charged with administration expenses and the total income earned during administration. The commentator, however, considered the requirement that projected income and expenses be presently valued to be impractical, complex, and uncertain. Another commentator considered a quantitative test to be impractical. A third commentator suggested that a quantitative test would require a factual determination in each case and, as a result, the period of estate administration would be greatly prolonged.

Because these tests for materiality appear to be complex and difficult to administer, the proposed regulations adopt neither a quantitative test nor a test based on present values of projected income and expenses.

Many commentators opposed an approach in which every charge to income is a material limitation on the spouse's right to income. Two commentators contended that adoption of this approach would effectively overrule the result in *Estate of Hubert.*

One commentator suggested the approach adopted in the proposed regulations, a description of which follows, and two commentators suggested similar approaches.

Explanation of Provisions

After carefully considering the comments, the Treasury and the Internal Revenue Service have determined that a test based on what constitutes a material limitation would prove too complex and would be administratively burdensome. For this reason, the proposed regulations eliminate the concept of materiality and, instead, establish rules providing that only administration expenses of a certain character which are charged to the marital property will reduce the value of the property for marital deduction purposes. It is anticipated that these rules will have uniform application to all estates, will be simple to administer, and will reflect the economic realities of estate administration. These same rules will also apply for purposes of the estate tax charitable deduction.

Under the proposed regulations, a reduction is made to the date of death value of the property interest which passes from the decedent to the surviving spouse (or to a charitable organization described in section 2055) for the dollar amount of any estate transmission expenses incurred during the administration of the decedent's estate and charged to the property interest. Such a reduction is proper because these expenses would not have been incurred but for the decedent's death. No reduction is made for estate management expenses incurred with respect to the property and charged to the property because these expenses would have been incurred even if the death had not occurred. However, a reduction is made for estate management expenses charged to the marital property interest passing to the surviving spouse if the expenses were incurred in connection with property passing to someone other than the surviving spouse and a person other than the surviving spouse is entitled to the income from that property. Estate transmission expenses are all estate administration expenses that are not estate management expenses and include expenses incurred in collecting estate assets, paying debts, estate and inheritance taxes, and distributing the decedent's property. Estate management expenses are expenses incurred in connection with the investment of the estate assets and with their preservation and maintenance during the period of administration.

Proposed Effective Date

These regulations are proposed to be effective for estates of decedents dying on or after the date the regulations are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for April 21, 1999, beginning at 10 a.m. in Room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an

outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by March 31, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Deborah Ryan, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 20.2055–1, paragraph (d)(6) is added to read as follows:

§ 20.2055–1 Deduction for transfers for public, charitable, and religious uses; in general.

* * * * *

(d) * * *

(6) For the effect of certain administration expenses on the valuation of transfers for charitable deduction purposes, see § 20.2056(b)–4(e). The rules provided in that section apply for purposes of both the marital and charitable deductions. This paragraph (d)(6) is effective for estates of decedents dying on or after the date these regulations are published in the **Federal Register** as final regulations.

Par. 3. Section 20.2056(b)–4 is amended by:

1. Removing the last two sentences of paragraph (a).

2. Adding paragraph (e).

The addition reads as follows:

§ 20.2056(b)-4 Marital deduction; valuation of interest passing to surviving spouse.

* * * * *

(e) *Effect of certain administration expenses*—(1) *Estate transmission expenses.* For purposes of determining the marital deduction, the value of any deductible property interest which passed from the decedent to the surviving spouse shall be reduced by the amount of estate transmission expenses incurred during the administration of the decedent's estate and paid from the principal of the property interest or the income produced by the property interest. For purposes of this subsection, the term estate transmission expenses means all estate administration expenses that are not estate management expenses (as defined in paragraph (e)(2) of this section). Estate transmission expenses include expenses incurred in the collection of the decedent's assets, the payment of the decedent's debts and death taxes, and the distribution of the decedent's property to those who are entitled to receive it. Examples of these expenses include executor commissions and attorney fees (except to the extent specifically related to investment, preservation, and maintenance of the assets), probate fees, expenses incurred in construction proceedings and defending against will contests, and appraisal fees.

(2) *Estate management expenses*—(i) *In general.* For purposes of determining the marital deduction, the value of any deductible property interest which passed from the decedent to the surviving spouse shall not be reduced by the amount of estate management expenses incurred in connection with the property interest during the administration of the decedent's estate and paid from the principal of the property interest or the income produced by the property interest. For marital deduction purposes, the value of any deductible property interest which passed from the decedent to the surviving spouse shall be reduced by the amount of any estate management expenses incurred in connection with property that passed to a beneficiary other than the surviving spouse if a beneficiary other than the surviving spouse is entitled to the income from the property and the expenses are charged to the deductible property interest which passed to the surviving spouse. For purposes of this subsection, the term estate management expenses means expenses incurred in connection with the investment of the estate assets and with their preservation and maintenance during the period of administration. Examples of these expenses include investment advisory fees, stock brokerage commissions, custodial fees, and interest.

(ii) *Special rule where estate management expenses are deducted on the federal estate tax return.* For purposes of determining the marital deduction, the value of the deductible property interest which passed from the decedent to the surviving spouse is not increased as a result of the decrease in the federal estate tax liability attributable to any estate management expenses that are deducted as expenses of administration under section 2053 on the federal estate tax return.

(3) *Examples.* The following examples illustrate the application of this paragraph (e). In each example, the decedent, who dies after 2006, makes a bequest of shares of ABC Corporation stock to the decedent's child. The bequest provides that the child is to receive the income from the shares from the date of the decedent's death. The value of the bequeathed shares, on the decedent's date of death, is $3,000,000. The residue of the estate is bequeathed to a trust which satisfies the requirements of section 2056(b)(7) as qualified terminable interest property. The value of the residue, on the decedent's date of death, before the payment of administration expenses and estate taxes, is $6,000,000. Under applicable local law, the executor has the discretion to pay administration expenses from the income or principal of the residuary estate. All estate taxes are to be paid from the residue. The state estate tax equals the state tax credit available under section 2011. The examples are as follows:

Example 1. During the period of administration, the estate incurs estate transmission expenses of $400,000, which the executor charges to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the federal and state estate taxes and by the estate transmission expenses. If the transmission expenses are deducted on the federal estate tax return, the marital deduction is $3,500,000 ($6,000,000 minus $400,000 transmission expenses and minus $2,100,000 federal and state estate taxes). If the transmission expenses are deducted on the estate's income tax return rather than on the estate tax return, the marital deduction is $3,011,111 ($6,000,000 minus $400,000 transmission expenses and minus $2,588,889 federal and state estate taxes).

Example 2. During the period of administration, the estate incurs estate management expenses of $400,000 in connection with the residue property passing for the benefit of the spouse. The executor charges these management expenses to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the federal and state estate taxes but is not reduced by the estate management expenses. If the management expenses are deducted on the estate's income tax return, the marital deduction is $3,900,000 ($6,000,000 minus $2,100,000 federal and state estate taxes). If the management expenses are deducted on the estate tax

return rather than on the estate's income tax return, the marital deduction remains $3,900,000, even though the federal and state estate taxes now total only $1,880,000. The marital deduction is not increased by the reduction in estate taxes attributable to deducting the management expenses on the federal estate tax return.

Example 3. During the period of administration, the estate incurs estate management expenses of $400,000 in connection with the bequest of ABC Corporation stock to the decedent's child. The executor charges these management expenses to the residue. For purposes of determining the marital deduction, the value of the residue is reduced by the federal and state estate taxes and by the management expenses. The management expenses reduce the value of the residue because they are charged to the property passing to the spouse even though they were incurred with respect to stock passing to the child and the spouse is not entitled to the income from the stock during the period of estate administration. If the management expenses are deducted on the estate's income tax return, the marital deduction is $3,011,111 ($6,000,000 minus $400,000 management expenses and minus $2,588,889 federal and state estate taxes). If the management expenses are deducted on the estate tax return rather than on the estate's income tax return, the marital deduction remains $3,011,111, even though the federal and state estate taxes now total only $2,368,889. The marital deduction is not increased by the reduction in estate taxes attributable to deducting the management expenses on the federal estate tax return.

(4) *Effective date.* This paragraph (e) applies to estates of decedents dying on or after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–33125 Filed 12–15–98; 8:45 am]

BILLING CODE 4830–01–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 98–7B]

Notice and Recordkeeping for Making and Distributing Phonorecords

AGENCY: Copyright Office, Library of Congress.

ACTION: Reopening of comment period.

SUMMARY: The Copyright Office of the Library of Congress is reopening the comment period on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords.

DATES: The comment period is reopened until 12 p.m. on December 24, 1998.

ADDRESSES: If sent by mail, an original and ten copies of the comments should be addressed to: David O. Carson, General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. If hand delivered, an original and ten copies of the comments should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380 or Telefax (202) 252–3423.

SUPPLEMENTARY INFORMATION: On September 4, 1998, the Copyright Office published a notice of inquiry seeking comments on the requirements by which copyright owners shall receive reasonable notice of the use of their works in the making and distribution of phonorecords. 63 FR 47215 (September 4, 1998). The Digital Performance Right in Sound Recordings Act of 1995, Pub. L. 104–39, 109 Stat. 336, requires the Librarian of Congress to establish these regulations to ensure proper payment to copyright owners for the use of their works. 17 U.S.C. 115(c)(3)(D). Comments were timely filed by the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and the National Music Publishers' Association, Inc. (NMPA) and the Recording Industry Association of America, Inc. (RIAA). Reply comments were due to be filed on November 18, 1998. On November 27, 1998, the Office granted a request to reopen the reply comment period; under the reopened deadline, reply comments were due to be filed on December 11, 1998. 63 FR 65567 (November 27, 1998). Although the November 27 **Federal Register** notice reopened the reply comment period, the Office recognizes that submissions filed in accordance with that notice would have been so substantive in nature as to constitute comments and not reply comments.

In response to requests for additional time and in light of the complexity of the issues involved in the adoption of notice and recordkeeping procedures for the making and distribution of phonorecords and the substantive nature of the comments to be filed, the Office agrees that it is appropriate to grant additional time for all interested parties to file their comments. Thus, the Office sets the reopened deadline for the filing of comments to 12 p.m. on December 24, 1998. Parties who have previously filed comments may supplement those comments if they desire.

The Office will not, however, be reopening the reply comment period. Instead, after the filing of comments, the Office will publish in the **Federal Register** either a notice of proposed rulemaking, with a notice and comment period, or an interim rule, seeking comment.

Dated: December 11, 1998.

David O. Carson,

General Counsel.

[FR Doc. 98–33342 Filed 12–15–98; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6203–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks; State of California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The California Air Resources Board (CARB) requested approval, under section 112(l) of the Clean Air Act (the Act), to implement and enforce California's ''Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations'' (Chrome ATCM) in place of the ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks'' (Chrome NESHAP). EPA has reviewed this request and has found that it satisfies all of the requirements necessary to qualify for approval. Thus, EPA is proposing to grant California the authority to implement and enforce its Chrome ATCM in place of the Chrome NESHAP.

DATES: Comments must be received on or before January 15, 1999.

ADDRESSES: Written comments should be mailed concurrently to the addresses below:

Ken Bigos, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901.

Robert Fletcher, Chief, Emissions Assessment Branch, Stationary Source

Division, California Air Resources Board, 2020 ''L'' Street, P.O. Box 2815, Sacramento, California 95812–2815.

Copies of California's request for approval are available for public inspection at EPA's Region IX office during normal business hours (air docket #A–96–25).

FOR FURTHER INFORMATION CONTACT: Ken Bigos, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901, (415) 744–1240.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 112(l) of the Act, EPA is authorized to delegate to state agencies the authority to implement and enforce the National Emission Standards for Hazardous Air Pollutants (NESHAPs). The Federal regulations governing EPA's approval of state rules or programs under section 112(l) are located at 40 CFR part 63, subpart E. Under these regulations, a State has the option to request EPA's approval to substitute a state rule for the comparable NESHAP. Upon approval, the State is given the authority to implement and enforce its rule in lieu of the NESHAP. This ''rule substitution'' option requires EPA to ''make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements'' of 40 CFR 63.93 (*see* 58 FR 62274). A rule will be approved if EPA finds: (1) the state authorities are ''no less stringent'' than the corresponding federal NESHAP, (2) adequate authorities and resources exist, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the state program is otherwise in compliance with Federal guidance.

On January 25, 1995, EPA promulgated the NESHAP for chromium electroplating facilities (*see* 60 FR 4963), which was codified in 40 CFR part 63, subpart N, ''National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks'' (Chrome NESHAP). On July 17, 1998, EPA received the California Air Resources Board's (CARB's) request for approval to implement and enforce section 93102 of Title 17 of the California Code of Regulations, ''Hexavalent Chromium Airborne Toxic Control Measure for Chrome Plating and Chromic Acid Anodizing Operations'' (Chrome ATCM), in place of the Chrome NESHAP as the Federally-enforceable standard in California.

II. EPA Evaluation and Proposed Action

A. California's Chrome ATCM

California's Chrome ATCM differs in many ways from the Federal Chrome NESHAP. While these differences do not appear to warrant a finding that the Chrome ATCM is less stringent than the Chrome NESHAP, this section discusses these differences so that the public is afforded an opportunity to comment on the significance of these differences.

1. Title V Permit Requirements

The Chrome ATCM requires the owner or operator of a major source subject to the Chrome ATCM to obtain a Title V permit (*see* section 93102(a)(5)). While the Chrome NESHAP includes this requirement, it also provides that all nonmajor sources, except for those sources referred to in 40 CFR 63.340(e)(1), are subject to Title V permitting requirements. While the applicable Title V permitting authority may defer certain qualifying nonmajor sources from the Title V permitting requirements until December 9, 1999, currently all sources receiving such deferrals are required to submit Title V permit applications by December 9, 2000 (*see* 40 CFR 63.340(e)(2) and 61 FR 27785). Although the Chrome ATCM is silent with respect to this requirement, CARB stated in its application that it will amend the Chrome ATCM in the future if EPA does not permanently exempt all sources receiving such deferrals. EPA believes that the approval of the Chrome ATCM at this time does not constitute a waiver of this Title V permitting requirement.

2. Emission Limits for Hard Chromium Electroplating

Under the Chrome NESHAP, emission limits for hard chromium electroplating tanks are expressed in the form of milligrams of total chromium per dry standard cubic meter. Different emission limits apply depending on whether the facility qualifies as large or small, which, in turn, is based on the facility's maximum cumulative potential rectifier capacity. In contrast, the emission limits in the Chrome ATCM are expressed in terms of milligrams of hexavalent chromium per ampere hour, and are differentiated between large, medium, and small facility sizes dependent on both mass emissions and a capacity or usage limit.

Since there is no unique conversion between the form of the emission limits in the Chrome NESHAP and the Chrome ATCM, CARB took the approach of using source test data to demonstrate that facilities meeting the emission limits of the Chrome ATCM also meet the emission limits of the Chrome NESHAP. After reviewing the results of approximately 35 source tests of hard chromium electroplating facilities in California of various sizes, CARB found that in every case the sources that were in compliance with the applicable Chrome ATCM emission limit were also in compliance with the applicable Chrome NESHAP emission limit. CARB believes, and EPA concurs, that these source test results confirm CARB's position that the Chrome ATCM emission limits are at least as stringent as the Chrome NESHAP emission limits for every source subject to the Chrome NESHAP.

Both the Chrome NESHAP and the Chrome ATCM allow facilities with a maximum cumulative potential rectifier capacity of greater than 60 million ampere-hours per year to be considered small (or medium in the case of the Chrome ATCM) by accepting a limit on the maximum cumulative potential rectifier usage (*see* section 93102(h)(7)(B) and 40 CFR 63.342(c)(2)). EPA wishes to clarify that it considers all such usage limits in non-Title V operating permits as Federally-enforceable for purpose of this proposed substitution of the Chrome ATCM for the Chrome NESHAP.

3. Malfunctions

Both the Chrome NESHAP and the Chrome ATCM provide that the emission limits apply during tank operations, including periods of startup and shutdown, but do not apply during periods of malfunction, which the Chrome ATCM refers to as periods of ''breakdown'' (*see* section 93102(a)(4) and (b)(7), and 40 CFR 63.2 and 63.342(b)(1)). The Chrome ATCM both defines the term ''breakdown'' and states that the emission limits ''do not apply during periods of equipment breakdown, provided the provisions of the permitting agency's breakdown rule are met. * * *'' This means that an event does not constitute a breakdown unless both of the following conditions are met: (1) the event meets the characteristics of a breakdown as defined in the Chrome ATCM, and (2) the provisions of the applicable permitting agency's (i.e., district's) breakdown rule are met. This two-step analysis is important because it is the Chrome ATCM definition of ''breakdown'' that first determines what constitutes a breakdown, not the provisions of the applicable district's breakdown rule.

Under the Chrome ATCM, the districts' breakdown rules serve only one function: to establish the reporting

requirements that must be followed when a breakdown occurs (*see* section 93102(i)(4)). These rules do not override or supplant the other breakdown or excess emission requirements of the Chrome ATCM, including the requirements to revise the operation and maintenance plan to minimize breakdowns (*see* section 93102(g)(4)), to maintain the specified records of all breakdowns and excess emissions (*see* section 93102(h)(5) and (6)), and to include as part of the ongoing compliance status report a summary of any excess emissions (*see* section 93102(h)(6), (i)(3)(B), and appendix 3). And, the districts' breakdown rules neither expand the scope nor extend the time-frame of a breakdown beyond the definition in section 93102(b)(7) of the Chrome ATCM. In other words, while the emission limits do not apply during a breakdown, what constitutes a breakdown is determined by the Chrome ATCM's, not a particular district's, definition of ''breakdown.''

As a supplement to its application, CARB submitted copies of the districts' breakdown rules, which are referenced in appendix 6 of the Chrome ATCM. These rules raise several issues. First, if the Chrome ATCM is approved under section 112(l) of the Act, then only those district breakdown rules that were submitted to EPA as part of CARB's Chrome ATCM application are approved as a matter of Federal law. A source cannot rely on revisions to a district's breakdown rule until such revisions receive EPA's approval under section 112(l) of the Act.

Second, the proposed approval of the districts' breakdown rules, which are incorporated by reference into the Chrome ATCM, is strictly limited to the context of approval of the Chrome ATCM under section 112(l) of the Act. While the use of these rules may be appropriate in lieu of the Chrome NESHAP reporting requirements, the use of these rules in other contexts may be inappropriate (e.g., with regard to other NESHAPs or State Implementation Plans). Thus, it is possible that a district's breakdown rule can be Federally-approved as part of the Chrome ATCM but not Federally-approved as part of the California State Implementation Plan.

Third, some of the districts' breakdown rules use the term ''malfunction'' rather than ''breakdown.'' For the purpose of the Chrome ATCM, EPA interprets these terms as interchangeable, provided that it is understood that the Chrome ATCM definition of ''breakdown'' is controlling, not the districts' definitions of ''breakdown'' or ''malfunction.''

Fourth, some of the districts' breakdown rules include provisions regarding the district's authority to determine whether a breakdown has occurred, authority to grant emergency variances, or authority to decide to take no enforcement action. Like the districts' definitions of ''breakdown'' or ''malfunction,'' the above-listed provisions go beyond the function of the districts' breakdown rules in the context of the Chrome ATCM (such function being limited to establishing the reporting requirements that must be followed when a breakdown occurs). Thus, EPA's proposed approval of the Chrome ATCM under section 112(l) of the Act does not include such provisions of the districts' breakdown rules since these provisions go beyond the scope of the Chrome ATCM.

Fifth, some of the districts' breakdown rules require written breakdown reports only if requested by the district. However, for the purpose of approval of the Chrome ATCM, EPA will interpret such rules as requiring the submission of written breakdown reports to the district even if the district has not formally requested the source to provide such reports.

Sixth, some of the districts' breakdown rules do not specify the reporting time period, but merely state that notification shall be ''immediate'' or the written breakdown report shall be filed ''subsequently.'' With respect to such rules, EPA will interpret such terms by reference to the comparable Chrome NESHAP reporting deadlines in 40 CFR 63.342(f)(3)(iv).

4. Performance Test Requirements

The Chrome ATCM allows the use of CARB Method 425, dated July 28, 1997, and South Coast Air Quality Management District (SCAQMD) Method 205.1, dated August 1991, for determining chromium emissions. By approving the Chrome ATCM, these methods would be approved only as prescribed by the Chrome ATCM and only to determine compliance with the Chrome ATCM. EPA approval of the Chrome ATCM would not result in approval of these methods as general alternatives to EPA Method 306.

In addition, assuming EPA approves the Chrome ATCM, the owner or operator of an affected source cannot rely on provisions in CARB Method 425 or SCAQMD Method 205.1 allowing for approval of alternatives, modifications, or variations from the test method. Any such alternatives, modifications, or variations to the test methods must be approved under the procedures in section 93102(k) of the Chrome ATCM.

5. Monitoring and Recording Frequencies

In several areas of parameter monitoring, the Chrome ATCM includes monitoring or recording frequencies that differ from those required by the Chrome NESHAP. For example, the Chrome NESHAP requires measurements of velocity pressure and pressure drop across control devices to be recorded daily. The Chrome ATCM requires that these parameters be monitored continuously with a mechanical gauge that is in clear sight of the operation or maintenance personnel, and that the measurements be recorded weekly rather than daily. CARB believes that pressure drop does not significantly change on a daily basis unless there is a major malfunction. Additionally, CARB asserts that, based on their experience in implementing the Chrome ATCM, there exists compelling engineering evidence to support a recording frequency of once per week as the minimum requirement for this source category.

The Chrome NESHAP also requires surface tension to be measured every 4 hours of tank operation. This frequency may be reduced to every 8 hours of tank operation if there are no exceedances after 40 hours, and then further reduced to once every 40 hours if no exceedances occur after a second 40 hours of tank operation. In contrast, the Chrome ATCM requires daily monitoring of the surface tension, with a possible reduction to once a week after 20 days. For facilities using a foam blanket-type fume suppressant, the Chrome NESHAP requires foam blanket thickness to be measured every hour, and then every 4 hours and then every 8 hours if no exceedances occur during a 40-hour period. The Chrome ATCM, however, requires hourly monitoring of the foam blanket thickness, and then a reduction to daily if no exceedance occurs after 15 days. Again, CARB asserts that there exists compelling engineering evidence to support the monitoring frequencies in the Chrome ATCM as the minimum requirements for this source category.

6. Work Practice Standards for Packed-Bed Scrubbers

Under the Chrome NESHAP, one of the work practice standards applicable to packed-bed scrubbers is that fresh makeup water must be added to the top of the packed-bed, except it may be added to the scrubber basin if greater than 50 percent of the scrubber water is drained (*see* Table 1 to 40 CFR 63.342). By contrast, the Chrome ATCM only requires affected sources using

horizontal packed-bed scrubbers without continuous recirculation to add fresh makeup water to the top of the packed-bed.

7. HEPA Filters, Chrome Tank Covers, and Polyballs

Unlike the Chrome NESHAP, the Chrome ATCM specifically includes requirements for the following alternative emission control technologies: high efficiency particulate air (HEPA) filters, chrome tank covers, and polyballs. In approving the Chrome ATCM under section 112(l) of the Act, EPA would be approving these alternative technologies for use in California. However, affected sources using these alternative technologies would still be required to demonstrate, through compliance testing and ongoing compliance monitoring, that the emission standards in section 93102(c) are being achieved.

8. Ongoing Compliance Status Reports for Major Sources

Both the Chrome NESHAP and the Chrome ATCM require major sources to submit ongoing compliance status reports (*see* section 93102(i)(3) and 40 CFR 63.347(g)). However, the Chrome ATCM requires these reports to be submitted annually, while the Chrome NESHAP requires these reports to be submitted semi-annually (quarterly where the applicable emission limit is being exceeded). Because section 504(a) of the Act requires major sources that have Title V permits to submit such reports no less often than every six months, EPA cannot approve this provision of the Chrome ATCM to operate in lieu of the comparable provision of the Chrome NESHAP. Since major sources must comply with the Title V semi-annual reporting requirement independent of the Chrome NESHAP or the Chrome ATCM (i.e., regardless of whether the semi-annual reporting requirement is included in either the Chrome NESHAP or the Chrome ATCM), EPA believes that it has the authority to disapprove this provision of the Chrome ATCM as not satisfying the objective of section 504(a) of the Act.

9. Compliance with the Chrome NESHAP

Under Federal law, until EPA approves the Chrome ATCM (i.e., the approval becomes effective), all sources subject to the Chrome NESHAP and located in California must be in compliance with the applicable requirements of the Chrome NESHAP. Even after such approval becomes effective, sources remain subject to Federal enforcement for violation of any Chrome NESHAP provision that the source was required to be in compliance with prior to the effective date of the Chrome ATCM approval. Such Chrome NESHAP provisions include, but are not limited to, the requirements to prepare operation and maintenance plans under 40 CFR 63.342(f)(3), to comply with initial notification deadlines under 40 CFR 63.347(c) and (i)(1), and to comply with the new and reconstructed source provisions under 40 CFR 63.5 and 63.345.

10. Changes in Source Status

Unlike the Chrome NESHAP, the Chrome ATCM is not as explicit regarding compliance deadlines relating to certain changes to a source's status, such as (1) a change from an area source to a major source; (2) a change from either a very small, small, medium, or less than 60 million ampere-hours hard chrome plater to a different size category; and (3) a change from a decorative chrome plater using a trivalent chrome bath that incorporates a wetting agent to one that ceases to use this process. Since the Chrome ATCM does not explicitly state the compliance deadlines for the changes, EPA interprets the Chrome ATCM to require immediate compliance with the standard that applies to the source's new status.

11. Circumvention

Under the Chrome NESHAP, no owner or operator shall build, erect, install, or use any article, machine, equipment, or process to conceal an emission that would otherwise constitute noncompliance with a relevant standard (*see* 40 CFR 63.4(b)). CARB believes that this provision is not necessary, presumably because CARB interprets the Chrome ATCM as implicitly not allowing such activities.

12. Notification of New and Modified Sources

Section 93102(j)(2) of the Chrome ATCM allows facilities to fulfill the notification of construction or modification requirements in section 93102(j)(1) by complying with the applicable district's new source review rule or policy, provided similar information is obtained. Thus, the district's new source review rules or policy merely serve the purpose of obviating the need for duplicative reporting. Such rules or policies, however, do not change the underlying requirement that such notification must exist and must be generated at least within the time frame established by section 93102(j)(1). Furthermore, the burden of proof of compliance rests upon the source to prove that it provided notice of construction or reconstruction on time and that such notice includes at least all of the information included in appendix 4 of the Chrome ATCM.

B. Proposed Action

After reviewing the request for approval of California's Chrome ATCM, EPA has determined that this request meets all the requirements necessary to qualify for approval under section 112(l) of the Act and 40 CFR 63.91 and 63.93. Accordingly, EPA is proposing to approve the Chrome ATCM as the Federally-enforceable standard for sources in California. If this proposed action is finalized, then the Chrome ATCM will be enforceable by the EPA and citizens under the Act. Although the local air pollution control districts in California would have primary implementation and enforcement responsibility, EPA would retain the right, pursuant to section 112(l)(7) of the Act, to enforce any applicable emission standard or requirement under section 112 of the Act.

C. California's Authorities to Implement and Enforce Section 112 Standards

1. Penalty Authorities

Previously, CARB submitted a finding by California's Attorney General stating that ''State law provides civil and criminal enforcement authority consistent with [40 CFR] 63.91(b)(1)(i), 63.91(b)(6)(i), and 70.11, including authority to recover penalties and fines in a maximum amount of not less than $10,000 per day *per violation* * * *'' (emphasis added) (*see* 61 FR 25397). In accordance with this finding, EPA understands that the California Attorney General interprets section 39674 and the applicable sections of Division 26, Part 4, Chapter 4, Article 3 (''Penalties'') of the California Health and Safety Code as allowing the collection of penalties for multiple violations per day. In addition, EPA also understands that the California Attorney General interprets section 42400(c)(2) of the California Health and Safety Code as allowing for, among other things, criminal penalties for knowingly rendering inaccurate any monitoring method required by a toxic air contaminant rule, regulation, or permit.

As stated in section II.B above, EPA would retain the right, pursuant to section 112(l)(7) of the Act, to enforce any applicable emission standard or requirement under section 112 of the Act, including the authority to seek civil and criminal penalties up to the

maximum amounts specified in section 113 of the Act.

2. Variances

Division 26, Part 4, Chapter 4, Articles 2 and 2.5 of the California Health and Safety Code provide for the granting of variances under certain circumstances. EPA regards these provisions as wholly external to CARB's request for approval to implement and enforce a section 112 program or rule and, consequently, is proposing to take no action on these provisions of state or local law. EPA does not recognize the ability of a state or local agency who has received delegation of a section 112 program or rule to grant relief from the duty to comply with such Federally-enforceable program or rule, except where such relief is granted in accordance with procedures allowed under section 112 of the Act. As stated above, EPA retains the right, pursuant to section 112(l)(7) of the Act, and citizens retain the right, pursuant to section 304 of the Act, to enforce any applicable emission standard or requirement under section 112 of the Act.

Similarly, section 39666(f) of the California Health and Safety Code allows local agencies to approve alternative methods from those required in the ATCMs, but only as long as such approvals are consistent with the Act. A source seeking permission to use an alternative means of emission limitation under section 112 of the Act must also receive approval, after notice and opportunity for comment, from EPA before using such alternative means of emission limitation for the purpose of complying with section 112 of the Act.

III. Public Comment

EPA is seeking comment on CARB's request for approval of the Chrome ATCM as a substitute for the Chrome NESHAP. EPA will consider all public comments submitted during the public comment period. Issues raised by the comments will be carefully reviewed and considered in the decision to approve or disapprove CARB's request. EPA will provide notice of its final decision in the **Federal Register**, including a summary of the reasons for the final decision and a summary of all major comments.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

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

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

B. Executive Order 12875

Under E.O. 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 the mandate is unfunded, EPA must 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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 proposed rule does not create a mandate on state, local or tribal governments. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

D. Regulatory Flexibility Act

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

Approvals under 40 CFR 63.93 do not create any new requirements, but simply approve requirements that the state or local agency is already imposing. Therefore, because this proposed approval does not impose any new requirements, it does not have a significant impact on affected small entities.

E. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Incorporation by reference,

Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of section 112 of the Clean Air Act, as amended, 42 U.S.C. 7412.

Dated: December 8, 1998.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 98–33338 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6202–1]

Stakeholders Meeting on Chemical Monitoring Revisions for Public Water Systems

AGENCY: Environmental Protection Agency.

ACTION: Announcement of stakeholders meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will hold a two-day public meeting on January 12 and January 13, 1999 in Washington, D.C. Please be advised that if the agenda is completed on January 12, the meeting will not resume on January 13, 1999. The purpose of this meeting will be to collect input on the appropriate course of action to take with the Agency's effort to revise the monitoring requirements for certain chemicals in drinking water. The EPA has completed a review of new occurrence data and intends to present a summary of these findings at the meeting. The data reviewed and analyzed includes public water supply (PWS) compliance monitoring data and data from other water-quality contaminant occurrence data bases. Most of the data was formatted to extrapolate information regarding contaminant occurrence rates, occurrence by contaminant groups, contaminant co-occurrence, system vulnerability to synthetic and volatile organic compounds, seasonal and temporal variations, contaminant variability categorized by source and system size, and an evaluation of the national representativeness of the data sets.

The EPA will consider the comments and views expressed during this meeting to determine whether it should proceed with the suggested revisions as presented in the Advanced Notice of Proposed Rule Making (ANPRM) for Chemical Monitoring Reform or consider other approaches and modifications. The EPA encourages the full participation of all stakeholders throughout this process.

DATES: The stakeholder meeting will be held on January 12, 1999, 9:30 a.m. to 4:30 p.m. and may be extended to January 13, 1999 9:30 a.m. to 12:00 p.m. EST in Washington, D.C.

ADDRESSES: To register for the meeting, please contact the EPA Safe Drinking Water Hotline at 1–800–426–4791, or Ed Thomas of the EPA's Office of Ground Water and Drinking Water at (202) 260–0910. Participants registering in advance will be mailed a packet of materials before the meeting. Interested parties who cannot attend the meeting in person may participate via conference call and should register with the Safe Drinking Water Hotline. Conference lines will be allocated on the basis of first reserved, first served. The stakeholder meeting will be held at the Wyndham Bristol Hotel, 2430 Pennsylvania Avenue, N.W., Washington, D.C. 20037.

FOR FURTHER INFORMATION CONTACT: For general information on meeting logistics, please contact the Safe Drinking Water Hotline at 1–800–426–4791. For information on the activities related to this rulemaking, contact: Ed Thomas, U.S. EPA at (202) 260–0910 or E-mail to *thomas.edwin@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: On July 3, 1997, EPA issued an Advance Notice of Proposed Rule Making (ANPRM) for Chemical Monitoring Reform (CMR) and Permanent Monitoring Relief (PMR). This ANPRM suggested regulatory changes in chemical monitoring requirements that would focus monitoring on systems at risk of contamination and on the contaminants posing such risk. The regulatory changes suggested in the ANPRM covered 64 chronic contaminants including inorganic chemicals (IOCs), synthetic organic chemicals (SOCs) and volatile organic chemicals (VOCs).

The monitoring changes suggested in the ANPRM were developed, in part, considering the occurrence data that were available at that time. Recognizing that these data were limited, we solicited additional data for use in developing the proposed rule. In response to this solicitation and as part of additional information gathering, EPA identified 17 potential data sources. The Agency completed a preliminary review of these data sets and presented a summary of that review at a stakeholder meeting on April 6, 1998, in Washington, D.C. On the basis of its initial review and consultation with stakeholders, the EPA was not able to say that the new data were simply supplementary data that supported and confirmed the possible changes to the monitoring requirements set forth in the ANPRM. Stakeholders at the April 6 meeting agreed with this decision. Following the April 6 Stakeholder meeting, EPA published a Federal Register Notice on July 30, 1998 indicating that the Agency had completed a review of the monitoring requirements for chemical contaminants in drinking water and believed that it was inappropriate to proceed with the ANPRM until it had completed its analysis of the new data.

Stakeholders at the April 6 meeting also requested that a ''data analysis plan'' be forwarded to them for review. On June 8, 1998, the plan was sent to the Stakeholders. The EPA incorporated stakeholder comments and proceeded with data analyses in accordance with the plan. The Agency has completed its review of the data and intends to present their findings at the two-day stakeholder meeting on January 12 and 13, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 98–33116 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980923246–8246–01; I.D. 071598A]

RIN 0648–AK20

Fisheries in the Exclusive Economic Zone Off Alaska; Modified Hired Skipper Requirements for the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a regulatory amendment to the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off of Alaska. This action would require an initial recipient of certain categories of quota share (QS) who wishes to hire a skipper to fish the IFQ derived from that QS to own a minimum of 20–percent interest in the harvesting vessel. This 20–percent minimum ownership requirement

would not apply to a QS holder who hired a skipper prior to April 17, 1997, continues to own that vessel at no less percentage of ownership interest than was held on April 17, 1997, and has not acquired additional QS through transfer after September 23, 1997. This action is necessary to promote the Council's intent to provide for an owner-operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and is intended to further the objectives of the IFQ Program.

DATES: Comments on the proposed rule and supporting documents must be received by January 15, 1999.

ADDRESSES: Comments must be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed action also may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a limited access system for managing the fixed gear Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) fisheries in waters of the Exclusive Economic Zone off of Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982, recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program is designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based. To this end, various program constraints limit consolidation of QS and ensure that those who actually harvest the resource retain harvesting privileges. The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) and IFQ implementing regulations prohibit all leasing of IFQ derived from QS in categories B, C, and D (QS that authorizes the harvest but not the processing of IFQ species on board the vessel). Further, they require that holders of such QS be aboard the vessel harvesting IFQ species during all fishing operations.

An exception to this owner-aboard provision allows initial recipients of B, C, or D category QS to employ a hired skipper to fish his or her IFQ provided that the QS holder owns the vessel on which the IFQ is being fished. This exception was created to allow fishermen who had operated their fishing businesses in this manner before the IFQ Program was implemented to have some flexibility to continue operating this way under the IFQ Program. While the IFQ Program promotes an owner-operator fixed gear fishery for sablefish and halibut, this exception allows initial recipients of QS to remain ashore while a hired skipper harvests their IFQ. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

The current regulations do not specify any minimum ownership interest that must be acquired before the QS holder may hire a skipper to harvest the IFQ. An initial recipient of B, C, or D category QS who acquires even a nominal ownership of a vessel may hire a skipper to fish his or her IFQ on that vessel. In the first 2 years of the IFQ Program, the hired skipper provision occasionally has been used by initial allocation QS holders who may not have employed hired skippers prior to the IFQ Program but who acquire as little as 0.1 percent ownership interest in a vessel expressly for the purpose of hiring a skipper. This practice, if unchecked, would compromise the Council's intent to have an owner-operator fishery in which the QS holders actively participate in harvesting operations.

In November 1995, the IFQ Industry Implementation Team recommended that the current regulations be revised to require initial recipients of QS to hold a minimum of 51 percent or a controlling interest in a vessel in order to take advantage of the hired skipper provisions. In April 1997, and again in June 1997, the Council reviewed analyses of various options and alternatives including requiring minimum vessel interest of 5, 20, 49, or 51 percent. At its meeting in September 1997, the Council took final action to recommend this proposed action.

If NMFS approves this proposed action, initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS would be required to own a minimum of 20 percent interest in the vessel on which the IFQ species are being harvested. This minimum vessel ownership interest would not be required of QS holders who have hired skippers prior to April 17, 1997, the date of the Council's first review of the analysis of this issue, provided that the QS holder's percentage of vessel ownership does not fall below the percentage held April 17, 1997, and the QS holder has not acquired additional QS through transfer after September 23, 1997, the date of the Council's final action to recommend this regulatory change.

The rationale for setting the minimum percentage of vessel ownership at 20 percent is to allow for most equal-interest partnerships, such as those between spouses. Joint ownership by several parties each holding a substantial equal interest in the vessel would put each owner below the 51 percent controlling interest originally proposed by the IFQ Industry Implementation Team. However, the analysis for this issue suggests that some instances of vessel ownership below 20 percent may also represent business arrangements in which the QS holder has acquired a substantial ownership interest in the vessel on which the IFQ is to be harvested. Therefore, the Council includes the grandfather provision in this proposed action that would allow percentages of vessel ownership existing prior to April 17, 1997, to continue with regard to the hired skipper provisions.

The grandfather provision itself would carry restrictions. By requiring QS holders who held lower percentages of vessel interest prior to April 17, 1997, to continue to hold at least the percentage held prior to that date, the Council intends to prevent those grandfathered under this proposed action from divesting themselves of all but nominal interest in a vessel. Moreover, because an initial recipient of QS may hire a skipper to fish not only the QS acquired as an initial allocation but also any QS acquired through transfer, the proposed action would limit the maximum amount of QS that could be used under the grandfather provision to levels held prior to September 23, 1997–the date of the Council's final action on this proposal. This restriction would assure that exemption from the 20 percent requirement would be granted only to pre-existing arrangements regarding levels of both vessel ownership and QS holdings.

Examples

(1) If an initial allocation QS holder owns 15 percent interest in a vessel and hired a skipper to fish his IFQ on that

vessel prior to April 17, 1997, then the QS holder may continue to hire a skipper to fish his IFQ on that vessel provided that the QS holder's percentage of ownership in that particular vessel does not fall below 15 percent. If the QS holder's percentage of ownership in that vessel falls, for example, to 14 percent, the QS holder would no longer be allowed to hire a skipper to fish his IFQ on that vessel. The QS holder would be required either to be on board the vessel harvesting his IFQ during all fishing operations or to acquire additional ownership interest amounting to a total minimum of 20 percent interest in the vessel. By allowing his ownership interest in the vessel to fall below the percentage held prior to April 17, 1997, the QS holder would relinquish his grandfathered status under this provision.

(2) If the same QS holder in example (1) acquires an ownership interest in an additional vessel after April 17, 1997, then the QS holder must own a minimum of 20 percent interest in that particular vessel in order to hire a skipper to fish the IFQ on that vessel. The QS holder may continue to hire a skipper to fish for IFQ on the vessel in example (1) provided the QS holder continues to hold no less percentage of ownership in that vessel than he or she held on April 17, 1997. The grandfathered status is specific both to the vessel and to percentage of ownership owned on April 17, 1997.

(3) If an initial allocation QS holder owned a 15 percent interest in a vessel and hired a skipper to fish his IFQ on that vessel prior to April 17, 1997, but relinquishes ownership in that particular vessel and acquires ownership interest in another vessel after April 17, 1997, then the QS holder must own a minimum of 20 percent interest in the newly acquired vessel to hire a skipper to fish the IFQ on that vessel.

(4) If an initial allocation QS holder owned 15 percent interest in a vessel and hired a skipper to fish his IFQ on that vessel prior to April 17, 1997, but acquired additional QS through transfer after September 23, 1997, then that QS holder must acquire an additional ownership interest in that same vessel of at least 5 percent, for a total ownership interest of at least 20 percent, to hire a skipper to fish his IFQ on that vessel.

A corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of § 679.42 provided the corporation or partnership owns a minimum of 20 percent interest in the vessel on which its IFQ is being fished, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. This authorization to fish IFQ is not transferrable. It is noted that the QS assigned to categories B, C, and D for halibut in IFQ regulatory area 2C or for sablefish in the IFQ regulatory area east of 140° W. long. must be to an individual pursuant to § 679.41 (c) of this part and be used pursuant to § 679.41 (c) and (i).

The additional restrictions that this proposed action would impose on those wishing to hire skippers to fish IFQ do not deny or prevent initial recipients of category B, C, or D QS from enjoying the benefits of the IFQ derived from their QS. A QS holder who does not want to comply with the minimum ownership requirements can simply be on board the vessel himself for the harvesting of his IFQ, in which case the QS holder would not have to possess any ownership interest in a vessel. An ''owner-on-board'' IFQ fishery remains the basic intent of the Council for category B, C, and D QS.

Classification

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an IRFA that describes the impact this proposed rule, if adopted, would have on small entities. The IRFA identifies the small entities affected by this action and analyzes the economic impact on these small entities.

This proposed action would potentially affect approximately 5,000 persons who continue to hold initial allocations of category B, C, or D QS, all of which are classified as small entities as well as skippers who hire themselves out to operate fishing vessels. For purposes of the Regulatory Flexibility Act, NMFS generally considers a ''substantial number'' to mean 20 percent of the affected small entities; in this instance, initial allocation QS holders and hired skippers. Primarily, this rule would affect those who hired skippers after April 17, 1997, and who did not possess the minimum 20 percent of ownership interest in their vessel. In 1997, out of a total number of 221 applications by QS owners claiming vessel ownership for purposes of hiring a skipper, the 49 vessel owners claiming vessel ownership less than 20 percent represent the vessel owners that would be chiefly impacted by this action.

The acquisition of additional QS represents a substantial financial investment. No data are available on how many, if any, additional holders of initially allocated QS might have planned to hire skippers in the future. Nor are data available concerning what percentages of vessel ownership such QS holders might have. Fishermen for whom vessel ownership is either financially prohibitive or would entail a substantial increase in capital costs may, as is intended by the Council, harvest their IFQ themselves, rather than hire skippers. However, NMFS has no information on whether it would be possible or practical for these QS holders to do so. If the QS holders who hired skippers in the past and need to acquire more vessel ownership to continue to hire skippers do acquire additional vessel ownership interest, the number of hired skippers would not change. If some QS holders do not acquire more ownership to continue to hire skippers, the services of some skippers may not be retained. NMFS has no information on the potential number of skippers available for hire or the potential number of QS holders who may acquire additional vessel interest and so not retain the services of hired skippers.

For these reasons, it is possible that this action could result in a decrease of more than 5 percent in annual gross revenues for skippers whose services are not retained; it is also possible that this action could result in an increase of more than 5 percent in total costs of production or increases in compliance or capital costs for 20 percent or more of the affected small entities for any QS holders who decide to acquire ownership interest in a vessel rather than fish their IFQ themselves.

The Council considered a range of alternatives for addressing the issue of nominal or minimal vessel ownership by QS holders who hire skippers. Minimum ownership percentages of 5 percent, 20 percent, 49 percent, and 51 percent were analyzed and reviewed, before recommending the present proposed action. The Council decided to recommend a 20 percent minimum because a 5 percent minimum would continue to allow minimal vessel ownership and not solve the problem, and options for requiring minimum ownership of 49 and 51 percent would have solved the problem but would have been more burdensome to industry, and disallowing the use of hired skippers by all or many QS holders who own vessels in equal partnerships.

This action, if approved, could have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act, and an Initial Regulatory Flexibility

Analysis has been prepared. A copy of this analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 10, 1998.

Andrew Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.42, paragraph (i)(1) and the heading and the first sentence of the introductory text of paragraph (j) are revised and paragraph (j)(5) is added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be on board the vessel on which his or her IFQ is being fished or sign IFQ landing reports if that individual owns at least a 20 percent interest in the vessel, and is represented on the vessel by a master employed by that individual. This minimum 20 percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than was held on April 17, 1997, and provided that individual has not acquired additional QS through transfer after September 23, 1997.

* * * * *

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided the corporation or partnership owns at least a 20 percent interest in the vessel on which its IFQ is being fished, and it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. * * *

* * * * *

(5) A corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than was held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

* * * * *

[FR Doc. 98–33319 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 63, No. 241

Wednesday, December 16, 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

Agricultural Marketing Service

[TM–98–00–200]

Notice of Program Continuation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice inviting applications for fiscal year 1999 grant funds under the Federal-State Marketing Improvement Program.

SUMMARY: Notice is hereby given that the Federal-State Marketing Improvement Program (FSMIP) was allocated $1,200,000 in the Federal budget for fiscal year 1999. Funds remain available for this program. States interested in obtaining funds under the program are invited to submit proposals. While only State Departments of Agriculture or other appropriate State Agencies are eligible to apply for funds, State Agencies are encouraged to involve industry organizations in the development of proposals and the conduct of projects.

DATES: Applications will be accepted through June 14, 1999.

ADDRESSES: Proposals may be sent to: FSMIP Staff, Transportation and Marketing, Agricultural Marketing Service (AMS), U.S. Department of Agriculture, Room 4006 South Building, P. O. Box 96456, Washington, D.C. 20090–6456.

FOR FURTHER INFORMATION CONTACT: Dr. Larry V. Summers, (202) 720–2704.

SUPPLEMENTARY INFORMATION: FSMIP is authorized under Section 204(b) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The program is a matching fund program designed to assist State Departments of Agriculture or other appropriate State agencies in conducting studies or developing innovative approaches related to the marketing of agricultural products. Other organizations interested in participating in this program should contact their State Department of Agriculture's Marketing Division to discuss their proposal.

Mutually acceptable proposals are submitted by the State Agency and must be accompanied by a completed Standard Form (SF)–424 with SF–424A and SF–424B attached. FSMIP funds may not be used for advertising or, with limited exceptions, for the purchase of equipment or facilities. Guidelines may be obtained from your State Department of Agriculture or the above AMS contact.

Funds can be requested for a wide range of marketing research and marketing service activities, including projects aimed at:

(1) Developing and testing new or more efficient methods of processing, packaging, handling, storing, transporting, and distributing food and other agricultural products;

(2) Assessing customer response to new or alternative agricultural products or marketing services and evaluating potential opportunities for U.S. producers, processors and other agribusinesses, in both domestic and international markets; and,

(3) Identifying problems and impediments in existing channels of trade between producers and consumers of agricultural products and devising improved marketing practices, facilities, or systems to address such problems.

While all proposals which fall within the FSMIP guidelines will be considered, States are encouraged to submit proposals which address the ''marketing'' issues and concerns identified in the report of the National Commission on Small Farms, including projects aimed at ''* * * developing direct marketing strategies and initiatives that primarily benefit small farms.'' and projects in which the State agencies ''* * * partner with community-based organizations interested in pursuing local or regional food system strategies.'' Copies of the FSMIP guidelines and the report of the National Commission on Small Farms may be obtained by contacting the person listed as the contact for further information.

FSMIP is listed in the ''Catalog of Federal Domestic Assistance'' under number 10.156 and subject agencies must adhere to Title VI of the Civil Rights Act of 1964, which bars discrimination in all Federally assisted programs.

Authority: 7 U.S.C. 1621–1627.

Dated: December 9, 1998.

Gary E. Scavongelli,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–33292 Filed 12–11–98; 2:11 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Olympic Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Olympic PIEC Advisory Committee will meet on January 15, 1999 from 9:30 a.m. to 3:00 p.m. The meeting will be held at the Olympic National Forest Headquarters at 1835 Black Lake Blvd. S.W., Olympia, Washington. Agenda items to be covered include: (1) Review and approve 1999 Watershed Restoration Program and 1998 Implementation Monitoring Report; (2) Discussion of several items from the Adaptive Management Area Guide; (3) Carbon Sequestration study presentation; (4) 1999 Recreation Program Budget Impacts; (5) Review meeting attendance policy; (6) Update on Effectiveness Monitoring Pilot Proposal. All Olympic Province Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kathy Snow, Province Liaison, USDA, Quilcene Ranger District, P.O. Box 280, Quilcene, WA 98376, (360) 765–2211 or Claire Lavendel, Acting Forest Supervisor, at (360) 956–2301.

Dated: December 7, 1998.

Claire Lavendel,

Acting Forest Supervisor.

[FR Doc. 98–33245 Filed 12–15–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council, Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held January 6, 1999, 9:00 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3886C, Bureau of Export Administration, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: December 10, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–33341 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 55–98]

Foreign-Trade Zone 138—Columbus, Ohio, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Rickenbacker Port Authority (RPA), grantee of Foreign-Trade Zone 138, requesting authority to expand its zone to include additional sites in Columbus and Lima, Ohio, adjacent to the Columbus Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 4, 1998.

FTZ 138 was approved on March 13, 1987 (Board Order 351, 52 FR 9319, 3/24/87) and expanded on February 23, 1994 (Board Order 685, 59 FR 10783, 3/8/94). The general-purpose zone consists of a site (1,926 acres—3 parcels) at the Rickenbacker International Airport in Franklin County.

The applicant is now requesting authority to expand the general-purpose zone to increase the approved area at its existing site and to include a new site in Lima, Ohio: *Site 1*—include an additional parcel (2,787 acres) at the Rickenbacker International Airport, Franklin County; and, *Proposed Site 2* (136 acres, 3 adjacent parcels)—industrial park project, McClain Road, Lima (Allen County). The proposed expansion area at Rickenbacker Airport is part of a former U.S. Air Force Base which is owned by the U.S. Air Force but is under the control of RPA. The land will eventually be transferred to RPA. The Lima site is owned by the Allen County Port Authority and will be developed as an industrial park. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 16, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 1, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, International Trade Administration, US&FCS, 37 North High Street, 4th Floor, Columbus, Ohio 43215

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 7, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–33328 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 56–98]

Foreign-Trade Zone 35—Philadelphia, PA; Application for Subzone Status, Kvaerner Philadelphia Shipyard, Inc. (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting special-purpose subzone status for the shipbuilding facility of Kvaerner Philadelphia Shipyard, Inc. (KPSI), in Philadelphia, Pennsylvania (formerly operated by the U.S. Navy). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 10, 1998.

The KPSI shipyard (114 acres, up to 1,000 employees) is located on the Delaware River in the Philadelphia Naval Business Center, Philadelphia, Pennsylvania. Currently undergoing extensive renovation, the facility will be

used for the construction, repair, and conversion of commercial vessels for domestic and international customers. Foreign components that may be used at the KPSI shipyard (up to 30% of total) include propulsion units, engines and control systems, profile steel, pumps, alarm systems, diesel generators, navigation equipment, radio communications, rudder systems, radar apparatus, pumps, CO_2 discharge systems, propellers and shafts, winches, windlass, ships' logs, depth sounding equipment, boilers, inert gas plants, electro-hydraulic power racks, switchboards/panels/consoles (1998 duty rate range: free—5.7%, *ad valorem*).

FTZ procedures would exempt KPSI from Customs duty payments on the foreign components (except steel mill products) used in export activity. On its domestic sales, the company would be able to choose the duty rate that applies to finished oceangoing vessels (duty free) for the foreign-origin components noted above. The manufacturing activity conducted under FTZ procedures would be subject to the ''standard shipyard restriction'' applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items. The application indicates that the savings from FTZ procedures would help improve the facility's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is February 16, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 1, 1999).

A copy of the application will be available for public inspection at the following locations:

U.S. Department of Commerce, Export Assistance Center, 615 Chestnut Street, Suite 1501, Philadelphia, PA 19106

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: December 10, 1998.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 98–33329 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle, From Japan: Amended Final Results of Expedited Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Amendment to Final Results of Expedited Sunset Review: Roller Chain, Other Than Bicycle, from Japan

SUMMARY: On November 10, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** (63 FR 63026) the final results of its expedited sunset review of the antidumping finding on roller chain, other than bicycle, from Japan. Subsequent to the publication of the final results, we received comments requesting correction of ministerial errors appearing in the notice. After analyzing the comments submitted, we are amending our final results to correct the ministerial errors. Based on the correction of the ministerial errors, we removed from the Appendix contained in the notice of final results, the listing for Enuma Chain/Daido and for Enuma Chain/Meisi. These combination producers/exporters were not reviewed in the first administrative review conducted by the Department and, therefore, should not have been included in the Appendix. In addition, we are correcting the margin listed in the Appendix for Sugiyama/HKK from 15 percent to 0.15 percent.

EFFECTIVE DATE: December 16, 1998.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230: telephone (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1998, the Department of Commerce (''the Department'') published in the **Federal Register** (63 FR 63026) the final results of its expedited sunset review of the antidumping finding on roller chain, other than bicycle, from Japan. Subsequent to the publication of the final results, we received comments on behalf of Daido Tsusho Co., Ltd. and Daido Corporation (collectively ''Daido'') requesting correction of ministerial errors appearing in the notice.

Clerical Error Allegations

Daido alleges that the Department stated in its notice of final results that it intended to use the ''original margins calculated by the Department'' as reported in Roller Chain, Other Than Bicycle, From Japan; 46 FR 44488 (September 4, 1981). Because the manufacturer/ exporter combinations of Enuma Chain/Daido and Enuma Chain/ Meisi were not included in the September 4, 1981, notice, they should be deleted from the November 10, 1998, notice, and from the information reported to the International Trade Commission. Daido also alleges that the November 10, 1998, notice of final results contains a typographical error that should be corrected. Specifically, Daido alleges that the September 4, 1981, notice shows a dumping margin of ''.15%'' for the Sugiyama/HKK manufacturer/exporter combination, whereas the November 10, 1998, notice shows a dumping margin of 15% for the combination.

After analyzing the comments submitted, we are amending our final results to correct the ministerial errors. Based on the correction of the ministerial errors, we remove from the Appendix contained in the notice of final result, the listing for Enuma Chain/ Daido and for Enuma Chain/Meisi. These combination producers/exporters were not reviewed in the first administrative review conducted by the Department and, therefore, should not have been included in the Appendix. In addition, we are correcting the margin listed in the Appendix for Sugiyama/ HKK from 15 percent to 0.15 percent.

Amended Final Results of Review

A complete revised Appendix is attached.

This amendment is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: December 10, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX

Manufacturer/Exporter	Margin (percent)
A & K Co	1.84
Ajia Kikei Boeki	1.84
APC Corp	0
Asia Machinery	2.00
Auto Dynamics	5.36
C. Itoh	0
Central Automotive	2.00
Cherry Industrial	20.00
Daido Enterprising	2.00
Daido Kogyo Co., Ltd	1.18
Daido Sangyo	5.36
Deer Island	43.29
Detroit Industries	5.36
Empire Motor	5.36
Enuma Chain Manufacturing Co	1.18
Fee International	1.84
Fuji Lumber	0
Fuji Motors (Zenoah)	5.36
Fuji Seiko	43.29
Fukoku	5.36
Hajime	5.36
Harima Enterprise	0
Henry Abe	5.36
HIC Trading Co., Ltd	0
Hiro Enterprises	0
Hitachi Metals/Hitachi Intl	2.76
Hitachi Metals/All Other Importers	1.84
HKS Japan	20.00
Hodaka Kogyosho	5.36
Honda Motor	(1)
I & OC	5.36
Iketoku	5.36
Izumi Chain Mfg. Co., Ltd	6.93
Jeico	0
Kaga Kogyo (Kaga Industries Co., Ltd.)	0
Kaga/APC	0
Kaga Koken/TK Products	1.00
Karl Mayer Textile	0
Kashima Trading	43.29
Katayama Chain Co., Ltd	43.29
Kawasaki	1.00
Kokusai	5.36
Marubeni	0
Maruka Machinery	5.36
MC Intl	5.36
Meiho Yoko	43.29
Meisei Trading	1.18
Miewa Trading	3.00
Mitsui	13.40
Mitsubishi	5.36
Mitsubishi Boeki	34.80
Mitsubishi Motors	5.36
Myasaki Shokai	5.36
Naniwa Kogyo	43.29
Nankai Buhin	5.36
Nickel & Lyons	5.36
Nippo Buhin	5.36
Nissan Motor	0
Nissei Company	12.80
Nissho Iwai	0
Nomura Shoji	5.36
Oriental Chain	0
Osaka Buhin	5.36
Pulton Chain	0
Pulton/HIC Trading	0
Pulton/I&OC	0
Refac Intl	5.36
Rocky Asia	6.93
Royal Industires	2.00
Ryobi Ltd	2.00
Sanko Co	9.37
Schneider Engineering	2.00
Shima Trading	6.99
Shinyei Kaisha	5.36
Shinyo Ind	43.29
Sugiyama/Fuji Lumber	0
Sugiyama/Harima Enterprise	0
Sugiyama/HKK	0.15
Sugiyama/I & OC	0
Sugiyama/All Others	0
Sumitomo Shoji Kaisha	5.36
Suzuki Motor	0
Tabard	43.29
Taikyo Sangyo	0
Taiyo Shokai	43.29
Takara Auto Parts	29.52
Takasago (currently RK Excel)	5.36
Tanaka Kogyo	5.36
Tashiro	5.36
Tatsumiya Kogyo	2.00
TEC Engineering	5.36
Teijin Shojhi Kaisha Ltd	5.36
TK Products	1.00
Tokyo Enterprise	5.36
Tokyo Incentive	5.36
Tokyo Ryuki Seizo	0
Tosho	5.36
Toyo Kogyo Mazda	0
Toyo Menka Kaisha	5.36
Toyota Motor Sales	43.29
Tsubakimoto Chain	(1)
Tsujimoto Shokai	5.36
United Trading Co	5.36
Universal Trading	5.36
Y-K Brothers Shokai	5.36
Yamaha Motor	2.00
Yamakyu Chain	9.37
Yoshida Auto	43.29
Yoshimura	5.36
Zushi Industries	5.36
All Other Firms	15.92

[1] Revoked.

[FR Doc. 98–33330 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Georgia Institute of Technology; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Decision: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

Reasons: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 97–105. *Applicant:* Georgia Institute of Technology, Institute for Bioengineering and Bioscience, 281 Ferst Drive, SST/P. Weber Building, Atlanta, GA 30332–0363. Instrument: CardioMed Flowmeter, Model CM4008. Manufacturer: MediStim as, Norway. Date of Denial Without Prejudice to Resubmission: August 26, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–33331 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

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 instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are 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, D.C. 20230. Applications 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, N.W., Washington, D.C.

Docket Number: 98–059. Applicant: Rutgers, The State University of New Jersey, Institute of Marine and Coastal Science, 56 Bevier Road, Piscataway, NJ 08854. Instrument: Current Meter, Model RCM–9. Manufacturer: Aanderaa Instruments A/S, Norway. Intended Use: The instrument is intended to be used to measure the flow velocity during experiments conducted to quantify the nitrogen flux through the estuary-ocean

boundary and identify causes for the variability in nitrogen flux. Application accepted by Commissioner of Customs: November 6, 1998.

Docket Number: 98–060. Applicant: Iowa State University of Science & Technology, 3616 Administrative Services Building, Ames, IA 50011–3616. Instrument: Variable Temperature Scanning Tunneling Microscope. Manufacturer: Omicron Vakuum Physik, Germany. Intended Use: The instrument will be used for characterization and fundamental studies of submonolayer to multilayer metal films deposited on metal single crystal surfaces. The studies will involve depositing metals onto metal substrates at a given temperature and following the evolution of the surface structure for time periods as long as 12 hours using the instrument. The evolution of the films will be studied both during and after deposition. In addition, the instrument will be used for educational purposes in the courses Chemistry 576-Surface Chemistry and Chemistry 699-Research. Application accepted by Commissioner of Customs: November 19, 1998.

Docket Number: 98–061. Applicant: The University of Chicago, Operator of Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, IL 60439. Instrument: Ion Source. Manufacturer: Atomika Instruments, Germany. Intended Use: The instrument will be used as a desorption source in depth profiling and trace analysis of a wide variety of materials ranging from semi-conductor wafers (Si, GaAs, HgCdTe) to solar wind collector foils of a diamond. The objective of this research is to analyze near-surface concentrations below one part per trillion (several orders of magnitude below the current capability anywhere in the world). Application accepted by Commissioner of Customs: November 24, 1998.

Docket Number: 98–062. Applicant: University of California, Davis, Department of Applied Science, Institute for Laser Science and Applications, Lawrence Livermore National Laboratory, 7000 East Avenue, Livermore, CA 94550. Instrument: Titanium Sapphire Oscillator. Manufacturer: Femtolasers Produktions, Germany. Intended Use: The instrument is intended to be used for the study of the interactions of ultrashort, ultrahigh intensity laser pulses with relativistic electron beams in vacuum in the following experiments: (a) production of ultrashort electron bunches in a rf photoinjector for the production of Coherent Synchroton Radiation in a Free Electron Laser, (b) Vacuum Laser Acceleration of electron beams using either ''pondermotive scattering'' or ''chirped pulse inverse free electron lasers'' and (c) production of short, intense bursts of x-rays using Compton Scattering for basic and applied physics applications. Application accepted by Commissioner of Customs: November 24, 1998.

Docket Number: 98–063. Applicant: University of Maryland, Center for Microanalysis and Microscopy, Department of Materials and Nuclear Engineering, Building 090, College Park, MD 20742. Instrument: Electron Microprobe, Model JXA–8900R. Manufacturer: JEOL Ltd., Japan. Intended Use: The instrument is intended to be used for studies of the chemical composition and elemental distribution of geological materials, engineering materials, biologic materials, thin films on substrates, and the chemistry of various other objects of interest. These studies will involve experiments consisting of focusing a high voltage electron beam on a solid sample (usually a polished grain mount or cross-section, thin section or other ceramic), generating characteristic x-rays, and measuring these x-rays quantitatively with wavelength and energy dispersive spectrometers. In addition, the instrument will be used for hands-on training in operation of the instrument. Application accepted by Commissioner of Customs: November 24, 1998.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–33333 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California, Davis; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–047. Applicant: University of California, Davis, Davis, CA 95616. Instrument: Plasma Generating Machine, Model SPS–1050. Manufacturer: Sumitomo Coal Mining Co., Japan. Intended Use: See notice at 63 FR 54676, October 13, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides quick formation of dense, hard materials from powders using spark plasma sintering. The National Institute of Standards and Technology advised December 1, 1998 that (1) this capability is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–33332 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

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. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the

applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 87–5A001.''

The American Film Marketing Association's (''AFMA'') original Certificate was issued on April 10, 1987 (52 FR 12578, April 17, 1987) and previously amended on March 25, 1988 (53 FR 10267, March 30, 1988); August 29, 1989 (54 FR 36848, September 5, 1989); November 5, 1991 (56 FR 57515, November 12, 1991); and August 26, 1993 (58 FR 46161, September 1, 1993). A summary of the application for an amendment follows.

Summary of the Application

Applicant: American Film Marketing Association (''AFMA''), 10850 Wilshire Blvd., 9th Floor, Los Angeles, California 90024–4321.

Contact: Jefferson C. Glassie, Legal Counsel, Telephone: (202) 639–6000.

Application No.: 87–5A001.

Date Deemed Submitted: December 9, 1998.

Proposed Amendment: AFMA seeks to amend its Certificate to:

1. Add the following companies as new ''Members'' of the Certificate within the meaning of section 325.2(1) of the Regulations (15 C.F.R. 325.2(1)): Alain Siritzky Productions (ASP), Los Angeles, CA; Alfred Haber Distribution, Inc., Palisades Park, NJ; Alliance Communications Corporation, Beverly Hills, CA; Arama Entertainment, Inc., Encino, CA; Arrow Films International Inc., New York, NY; Artisan Entertainment, Santa Monica, CA; Associated Television International, Hollywood, CA; Bank of America NT & SA, Los Angeles, CA; Banque Paribas, Los Angeles, CA; Blue Rider Pictures, Santa Monica, CA; Bonneville Worldwide Entertainment, Encino, CA; Capella International, Inc., Beverly Hills, CA; Cecchi Gori Group, Los Angeles, CA; Chase Manhattan Bank, Los Angeles, CA; Cinema Arts Entertainment, Beverly Hills, CA; Cinema Completions International, Inc., Universal City, CA; Cinema Financial Services, Inc., New York, NY; Cinequanon Pictures International, Los Angeles, CA; City National Bank, Beverly Hills, CA; CLT–UFA, Beverly Hills, CA; Comerica Bank-California, Los Angeles, CA; Coutts & Co./Natwest Group, Beverly Hills, CA; Crystal Sky Communications, Los Angeles, CA; Discovery Communications, Inc., Bethesda, MD; Distant Horizon Ltd., Los Angeles, CA; Dream Entertainment, Los Angeles, CA; Film Finances, Inc., Los Angeles, CA; Film Roman, Inc., N. Hollywood, CA; Films (Guernsey) Limited, Los Angeles, CA; Franchise Pictures, Los Angeles, CA; Goldcrest Films International Ltd., Los Angeles, CA; Good Machine International, Inc., New York, NY; Green Communications, Burbank, CA; Hamdon Entertainment, Studio City, VA; Harmony Gold USA Inc., Los Angeles, CA; HBO Enterprises, New York, NY; IFM Film Associates, Inc., Los Angeles, CA; Imperial Entertainment Group, Beverly Hills, CA; Initial Entertainment, Los Angeles, CA; Interlight Pictures, W. Hollywood, CA; Intermedia, Beverly Hills, CA; International Keystone Entertainment, Inc., Malibu, CA; Kathy Morgan International (KMI), Los Angeles, CA; King World Productions, Inc., New York, NY; Kushner-Locke Company, The, Los Angeles, CA; Lakeshore International, Hollywood, CA; Lewis Horwitz Organization, Los Angeles, CA; Lions Gate Films International, Los Angeles, CA; Lumiere International, Los Angeles, CA; Marquee Entertainment Inc., Los Angeles, CA; MTG Media Properties, Ltd., New York, NY; Natexis Bank—BFCE, Los Angeles, CA; NBC Enterprises, Burbank, CA; Nu Image, Los Angeles, CA; Oasis Pictures, Los Angeles, CA; October Films International, New York, NY; P.M. Entertainment, Sunland, CA; Pacific Century Bank, Encino, CA; Pandora Cinema, Santa Monica, CA; Pearson Television International, Los Angeles, CA; Phoenician Entertainment, Sherman Oaks, CA; Playboy Entertainment Group, Inc., Beverly Hills, CA; Quadra Entertainment, Beverly Hills, CA; Redwood Communications, Venice, CA; Regent Entertainment, Los Angeles, CA; Republic Bank California N.A., Beverly Hills, CA; RKO Pictures, Los Angeles, CA; Rysher Entertainment, Santa Monica, CA; Seven Arts Entertainment, Hollywood, CA; Shooting Gallery, The, Beverly Hills, CA; Showcase Entertainment, Inc., Woodland Hills, CA; Silicon Valley Bank, Entertainment Division, Los Angeles, CA; Tomorrow Film Corp., Santa Monica, CA; Trident Releasing, Inc., Los Angeles, CA; United Film Distributors, Inc., Los Angeles, CA; and Village Roadshow Pictures Int'l., Burbank, CA;

2. Delete as ''Members'' of the Certificate: Alice Entertainment, Inc./Kidpix Entertainment, Inc.; Angelika Films, Inc.; Arista Films, Inc.; Carolco Service, Inc.; Cinetrust Entertainment Corp.; Dino De Laurentiis Communications; Double Helix Films; Film World Entertainments/Miracle Films; Fries Distribution Co.; Grand Am Ltd.; Hemdale Communications, Inc.; Inter-Ocean Film Sales, Ltd.; I.R.S. Media International; ITC Entertainment Group; Kings Road Entertainment, Inc.; Lone Star Pictures International, Inc.; Manley Productions, Inc.; The Movie Group, Inc.; New World International; Odyssey Distributors, Ltd.; Penta International, Ltd.; Reel Movies International, Inc.; The Samuel Goldwyn Company; Trans Atlantic Entertainment/I.R.S.; Turner Pictures Worldwide; West Side Studios; and 21st Century Film Corporation; and

3. Change the listing of the company name for the current ''Members'' cited in this paragraph to the new listing cited in parenthesis as follows: Image Organization, Inc. (Behaviour Worldwide, Inc.); Big Bear Licensing Corporation (Big Bear Licensing Corporation, Inc.); ABC Distribution Company (Buena Vista Film Sales); Cinevest Entertainment (Castle Hill Productions, Inc.); Paul International, Inc. (Crystal Sky Communications); Curb Organization (Curb Entertainment International Corp.); Gel Distribution (G.E.L. Productions); Full Moon Entertainment (Full Moon Pictures); Golden Harvest/Golden Communications (Golden Harvest Entertainment Co., Ltd.); American First Run Studios/Zantar (Keller Entertainment Group); I.N.I. Entertainment Group, Inc. (Liberty International Entertainment, Inc.); Lway Productions (Marquee Entertainment, Inc.); Noble Productions, Inc./Noble Film (Noble Productions, Inc.); Overseas Filmgroup Inc. (Overseas Film Group/First Look Pictures); Republic Pictures

International (Republic Entertainment, Inc.); Imperial Entertainment B.V. (Scanbox International, Inc.); Starway International Corporation (Starway International); The Summit Group (Summit Entertainment); and Troma, Inc. (Troma Entertainment, Inc.).

Dated: December 10, 1998.

Morton Schnabel,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 98–33278 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Initiation of Process to Revoke Export Trade Certificate of Review No. 84–00015.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to AEON International Corporation. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to AEON International Corporation.

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 (''the Act'') [15 U.S.C. 4011–21] authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on July 16, 1984 to AEON International Corporation.

A certificate holder is required by law [Section 308 of the Act, 15 U.S.C. 4018] to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [Sections 325.14(a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation. [Sections 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to AEON International Corporation, on July 6, 1998, a letter containing annual report questions with a reminder that its annual report was due on August 30, 1998. Additional reminders were sent on September 15, 1998, and on October 13, 1998. The Department has received no written response to any of these letters.

On December 10, 1998, and in accordance with Section 325.10 (c)[1] of the Regulations, a letter was sent by certified mail to notify AEON International Corporation that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken because of the certificate holder's failure to file an annual report.

In accordance with Section 325.10(c)[2] of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter [Section 325.10(c)[2] of the Regulations].

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its contentions [Section 325.10(c)[3] of the Regulations].

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify [Section 325.10(c)[4] of the Regulations]. If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** [Sections 325.10(c)[4] and 325.11 of the Regulations].

Dated: December 10, 1998.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 98–33279 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101698G]

Marine Mammals; File No. 594–1467

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Georgia Department of Natural Resources, Nongame/Endangered Wildlife Program Coastal Office, One Conservation Way, Brunswick, GA 31520–8687, has been issued a permit to take right whales, humpback whales, bottlenose dolphins, Atlantic spotted dolphin and Pantropical spotted dolphins in the U.S. Southeast for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On September 15, 1998, notice was published in the **Federal Register** (63 FR 49337) that a request for a scientific research permit to take species listed above had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*),

and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR parts 217–227).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 9, 1998.

Ann D. Terbush, Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–33318 Filed 12–15–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF ENERGY

Opportunity for Leadership Entity: Beijing Energy-Efficiency and Renewable Energy Demonstration Building

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Notice of opportunity.

SUMMARY: The United States Department of Energy recently entered into an agreement with the People's Republic of China Ministry of Science and Technology to determine the feasibility of jointly constructing an energy efficient, mid-size office building demonstration project in downtown Beijing, China. The Department is interested in identifying an entity which will volunteer to work directly with the building's primary intended occupant, The Administrative Centre for China's Agenda 21, which reports to the Ministry of Science and Technology and the State Development and Planning Commission, in leading and being responsible for the execution of this demonstration project. If the project proves feasible, this entity would be responsible for bringing together the necessary financial, technical, and other components and resources for the bidding, constructing and commissioning of the final design of the energy efficient and renewable aspects of the building, and for monitoring the reductions of energy use and associated greenhouse gas emissions. The entity would also develop and provide for the operation of a Demonstration Center in the building illustrating the potential contribution of U.S. technologies and building design practices to reduced energy use and associated greenhouse gas emissions of similar buildings throughout China. Interested parties are asked to provide the Department with their approach to leading this effort, and their capability and relevant experience.

DATES: Response to Notice must be postmarked no later than January 15, 1999.

ADDRESSES: Respond to: U.S. Department of Energy, Office of Energy Efficiency, Alternative Fuels and Oil Analysis, PO–62; Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: O. Cleveland Laird, Jr., Phone (202) 586–0979, FAX (202) 586–4447, E-mail: Cleveland.Laird@hq.doe.gov; or Mary Beth Zimmerman, Phone (202) 586–7249, FAX (202) 586–4447, E-mail: MaryBeth.Zimmerman@hq.doe.gov

SUPPLEMENTARY INFORMATION:

This section is subdivided into: *Project Description, Background and Status, Role of the Entity,* and Funding.

Documents and other information referenced in this notice (denoted italicized & emboldened here, but to be shown in hypertext in the DOE website version of this document) may be obtained from the contacts in the section above, or can be downloaded from the Department's Office of Policy & International Affairs Internet Website: http://www.doe.gov/policy/featured.html.

Project Description: The project consists of three phases. Phases one and two are covered by the agreement'' the Statement of Work described under *Background and Status* section below. Phase one provides for the development of economic energy design criteria, and a project plan, including engineering and financial feasibility analyses. Phase two, provides for the assessment of this plan by each country. If the project proves feasible, phase three provides for the implementation of the project plan including the construction and monitoring of the building, and the establishment and operation of the Demonstration Center.

The Department is funding phase one, currently being undertaken by Lawrence Berkeley National Laboratory (LBNL) and the National Renewable Energy Laboratory (NREL), in cooperation with an architectural and engineering firm working for The Administrative Centre for China's Agenda 21. This effort is based on typical or expected construction costs and market prices for energy and energy services in Beijing to ensure that the resulting plan incorporates design strategies and technologies that are likely to be economically attractive in China.

The identified entity will be responsible for the phase two assessment and, if appropriate, phase three construction. Any costs of phase two will be borne by the entity (see *Funding* section below). Costs associated with phase three are to be allocated between China and the United States so that the identified entity would contribute only any additional costs associated with energy efficiency and renewable energy improvements, while China would pay the basic land and building costs.

Background and Status: The Department of Energy signed a Statement of Work (SOW) with the Ministry of Science and Technology of China on July 9, 1998 to develop the energy efficient design criteria and a project plan for a mid-size commercial office building at a site in downtown Beijing. [July 9, 1998 DOE News press release] The building would provide office space (nine stories, approximately 130,000 square feet) for China government environmental agencies, including the Centre for China's Agenda 21 offices, as well as for non-governmental organizations that work in the areas of science and the environment, and for a Demonstration Center.

The project plan will provide for multiple ways to demonstrate and promote the contribution of U.S. energy and greenhouse gas savings design know-how and technologies to buildings in China: first, the building design will incorporate currently available energy efficient and renewable energy building technologies appropriate to its location and use; second, the energy and carbon savings will be carefully monitored and reported to potential users of the technologies; third, the building will house a ''hands-on'' Demonstration Center that will provide direct exposure to U.S. buildings technologies to the buildings industry in China, as well as to policy makers and others who work with the Administrative Centre for China's Agenda 21 and related agencies; and fourth, Chinese government and buildings industry representatives will be directly involved throughout the design, construction, and operation of this project to provide a strong capacity-building framework for the future use of these design strategies.

The building is to be outfitted with the energy monitoring equipment needed to document energy and greenhouse gas savings potentials for both U.S. and Chinese suppliers and users. The project plan would include means of measuring the energy and greenhouse gas reductions achieved that

would be consistent with Decision 5/CP.1 of the Conference of the Parties of the United Nations Framework Convention on Climate Change (UNFCCC). The demonstration of commercially available, cost-effective building energy savings opportunities is part of the Priority Programme for China's Agenda 21 and could potentially be a project of the Activities Implemented Jointly (AIJ) under the Pilot Phase of the UNFCCC. Reported energy savings will provide both valuable information to the buildings profession in China and on energy savings calculations needed for climate change projects. There is a potential market opportunity for participants should ''trading'' in greenhouse gas emission reductions be allowed in the future under the UNFCCC .

Role of the Entity. The Department seeks an innovative entity to volunteer to lead and be responsible for phases two and three of the project. Phase two consists of the assessment of this plan by each country, including providing any feedback on the engineering and financial feasibility analysis conducted under phase one; and, if the project is found feasible, phase three would consist of the construction of the building, and establishment and operation of the Demonstration Center.

This entity will enlist interested parties—hereinafter referred to as Suppliers—from industry, including electric utilities, academia, non-government organizations (NGOs), and government agencies to be involved during phases two and three of the project. Further, the entity will enlist building community organizations to help ensure that potential Suppliers are aware of the opportunity.

The Supplier role will be filled by those that plan to bid to provide products (e.g., windows, controls, lighting) and/or services (e.g., design, financing, equipment, installation, construction, commissioning, monitoring). Suppliers also may include others expecting to contribute to the success of the project; for example utilities interested in the AIJ aspects of this project with the potential for greenhouse gas emissions reductions. Suppliers would also provide input on refining the performance and market price assumptions underlying the phase one analysis.

The entity will contract with the Chinese for the products and services that Suppliers will provide for the construction of the energy efficiency and renewables portion of the building. Suppliers will provide those products and services at zero or discounted cost (e.g., controls for no cost if none were planned or double glazed windows for the cost in China of single glazed windows if only single glazed were planned and the package of improvements increase the building's costs) to gain benefits from being associated with the publicity for the building & its performance, and any laboratory demonstrations of their other products/services. Furthermore, Suppliers will have an unparalleled opportunity in an official Chinese venue to demonstrate their products and services to the world's largest consumer market. In addition to supplying products and services in the building initially, the Demonstration Center, modeled on those operating in the United States, will allow Suppliers the opportunity to provide ''hands on'' demonstrations for builders, architects, and others in the Chinese buildings community to learn about the latest in proven, available energy-efficient and renewable energy design practices and technologies.

The entity will need to determine and make Suppliers aware of the advantages inherent in donating products and services to efforts such as this as a part of the incentive for Suppliers to support this project. Additionally the entity may locate/create and develop financing mechanisms for subsequent Supplier product/services sales in China.

To ensure appropriate information sharing among the interested parties, the entity will establish and maintain regular communications with the U.S. building community and the public at large as the project progresses. This is to include a home page for the project on the Internet.

Funding: The primary Federal role to date has been to make arrangements between the countries for the project to be undertaken and to fund the phase one technical analysis. Once phase one is complete, Federal involvement will be to ensure an open and technically sound process through the remaining phases. Upon a decision to construct the building, the Department will evaluate the building results to assess whether the design objectives were indeed reached. Private sector support is needed to fulfill all other responsibilities in the project.

The U.S. costs associated with the engineering feasibility analysis are being funded by the Department. If the building is constructed, the Chinese government plans to provide for all expenses associated with the base building. The entity is expected to raise its funding through whatever sources it can develop that support reduced energy usage and associated greenhouse gas emissions. Costs associated with energy-efficiency and renewables upgrades of the building—whether design, products and/or services—over and above the base building are to be borne by the successful Suppliers, based on their appreciation for the opportunity that opening this market potentially provides for the sale of their products and services. The entity will arrange remuneration for any amounts included in the base building for replacement energy-efficient and renewable energy technologies employed by U.S. Suppliers (e.g., whatever the windows included in the base building would have cost, that amount would be paid by the Chinese to the entity to be passed on to the successful U.S. window Supplier).

The entity will determine if there are normal or any special provisions (e.g., for a non-profit and/or research and development oriented organization) in the U.S. Tax Code under which it can operate that will provide benefits for its functioning in this voluntary capacity, and/or for any donors to its effort.

Issued in Washington, DC on December 8, 1998.

Abraham E. Haspel,

Deputy Assistant Secretary for Energy, Environmental and Economic Policy Analysis.

[FR Doc. 98–33287 Filed 12–15–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 97–70–NG; 98–86–NG; 98–87NG; 98–88–NG; 98–90–NG; 98–91–NG; 89–49–NG; 98–89–NG; 98–95–NG; 93–85–NG; and 86–43–NG]

Office of Fossil Energy; Niagara Mohawk Energy (Formerly Plum Street Energy Marketing, Inc.); Numac Energy (U.S.) Inc.; Pemex Gas Y Petroquimica Basica; Energy West Resources, Inc.; Equitable Energy L.L.C.; Idaho Power Co.; Megan-Racine Associates, Inc.; Tristate Pipeline, L.L.C.; Statoil Energy Services, Inc.; Granite State Gas Transmission, Inc.; Granite State Gas Transmission, Inc.; Orders Granting, Amending, and Vacating Authorizations to Import and/or Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending, and vacating various natural gas, including liquefied natural gas, import and export authorizations. These

Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import and Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on December 10, 1998.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import and Export Activities, Office of Fossil Energy.

APPENDIX.—ORDERS GRANTING, AMENDING, AND VACATING IMPORT/EXPORT AUTHORIZATION

Order No.	Date issued	Importer/exporter FE Docket No.	Two-Year Maximum		Comments
			Import volume	Export volume	
1303–A	11/03/98	Niagara Mohawk Energy Marketing, Inc. (Formerly Plum Street Energy Marketing, Inc.), 97–70–NG.	.....	.....	Name change.
1433	11/06/98	Numac Energy (U.S.) Inc., 98–86–NG;	50 Bcf	.....	Import from Canada over a two-year term beginning on October 15, 1998, and ending October 14, 2000.
1435	11/12/98	Pemex Gas Y Petroquimica Basica, 98–87–NG;	160 Bcf		Import and export up to a combined total, including LNG, from and to Canada and Mexico, beginning January 1, 1999, and ending December 31, 2000.
1436	11/12/98	Energy West Resources, Inc., 98–88–NG;	30 Bcf		Import and export up to a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
1437	11/18/98	Equitable Energy, L.L.C., 98–90–NG	100 Bcf	100 Bcf	Import from Canada and Mexico, and export to Canada and Mexico, over a two-year term beginning on December 1, 1998, and expiring on November 30, 2000.
1438	11/19/98	Idaho Power Co., 98–91–NG;	1 Bcf		Import and export up to a combined total from and to Canada, over a two-year term beginning on the date of first delivery.
461–A	11/19/98	Megan-Racine Associates, Inc., 89–49–NG	.....	.....	Authority vacated
1439	11/19/98	Tristate Pipeline, L.L.C., 98–89–NG	100 Bcf	400 Bcf	Import and export from and to Canada, over a two-year term beginning on the date of first delivery.
1440	11/27/98	Statoil Energy Services, Inc., 98–95–NG	110 Bcf		Import and export up to a combined total from and to Canada, over a two-year term beginning on December 8, 1998, through December 7, 2000.
857–A	11/27/98	Granite State Gas Transmission, Inc., 93–85–NG	.....	.....	Order amending import point from Highwater, Quebec, and North Troy, Vermont, to Pittsburg, New Hampshire, opposite East Hereford, Quebec.
187–B	11/27/98	Granite State Gas Transmission, Inc., 86–43–NG	.....	.....	Order amending import point from Highwater, Quebec, and North Troy, Vermont, to Pittsburg, New Hampshire, opposite East Hereford, Quebec.

DOE/FE AUTHORITY

[FR Doc. 98–33288 Filed 12–15–98; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 98–09—Certification Notice—164]

Office of Fossil Energy; Gregory Power Partners, L.P.; Notice of Filing of Coal Capability; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of filing.

SUMMARY: On November 24, 1998, Gregory Power Partners, L.P. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power IM/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability

to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Gregory Power Partners, L.P.
Operator: LG&E Power Services
Location: Gregory, TX
Plant configuration: Combined-cycle with steam extraction to process
Capacity: 401.1 megawatts
Fuel: Natural gas
Purchasing entities: Merchant power production facility may have power sales contracts with a variety of purchasers. Initially output will be sold to Reynolds Metals (25MW) and a power marketer (350).
In-service date: June 1, 2000

Issued in Washington, DC, December 10, 1998.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 98–33289 Filed 12–15–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–5–032]

CNG Transmission Corporation; Notice of Application

December 10, 1998.

Take notice that on December 2, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP87–5–032, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Federal Energy Regulatory Commission's (Commission) regulations, to amend an existing Service Agreement Applicable to the Storage of Natural Gas Under Rate Schedule GSS–II, between CNG and MarketSpan Gas Corporation d/b/a Brooklyn Union (MarketSpan), formerly, Long Island Lighting Company, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, CNG requests authorization to amend its existing GSS–II Service Agreement with MarketSpan by adding, on a secondary basis, a receipt point at the existing Canajoharie interconnection between CNG and Iroquois Pipeline Company in Montgomery County, New York. CNG states that no new facilities are required. CNG further states that receipts under the GSS–II Service Agreement at the Canajoharie interconnection will be available only when CNG's operating conditions permit.

Any person desiring to be heard or making any protest with reference to said application should on or before December 31, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to taken but will not serve to make protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on these applications if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–33235 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–83–001]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1998.

Take notice that on December 1, 1998, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with a proposed effective date of November 2, 1998:

Substitute Original Sheet No. 155A
Substitute Original Sheet No. 155B
Substitute Original Sheet No. 155C
Substitute Third Revised Sheet No. 160A

Eastern Shore states that on October 9, 1998, it submitted a filing to comply with the Commission's Order No. 587–H issued July 15, 1998 in Docket No. RM96–1–008 (the Order). The Order required pipelines to adopt Version 1.3 of the Gas Industry Standards Board (GISB) standards dealing with intra-day nominations and nomination and scheduling procedures. In addition, the

Order established November 2, 1998 as the date for implementation of the regulations regarding intra-day nominations.

Eastern Shore further states that in the November 6 Order, the Commission found that, although it had generally complied with Order No. 587–H, Eastern Shore (i) incorrectly changed the GISB version number from 1.2 to 1.3 for several GISB Standards previously incorporated into Eastern Shore's tariff, (ii) failed to incorporate verbatim or by reference GISB Standards 1.3.2 (v), 1.3.2 (vi), and 1.2.8 through 1.2.12, (iii) failed to include bumping notice procedures consistent with those in its OFO provisions, and (iv) did not address the issue of waiver of daily ''non-critical'' penalties.

Eastern Shore states it was directed in the November 6 Order to file revised tariff sheets to rectify the exceptions listed above. The revised tariff sheets referenced above are being filed to comply with items (i), (ii) and (iii) above. With respect to item (i) above, no action is necessary as the Commission rejected such proposed tariff sheets as moot. With respect to item (ii) Eastern Shore has added appropriate language to Sheet No. 160A to incorporate by reference GISB Standards 1.3.2 (v), 1.3.2 (vi) and 1.2.8 through 1.2.12. With respect to item (iii) Eastern Shore has revised Sheet Nos. 155A and 155B, respectively, to include bumping notice procedures consistent with those in its OFO provisions. In regard to item (iv) above, waiver of ''non-critical'' penalties, Eastern Shore respectfully requests an additional fifteen days within which to complete a review of its tariff and respond to this item.

Eastern Shore states that copies of its filing has been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–33234 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–028]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 10, 1998.

Take notice that on December 1, 1998, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet to become effective December 1, 1998:

Twenty-First Revised Sheet No. 30

El Paso states that the above tariff sheet is being filed to implement three negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–33237 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER85–477–010, ER95–1129–001, ER95–1129–002, ER95–1138–000, ER98–4445–000, EL96–71–000, OA96–33–000, OA97–691–000, ER98–3356–0001, and EL95–24–000]

Southwestern Public Service Company and Golden Spread Electric Cooperative, Inc; Notice of Filing

December 11, 1998.

Take notice that on November 25, 1998, Southwestern Public Service Company (Southwestern) and Golden Spread Electric Cooperative, Inc. (Golden Spread) filed a Joint Offer of Settlement in several active Commission dockets. The Joint Offer of Settlement also contains several service agreements which provide for the new service between the parties. These include: (1) The Power Sales Agreement between Southwestern and Golden Spread, dated as of November 16, 1998, pursuant to which Southwestern will provide partial requirements and emergency services to golden Spread; (2) the Mustang Station Unit Power Sale Agreement between Golden Spread and Southwestern, dated as of November 16, 1998, pursuant to which Golden Spread will sell capacity and energy from the Mustang Station to Southwestern; (3) the Golden Spread Emergency Energy Sales Agreement between Golden Spread and SPS; (4) Amendment No. 1 to the January 9, 1998 Partial Requirements Transition Agreement among Southwestern, Golden Spread, GS Electric Generating Cooperative, Inc. (GSE), and Denver City Energy Associates, L.P. (Denver City), dated as of November 16, 1998, which sets out the framework for Golden Spread's conversion from full to partial requirements service; and (5) Amendment No. 1 to the January 9, 1998 Commitment and Dispatch Service Agreement between Golden Spread and Southwestern, dated as of November 16, 1998.

Approval of these agreements is expressly contingent upon approval of the entire Joint Offer of Settlement. Further, the Parties request that these agreements be accepted as a supplement to the various rate schedules already on file with the Commission.

Any person desiring to be heard or to protest such 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 Procedures (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before December 22, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–33258 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER85–477–010, ER95–1129–001, ER95–1129–002, ER95–1138–000, ER98–4445–000, EL96–71–000, OA96–33–000, OA97–691–000, ER98–3356–001, and EL95–24–000]

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December 11, 1998.

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These agreements are not contingent upon Commission approval of the Joint Offer of Settlement. Further, the Parties request that these agreements be accepted as a supplement to the various rate schedules already on file with the Commission.

Any person desiring to be heard or to protest such 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 385.214). All such motions and protests should be filed on or before December 22, 1998. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party to must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–33259 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–103–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

December 10, 1998.

Take notice that on December 3, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, 157.205 and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the receipt of transportation of gas from O-State Energy Company, Inc. (O-State) and to reclaim facilities located in Alfalfa County, Oklahoma, 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.

Williams states that O-State has disconnected its gas supply from Williams and that O-State has agreed to the reclaim of facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rule (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–33236 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3594–000, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Regulation Filings

December 9, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket No. ER98–3594–000]

Take notice that on December 4, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment to the ISO Tariff. The proposed changes would revise Amendment No. 9, to the ISO Tariff, relating to Firm Transmission Rights, which the ISO tendered for filing on June 30, 1998 in the above-captioned docket.

The ISO states that this filing has been served upon all parties on the official service list compiled by the Secretary in the above-captioned docket, including the Public Utilities Commission of California, and upon the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Western Resources, Inc. and Kansas City Power & Light Co.

[Docket No. EC97–56–000]

Take notice that on December 2, 1998, Western Resources, Inc. (Western Resources) and Kansas City Power & Light Co. (KCPL) (collectively, Applicants), filed a response to the letter issued in this proceeding on August 24, 1998 from the Director of the Division of Opinions and Corporate Applications (Director) concerning the proposed merger of Western Resources and KCPL.

Copies of the amended application have been served on all persons included in the Commission's official service list.

Comment date: February 2, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Cambridge Electric Light Company, *et al.*

[Docket Nos. EC98–50–000 and ER98–4088–001, *et al.*]

Take notice that on November 25, 1998, Commonwealth Electric Company (Commonwealth) tendered for filing with the Federal Energy Regulatory Commission (Commission), a copy of the executed First Amendment to the Distribution Service Agreement conforming the monthly charge to the charge set forth in the cost study, pursuant to the Commission's November 12, 1998 order issued in the above-referenced proceeding (85 FERC ¶ 61,217).

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Cambridge Electric Light Co.

[Docket Nos. ER94–1409–002 and EL94–88–002]

Take notice that on December 4, 1998, Cambridge Electric Light Company (Cambridge) filed Revisions to Transmission Service Agreement Between Cambridge Electric Light Company and the Town of Belmont, Massachusetts, and Motion to Modify Refund Procedures. Cambridge states that this filing is made pursuant to Ordering Paragraphs (C) and (D) of the Commission's November 4, 1998 Order in *Cambridge Electric Light Co.*, 82 FERC ¶ 61,190 (1998).

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Lakeside Energy Services, LLC

[Docket No. ER99–505–000]

Take notice that on December 3, 1998, Lakeside Energy Services, LLC (Lakeside) filed a supplement to its application for market-based rates as power marketer. The supplemental information pertains to clarification of ownership of Lakeside as follows:

Lakeside currently has no affiliates and is owned by the following individuals:

Name	Percent ownership
(i) Tammy R. Mabry	50.0
(ii) Gregory V. Mabry	50.0
Total Ownership	100.0

(i) Tammy R. Mabry is currently unemployed. She is a former public school teacher with the Cypress-Fairbanks Independent School District of Houston, Texas.

(ii) Gregory V. Mabry is currently employed as a Tax Manager for International Paper Company in its Houston, Texas office. International Paper Company is primarily engaged in worldwide production of printing and writing papers, paperboard and packaging, building materials and specialty businesses, and manages an extensive distribution system and forestry operation.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Dighton Power Associates Limited Partnership

[Docket No. ER99–616–000]

Take notice that on December 4, 1998, Dighton Power Associates Limited Partnership (Dighton), tendered for filing a supplement to its application for market-based rates as a power marketer, certain blanket approvals, and the waiver of certain Commission regulations. The supplemental information pertains to details on the ownership of Dighton.

Copies of this application are on file with the Commission and are available for public inspection.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Consumers Energy Company

[Docket No. ER99–811–000]

Take notice that on December 4, 1998, Consumers Energy Company (Consumers), tendered for filing executed Service Agreements for Network Integration Transmission Service pursuant to Consumers' Open Access Transmission Service Tariff and Network Operating Agreements with: (1) Chrysler Corporation—Chelsea Proving Grounds, (2) Borgess Medical Center, and (3) Essroc Cement Corporation (Customers).

The agreements with the first two listed Customers have effective dates of November 23, 1998. The agreements with the third listed Customer have effective dates of November 30, 1998.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the Customers.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Minnesota Power, Inc.; Superior Water, Light & Power

[Docket No. ER99–812–000]

Take notice that on December 4, 1998, Minnesota Power, Inc., (Minnesota Power) and Superior Water, Light and Power (SWL&P), tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with TransAlta Energy Marketing (U.S.) Inc., under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Minnesota Power and SWL&P hereby request an effective date thirty days prior to the official filing date.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. FirstEnergy System

[Docket No. ER99–814–000]

Take notice that on December 4, 1998, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for West Penn Power, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under the Service Agreement is November 20, 1998, for the above mentioned Service Agreement in this filing.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Minnesota Power, Inc.

[Docket No. ER99–815–000]

Take notice that on December 4, 1998, Minnesota Power, Inc., (Minnesota Power) and Superior Water, Light and Power (SWL&P), tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with Ameren Services Company, under its Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Maine Electric Power Company

[Docket No. ER99–816–000]

Take notice that on December 4, 1998, Maine Electric Power Company (MEPCO), tendered for filing a service agreement for Non-Firm Point-to-Point Transmission Service entered into with Energy Atlantic, LLC. Service will be provided pursuant to MEPCO's Open Access Transmission Tariff, designated rate schedule MEPCO—FERC Electric Tariff, Original Volume No. 1, as supplemented.

MEPCO respectfully requests that the Commission accept this Service Agreement for filing and requests waiver of the Commission's notice requirements to permit service under the agreement to become effective as of December 4, 1998. MEPCO also requests waiver of Commission notice requirements.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER99–817–000]

Take notice that on December 4, 1998, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Mutual Netting/Closeout Agreements between PacifiCorp and Black Hills Corporation, City of Azusa, City of Burbank, Municipal Energy Agency of Nebraska, Plains Electric Generation and Transmission Cooperative, Inc. and Platte River Power Authority.

Copies of this filing were served on the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER99–818–000]

Take notice that on December 4, 1998, PacifiCorp tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, Network Service Agreements with Flathead Electric Coop., Inc. under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were served on the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER99–819–000]

Take notice that on December 4, 1998, PacifiCorp, tendered for filing in accordance with 18 CFR Part 35 of the Commission's Rules and Regulations, the Second Restated Power Sales Agreement with Electrical District No. 2 of Pinal County, Arizona under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were served on the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Amoco Energy Trading Corporation

[Docket No. ER99–820–000]

Take notice that on December 4, 1998, Amoco Energy Trading Corporation (AETC) submitted for filing a notice of cancellation pursuant to 18 CFR 35.15 to reflect the cancellation of its Rate Schedule FERC No. 1, with a proposed effective date of December 4, 1998.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER99–821–000]

Take notice that on December 4, 1998, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, an umbrella Service Agreements with Black Hills Corporation, City of Burbank and Plains Electric Generation and Transmission Cooperative, Inc., under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon and the Washington Utilities and Transportation Commission.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. State Line Energy, L.L.C.

[Docket No. ER99–822–000]

Take notice that on December 4, 1998, State Line Energy, L.L.C. (State Line), tendered for filing a short-term umbrella agreement with Southern Company Energy Marketing, L.P., for sales under State Line's Market Rate Tariff, FERC Electric Tariff Original Volume No. 1. Service under this agreement commenced on July 15, 1998.

State Line requests waiver of the Commission's 60-day prior notice requirements to allow service to become effective as of July 15, 1998, which is the date that service commenced under the Service Agreement.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. River City Energy, Inc.

[Docket No. ER99–823–000]

Take notice that on December 4, 1998, River City Energy, Inc. (RCE) petitioned the Commission for acceptance of RCE Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

RCE intends to engage in wholesale electric power and energy purchases and sales as a marketer. RCE is not in the business of generating or transmitting electric power. RCE has no affiliates.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. The Washington Water Power Company

[Docket No. ER99–824–000]

Take notice that on December 4, 1998, The Washington Water Power Company (WWP), tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed long-term service agreement under WWP's FERC Electric Tariff, First Revised Volume No. 9, with Enron Power Marketing, Inc.

WWP requests that the Commission waive its prior notice requirement, pursuant to section 35.11 of the Commission's regulations, 18 CFR 35.11, and accept the service agreement for filing effective December 4, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. New York State Electric & Gas Corporation

[Docket No. ER99–825–000]

Take notice that on December 4, 1998, New York State Electric & Gas Corporation (NYSEG), tendered for filing a Service Agreements between NYSEG and PP&L, Inc., Coral Power, L.L.C., West Penn Power d/b/a/ Allegheny Energy, and TransAlta Energy Marketing (U.S.) Inc., (Customer). These Service Agreements specify that the Customer has agreed to the rates, terms and conditions of the NYSEG open access transmission tariff filed July 9, 1997 and effective on November 27, 1997, in Docket No. ER97–2353–000.

NYSEG requests waiver of the Commission's sixty-day notice

requirements and an effective date of December 5, 1998, for the Service Agreements.

NYSEG has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. California Independent System Operator Corporation

[Docket No. ER99–826–000]

Take notice that on December 4, 1998, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment to the ISO Tariff. The proposed amendment would modify Section 28 of the ISO Tariff to extend the ISO's authority to disqualify Energy bids that exceed a specified level.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. The Detroit Edison Company

[Docket No. ER99–828–000]

Take notice that on December 4, 1998, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements for wholesale power sales transactions (the Service Agreements) under Detroit Edison's Wholesale Power Sales Tariff (WPS–1), FERC Electric Tariff No. 4 (the WPS–1 Tariff), and Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff) between Detroit Edison and Merchant Energy Group of the Americas, Inc., and NIPSCO Energy Services, Inc.

Detroit Edison requests that both service agreements with Merchant Energy Group of the Americas, Inc., be accepted effective as of November 2, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company

[Docket No. ER99–829–000]

Take notice that on December 4, 1998, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing a service agreement establishing Arkansas Electric Cooperative Corp. (AEC), as a customer under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of July 7, 1998, for the agreement with AEC and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on AEC.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. Merrill Lynch Capital Services, Inc.

[Docket No. ER99–830–000]

Take notice that on December 4, 1998, Merrill Lynch Capital Services, Inc. (MLCS), tendered for filing pursuant to Rule 205, 18 CFR 385.205, a petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective as of the day following the date of this filing.

MLCS states that it intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where MLCS sells electric energy, it proposes to make such sales on rates, terms, and conditions to be mutually agreed to with the purchasing party. MLCS states that neither it nor any of its affiliates is in the business of generating, transmitting or distributing electric power in the United States.

Rate Schedule No. 1, provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1, also provides that no sales may be made to affiliates.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. The Montana Power Company

[Docket No. TX97–1–000]

Take notice that on November 25, 1998, The Montana Power Company (MPC) tendered for filing a Notice of Withdrawal of its application pursuant to Section 211 of the Federal Power Act, filed on October 10, 1996.

Comment date: December 18, 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. 98–33231 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulabory Commission

[Docket No. ER95–192–014, et al.]

National Power Management Company, et al.; Electric Rate and Corporate Regulation Filings

December 7, 1998.

Take notice that the following filings have been made with the Commission:

1. National Power Management Company

[Docket No. ER95–192–014]

Take notice that on December 4, 1998, the above-mentioned power marketer filed quarterly reports 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.

2. Boston Edison Company

[Docket No. ER99–35–000]

Take notice that on November 30, 1998, Boston Edison Company (Boston Edison), tendered for filing two amendments to its Rate Schedule FERC No. 167, with the Wellesley Municipal Light Department.

Boston Edison requests that these amendments be allowed to take effect on August 1,1998. Boston Edison and Wellesley join in that requested date, which is an element of their settlement which provides for a reduced rate to take effect on that date.

Comment date: December 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. The Washington Water Power Company

[Docket No. ER99–55–000]

Take notice that on December 2, 1998, The Washington Water Power Company (WWP), tendered for filing, pursuant to Section 35.12 of the Commission's Regulations, 18 CFR 35.12, an amendment to WWP's October 6, 1998, filing in Docket No. ER99–55–000. WWP amends its October 6, 1998, filing to include (1) an Ancillary Services Market Power Study, and (2) two additional service schedules, Schedules I and J, to WWP's FERC Electric Tariff, Second Revised Volume No. 9. Schedules I and J set forth the parameters for selling Spinning Reserve Service and Supplemental Reserve Service. WWP proposes to offer these services through its merchant function at market-based rates.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Moulton Niguel

[Docket No. ER99–572–000]

Take notice that on November 5, 1998, Moulton Niguel tendered for filing a Notice of Cancellation in the above-referenced docket.

Comment date: December 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. The United Illuminating Company

[Docket No. ER99–755–000]

Take notice that on November 30, 1998, The United Illuminating Company (UI) tendered for filing for informational purposes all individual Purchase Agreements and Supplements to Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No 2, as amended, during the six-month period May 1, 1998, through October 31, 1998.

Comment date: December 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Duquesne Light Company

[Docket No. ER99–786–000]

Take notice that on December 2, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's market-based rate tariff, an executed Service Agreement with American Electric Power Service Corporation (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 24, 1998.

Copies of this filing were served upon the Customer.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. PP&L, Inc

[Docket No. ER99–787–000]

Take notice that on December 2, 1998, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated November 24, 1998, with Avista Energy, Inc. (Avista), under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Original Volume No. 5. The Service Agreement adds Avista as an eligible customer under the Tariff.

PP&L requests an effective date of December 2, 1998, for the Service Agreement.

PP&L states that copies of this filing have been supplied to Avista and to the Pennsylvania Public Utility Commission.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Orange and Rockland Utilities, Inc.

Docket No. ER99–788–000]

Take notice that on December 2, 1998, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and Transalta Energy Marketing (U.S.) Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of November 9, 1998, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–789–000]

Take notice that on December 2, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between NSP and Duke Energy Trading & Marketing, L.L.C.

NSP requests that the Commission accept both the agreements effective November 4, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Commonwealth Edison Company

[Docket No. ER99–790–000]

Take notice that on December 2, 1998, Commonwealth Edison Company (Edison), tendered for filing a notice of cancellation of an Electric Coordination Agreement, dated December 31, 1988, as amended, between Edison and the Village of Winnetka, Illinois (Winnetka). Edison no longer provides any services to Winnetka under the ECA.

Edison seeks an effective date of June 1, 1998, and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Winnetka and the Illinois Commerce Commission.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–792–000]

Take notice that on December 2, 1998, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing revised tariff sheets amending Con Edison's Electric Rate Schedule No. 3, for the Wholesale Sale of Electricity to Implement Retail Access in New York City and Westchester County. The filing would modify the pricing provisions of the rate schedule to facilitate customer purchases of base quantities of energy from third parties. The rates for Con Edison's energy sales under the rate schedule will not be changed by the filing.

Con Edison states that a copy of this filing has been served by mail upon The New York State Public Service Commission and upon parties to Con Edison's service restructuring proceeding before the New York State Department of Public Service.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Carolina Power & Light Company

[Docket No. ER99–793–000]

Take notice that on December 2, 1998, Carolina Power & Light Company (CP&L), tendered for filing executed Service Agreements with Duke Power and Wisconsin Electric Power Company under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. These Service Agreements supersede the un-executed Agreements originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. The Montana Power Company

[Docket No. ER99–794–000]

Take notice that on December 2, 1998, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with The Town of Philipsburg (Philipsburg) and a Firm Point-To-Point Transmission Service Agreement with Stone Container Corporation (Stone Container) under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff). Montana also tendered for filing a Notice of Cancellation canceling the Firm Point-To-Point Transmission Service Agreement dated July 1, 1998, with Stone Container, as said Service Agreement terminated under it own terms and conditions and has been replaced with the Service Agreement included in the instant filing.

A copy of the filing was served upon Philipsburg and Stone Container.

Comment date: December 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. KeySpan Generation LLC

[Docket No. ER99–809–000]

Take notice that on December 3, 1998, KeySpan Generation LLC filed further Notice of Succession stating that the name of the generation subsidiary which sells energy and capacity at the rate proposed in the proceeding, Long Island Lighting Company, Docket Nos. ER98–11–000 and EL98–22–000, has since been changed from MarketSpan Generation LLC to KeySpan Generation LLC, effective as of October 21, 1998. KeySpan Generation LLC is a subsidiary of MarketSpan Corporation d/b/a/ KeySpan Energy, the holding company.

Comment date: Decmeber 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Old Dominion Electric Cooperative

[Docket No. ES99–14–000]

Take notice that on November 25, 1998, Old Dominion Electric Cooperative (Old Dominion), tendered for filing an application under Section 204 of the Federal Power Act for authorization to issue up to $5 million in first mortgage bonds, with a maturity greater than one year. Grayling Generating Station Docket No. ER99–791–000

Old Dominion also requests to be granted a waiver of the Commission's competitive bid or negotiated placement requirement, under 18 CFR 34.2, pursuant to the authorization requested in this docket.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Grayling Generating Station Limited Partnership

[Docket No. ER99–791–000]

Take notice that on December 2, 1998, Grayling Generating Station Limited Partnership, a Michigan limited partnership (GGS), petitioned the Commission for acceptance of Grayling Generating Station Limited Partnership Rate Schedule No. FERC No. 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

GGS intends to engage in wholesale electric power and energy transactions as a marketer. GGS is exclusively engaged in the operation of an approximately 38 MW (net) small power production facility in Grayling, Michigan. GGS is owned 1% by CMS Generation Grayling Company (CMSG), 49% by CMS Generation Grayling Holdings Company (CMSGH) and 50% by Grayling Development Partners. CMSG and CMSGH are indirect subsidiaries of CMS Energy Corporation, a registered public utility holding company.

Comment date: December 22, 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. 98–33233 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–4525–000, et al.]

Northeast Utilities Service Company, et al.; Electric Rate and Corporate Regulation Filings

December 8, 1998.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket Nos. ER98–4525–000 and ER98–4591–000]

Take notice that on December 3, 1998, Northeast Utilities Service Company (NUSCO), tendered for filing on behalf of 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 (collectively the NU Companies), amendments to its Systems power sales agreement filed in the above-referenced dockets.

NUSCO requests that the agreements be permitted to take effect on the original effective date of November 1, 1998, and that the Commission grant any waiver necessary to permit the agreements to take effect on that date.

Copies of the filing were served upon the City of Holyoke Gas & Electric Department and the Unitil Power Corporation.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company

[Docket No. ER99–795–000]

Take notice that on December 3, 1998, Commonwealth Edison Company (ComEd), tendered for filing a service

agreement establishing Vitol Gas & Electric (VG&E), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of December 3, 1998, for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on VG&E.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. Southwestern Public Service Company

[Docket No. ER99–797–000]

Take notice that on December 3, 1998, Southwestern Public Service Company (Southwestern), tendered for filing a proposed Power Sale Agreement (Agreement) with e prime, Inc. (e prime). The proposed Agreement provides for e prime's purchase of firm power service from Southwestern at market-based rates.

Southwestern requests that the Agreement be made effective on January 1, 1999.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Northeast Utilities Service Company

[Docket No. ER99–798–000]

Take notice that on December 3, 1998, Northeast Utilities Service Company (NUSCO) on behalf of the Northeast Utilities (NU) System Companies, tendered for filing a Service Agreement between NUSCO and The United Illuminating Company for Local Network Transmission service under the NU System Companies Open Access Transmission Service Tariff No. 9. NUSCO states that the Service Agreement will supersede the following Connecticut Light and Power Company rate schedules Rate Schedule FERC No. 15, Derby Junction; Rate Schedule FERC No. 16, Devon & Trumbull Junction; Rate Schedule FERC No. 17, Glen Lake Junction; Rate Schedule FERC No. 103, Old Town-Hawthorne Junction; and Rate Schedule FERC No. 42, Pease Road Junction.

NUSCO requests waiver of the Commission's notice requirements to permit the Service Agreement to become effective on November 1, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Co.

[Docket No. ER99–799–000]

Take notice that on December 3, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, Original Volume No. 2).

Wisconsin Electric respectfully requests an effective date December 4, 1998.

Copies of the filing have been served on Tractebel Energy Marketing, Inc., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Allegheny Power Service Corporation, on behalf of Monongahela Power Co. The Potomac Edison Company, and West Penn Power Company (Allegheny Power))

[Docket No. ER99–800–000]

Take notice that on December 3, 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 Supplement No. 40 to add Avista Energy, Inc., Duke Solutions, Inc., and The Detroit Edison Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing in Docket No. OA96–18–000.

The proposed effective date under the Service Agreements is December 2, 1998.

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 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Metro Energy Group, LLC

[Docket No. ER99–801–000]

Take notice that on December 3, 1998, Metro Energy Group, LLC (Metro), petitioned the Commission for acceptance of Metro Energy Group, LLC Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Metro intends to engage in wholesale electric power and energy purchases and sales as a marketer. Metro is not in the business of generating or transmitting electric power.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Washington Water Power Company

[Docket No. ER99–802–000]

Take notice that on December 3, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR Section 35.13, an executed Service Agreement under WWP's FERC Electric Tariff First Revised Volume No. 9, and Mutual Netting Agreement, with Sovereign Power, Inc.

WWP requests waiver of the prior notice requirement and requests an effective date of December 1, 1998.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Northern States Power Company (Minnesota) Northern States Power Company (Wisconsin)

[Docket No. ER99–803–000]

Take notice that on December 3, 1998, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Firm Point-to-Point Transmission Service Agreement between NSP and NSP Wholesale.

NSP requests that the Commission accept both the agreements effective November 1, 1998, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER99–804–000]

Take notice that on December 3, 1998, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Electric Clearinghouse, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 2, 1998.

Copies of this filing were served upon Customer.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–805–000]

Take notice that on December 3, 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 Supplement No. 10 to add two (4) new Customers 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 December 2, 1998, to Cinergy Capital & Trading, Inc., CNG Power Services Corporation, DTE Energy Trading, Inc., and Potomac Electric Power 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 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Genesee Power Station Limited Partnership

[Docket No. ER99–806–000]

Take notice that on December 3, 1998, Genesee Power Station Limited Partnership, a Michigan limited partnership (GPS), petitioned the Commission for acceptance of Genesee Power Station Limited Partnership Rate Schedule No. FERC No. 2; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

GPS intends to engage in wholesale electric power and energy transactions as a marketer. GPS is exclusively engaged in the operation of an approximately 38 MW (net) small power production facility in Genesee Township, Michigan. GPS is owned 1% by CMS Generation Genesee Company (CMSG), 48.75% by CMS Generation Holdings Company (CMSGH), 49.75% by Genesee Power Partners Limited Partnership, and .5% by GPS Newco L.L.C. CMSG and CMSGH are indirect subsidiaries of CMS Energy Corporation, a registered public utility holding company.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. FirstEnergy Corp.

[Docket No. ER99–807–000]

Take notice that on December 3, 1998, FirstEnergy Corp. (FirstEnergy), tendered for filing a Connection Point and Operating Agreement to provide a connection of electric generating facilities owned and operated by M.M. Cuyahoga Energy, L.L.C., to the FirstEnergy System and for operation and maintenance of those facilities.

The proposed effective date for the Connection Point and Operating Agreement is January 1, 1999.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Potomac Electric Power Company

[Docket No. ER99–808–000]

Take notice that on December 3, 1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco's FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and Merchant Energy Group of the Americas, Incorporated; Allegheny Electric Cooperative, Incorporated; and AYP Energy, Incorporated.

An effective date of December 3, 1998, for these service agreements, with waiver of notice is requested.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Niagara Mohawk Power Corporation

[Docket No. ER99–810–000]

Take notice that on December 3, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing an executed Transmission Service Agreement between NMPC and NEV East, L.L.C. This Transmission Service Agreement specifies that NEV East, L.L.C., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and NEV East, L.L.C., to enter into separately scheduled transactions under which NMPC will provide transmission service for NEV East, L.L.C., as the parties may mutually agree.

NMPC requests an effective date of November 25, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and NEV East, L.L.C.

Comment date: December 28, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Edgar Electric Cooperative

[Docket No. ER99–827–000]

Take notice that on December 3, 1998, Edgar Electric Cooperative, d/b/a/ EnerStar Power Corporation filed a summary of its activity for the third quarter of 1998. EnerStar Power Corporation entered into zero agreements for the sale, purchase, and/ or exchange of electricity with other parties during the third quarter of 1998.

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Central Louisiana Electric Co. Inc., Duquesne Light Company; Entergy Services, Inc.; Entergy Arkansas, Inc.; Entergy Gulf States, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; UtiliCorp United, Inc.; Central Power & Light Company; West Texas Utilities Company; Public Service Company of Oklahoma; Southwestern Electric Power Company; Public Service Company of New Mexico

[Docket Nos. OA97–432–002; OA97–407–002; OA97–458–002; OA97–446–002; OA97–287–002; OA97–433–002; and OA97–720–002]

Take notice that between November 30–December 4, 1998, the above-named companies submitted revised standards of conduct in response to the Commission's October 29, 1998 Order on Standards of Conduct, 85 FERC ¶ 61,145 (1998).

Comment date: December 23, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. UGI Utilities, Inc.

[Docket No. OA97–485–003]

Take notice that UGI Utilities, Inc. filed revised standards of conduct on December 3, 1998, in response to the Commission's September 18, 1998 Order on Standards of Conduct, 84 FERC ¶ 61,225 (1998).

Comment date: December 23, 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. 98–33232 Filed 12–15–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30411A; FRL–6042–7]

American Cyanamid Company; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Acrobat Technical, Acrobat MZ Fungicide, and Acrobat MZ WDG Fungicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 247, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–9354; e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of June 26, 1996 (61 FR 33116)(FRL–5370–5), which announced that American Cyanamid Company, Agricultural Research Division, P.O. Box 400, Princeton, NJ 08543-0400, had submitted applications to conditionally register the fungicide products Acrobat Technical and Acrobat MZ Fungicide (EPA File Symbols 241–GIE and 241–GIG) containing the active ingredient dimethomorph morpholine,3-(3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl at 98.98% and 9% respectively, active ingredient not included in any previously registered pesticide products. Acrobat MZ Fungicide also contains the chemical mancozeb zinc ion and manganese ethylenebisdithiocarbamate coordination product at 60%.

The chemical formulation has been amended to read ''dimethomorph (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine.''

EPA subsequently received an application from American Cyanamid to conditionally register the pesticide product Acrobat MZ WDG Fungicide (EPA File Symbol 241–GOL), containing the active ingredients dimethomorph at 9% and mancozeb at 60%. However, since the notice of receipt of this application to register the product as required by section 3(c)(4) of FIFRA, as amended did not publish in the **Federal Register**, interested parties may submit comments within 30 days from the date of publication of this notice for this product only. Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail.

The applications were approved on September 30, 1998, for the following products:

1. Acrobat Technical for formulation into end-use fungicide products (EPA Registration Number 241–382).

2. Acrobat MZ Fungicide for the control of late blight disease on potatoes (EPA Registration Number 241–383).

3. Acrobat MZ WDG Fungicide for the control of late blight disease on potatoes (EPA Registration Number 241–395)

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of dimethomorph and mancozeb, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of dimethomorph and mancozeb during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

All required data studies must be submitted to the Agency within 2 years from the date of registration.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on dimethomorph and mancozeb.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: December 7, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–33119 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30465; FRL–6046–7]

Biocontrol Limited; Application to Register Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by January 15, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30465] and the file symbol to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Judy Loranger, Regulatory Action Leader, Biopesticide and Pollution Prevention Division, (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 902W40, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202; (703) 308–8056; e-mail: loranger.judy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

File Symbol: 53575-ER. Applicant: Biocontrol Limited, 400 East Evergreen Blvd., Suite 205, Vancouver, WA 98660. Product Name: Isomate-BAW Pheromone. Active ingredient: This is the mixture of two pheromone compounds (Z,E)-9,12-Tetradecadienyl acetate at 69 percent and (Z)-9-Tetradecen-1-ol at 26 percent. Proposed classification/Use: For the control of the beet armyworm in alfalfa, asparagus, beans, beets, cabbage, celery, cole crops, cotton, cucumbers, ground nuts, lettuce, onions, peas, peppers, soybeans, strawberries, sweet potatoes, tomatoes and tobacco.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30465] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30465]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: December 4, 1998.

Janet L. Andersen,

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

[FR Doc. 98–33336 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34155; FRL–6049–3]

Certain Chemicals; Availability of Reregistration Eligibility Decision Documents, Opening of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period of the Reregistration Eligibility Decision (RED) documents for the active ingredients deet, triclopyr, dichlobenil, propachlor, and methylisothiazolinone. The REDs for the chemicals listed above are the Agency's formal regulatory assessments of the health and environmental data base of the subject chemicals and present the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on these decisions must be submitted by February 16, 1999.

ADDRESSES: Three copies of comments identified with the docket control number ''OPP–34155'' and the case

number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket.Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION: Technical questions on the RED documents listed below should be directed to the appropriate Chemical Review Manager:

Chemical Name	Case No	Chemical Review Manager	Telephone No.	e-mail Address
Deet	0002	Linda Werrell	703 308–8033	werrell.linda@epa.gov
Triclopyr	2710	Dean Monos	703 308–8074	monos.dean@epa.gov
Propachlor	0177	Anne Overstreet	703 308–8068	overstreet.anne@epa.gov
Dichlobenil	0263	Carmelita White	703 308–7038	white.carmelita@epa.gov
Methylisothiazolinone	3092	Deanna Scher	703 308–7043	scher.deanna@epa.gov

To request a copy of any of the above listed RED documents, or a RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, in Rm. 119 at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and can also be reached on the internet via EPA's website at: http//www.epa.gov/oppsrrd1/REDs/.

II. Reregistration Eligibility Decision

The Agency has issued Reregistration Eligibility Decision (RED) documents for the pesticidal active ingredients listed above. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of each of the chemicals listed above is substantially complete.

All registrants of products containing one or more of the above listed active ingredients have been sent the appropriate RED documents and must respond to labeling requirements and product specific data requirements (if applicable) within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing these REDs as final documents with a 60 day comment period. Although the 60 day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number ''OPP–34155'' (including comments and data submitted electronically as described below). A public version of this record, including printed and paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34155). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: December 3, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–33337 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34156; FRL–6050–2]

Availability of the Dicofol Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and starts a 60-day public comment period of the Reregistration Eligibility Decision (RED) document for the active ingredient dicofol. The RED for this chemical is the Agency's formal regulatory assessment of the health and environmental database of the subject

chemical and presents the Agency's determination regarding which pesticidal uses are eligible for reregistration.

DATES: Written comments on the RED decisions must be submitted by February 16, 1999.

ADDRESSES: Three copies of comments identified with the docket control number OPP–34156 and the case number (noted below), should be submitted to: By mail: Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to the docket on the first floor (Room 119), CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION'' of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket without prior notice (including comments and data submitted electronically). The public docket and docket index, including printed paper versions of electronic comments, which does not include any information claimed as CBI will be available for public inspection on the first floor (Room 119) at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Technical questions on the RED document should be directed to the appropriate point-of-contact:

Chemical Name	Case No.	Point of Contact	Telephone No.	e-mail Address
Dicofol	0021	Phil Budig	703–308–-8029	budig.phil@epa.gov

To request a copy of the above listed RED document, or a specific RED Fact Sheet, contact the OPP Pesticide Docket, Public Information and Records Integrity Branch, first floor (Room 119), at the address given above or call (703) 305–5805.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic copies of this document and various support documents 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/).

Electronic copies of the REDs and RED fact sheets can be downloaded from the Pesticide Special Review and Reregistration Information System at (703) 308–7224, and also can be reached on the Internet via EPA's website at: http://www.epa.gov/REDs.

II. Reregistration Eligibility Decision

The Agency has issued a Reregistration Eligibility Decision (RED) document for the pesticidal active ingredient dicofol. Under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of dicofol is substantially complete.

All registrants of products containing the above listed active ingredient have been sent the Dicofol RED document and must respond to labeling requirements and product specific data requirements within 8 months of receipt. Products containing other active ingredients will not be reregistered until those other active ingredients are determined to be eligible for reregistration.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED as a final document with a 60–day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. All comments will be carefully considered by the Agency.

III. Background Information

EPA has determined that products containing dicofol may be eligible for reregistration, as specified in the dicofol RED, contingent upon results of a dermal toxicity study due to the Agency in December 1998. EPA has identified a possible unacceptable occupational risk in the dicofol RED. However, the Agency believes that the assumptions used to arrive at this conclusion may have led to an overestimation of that risk (e.g., 100% dermal absorption). Therefore, EPA has found that it is not appropriate to declare dicofol ineligible at this time. One key consideration is the fact that the registrants will be submitting the dermal toxicity study mentioned above, which may be a more appropriate study for regulatory purposes than data currently used. Although the Agency would not normally delay a decision for a study voluntarily conducted by a registrant outside the RED timeframe, three factors make this appropriate here. First, the data will be delivered to the Agency very shortly. Second, the registrants have committed to significant risk mitigation measures to be implemented immediately (listed below), which address risk concern while the new data are being developed and evaluated. Third, the registrants have submitted a voluntary cancellation request, which will immediately go into effect for any dicofol use which is found to have unacceptable risk after consideration of the dermal toxicity study. EPA believes this process will address dicofol risk in a timeframe that is comparable or more rapid than what EPA could achieve through its own regulatory process.

In sum, dicofol risk will be addressed in the interim in the following manner:

To address risks to homeowners, residents, and children:

- All residential uses have been eliminated from labels and will be voluntarily canceled.

To address risks to handlers:

- Mixers/loaders/applicators must wear additional personal protective equipment (PPE), and use enclosed cabs and cockpits.
- All wettable powder formulations produced after December 31, 1998 must be placed in water soluble packaging.
- Application with handheld equipment is eliminated for liquid formulations.
- Liquid formulations produced after December 31, 1998 must bear labeling

requiring closed mixing systems for dry beans.

To address risks to workers (persons entering treated areas following applications of dicofol):

• A revised Restricted Entry Interval (REI) will be set, based on Dislodgeable Foliar Residue (DFR) data submitted in October, 1998, and on the dermal toxicity study being submitted in December, 1998.

To protect the environment and wildlife:

• Dicofol applications are limited to no more than one per year. Previously, for some uses, the number of applications allowed per year was either unrestricted or limited to 2 or 3 applications per year.

• Dicofol applications on citrus will not exceed 3 pounds a.i./acre per year. This has been reduced from 8 pounds a.i./acre per year.

• Dicofol applications on strawberries will not exceed 2 pounds a.i./acre per year. This has been reduced from 2.4 pounds a.i./acre per year.

• A spray drift and Runoff Caution Statement is being added to the label. Also, a statement prohibiting application directly to water is being added to the label.

IV. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket control number OPP–34156 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (OPP–34156). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: December 4, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 98–33334 Filed 12–15–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30408A; FRL–6042–6]

Rhone-Poulenc Co.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to conditionally register the pesticide products Technical Isoxaflutole and Balance WDG Herbicide containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM) 23, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, 703–305–6224; e-mail: miller.joanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Availability: Electronic copies of this document and the Fact Sheet are available from the EPA home page at the **Federal Register** Environmental Sub-Set entry for this document under ''Laws and Regulations'' (http://www.epa.gov/fedrgstr/).

EPA issued a notice, published the **Federal Register** of May 1, 1996 (61 FR 19282)(FRL–5363–6), which announced that Rhone-Poulenc Ag Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, had submitted applications to conditionally register the herbicide products Technical Isoxaflutole and Balance WDG Herbicide (EPA File Symbols 264–LAA and 264–LAT) containing the active ingredient isoxaflutole [5-cyclopropyl-4-(2-methylsulfonyl-4-trifluoromethylbenzoyl)isoxazole] at 98% and 76.5% respectively, an active ingredient not included in any previously registered pesticide products.

The applications were approved on September 15, 1998, for one technical and one end-use product listed below:

1. Technical Isoxaflutole for manufacturing purposes only (EPA Registration Number 264–566).

2. Balance WDG Herbicide for weed control in field corn (EPA Registration Number 264–567).

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of isoxaflutole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of isoxaflutole during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in an EPA Pesticide Fact Sheet on isoxaflutole.

A paper copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public

inspection in the Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: December 7, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–33118 Filed 12–15–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50847; FRL–6040–6]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Diana Horne, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 9W29, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, Telephone: 703–308–8367, e-mail: horne.diana@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

69834–EUP–1. Issuance. EDEN Bioscience Corporation, 11816 North Creek Parkway N., Bothell, WA 98011–8205. This experimental use permit allows the use of 548.58 pounds of the biological pesticide Harpin on 4,997 acres to evaluate the control of various bacterial, viral, and fungal diseases. Commodities included in the program are: alfalfa, apples, blueberry, citrus (oranges, grapefruit, lemons, limes, tangerines, and tangelos), conifer seedlings, corn, sweet corn, cotton, cranberry, cucurbits (cucumbers, squash, and melons), small grains (winter or spring wheat and barley), grapes (wine and table varieties), ornamental roses, ornamentals (greenhouse foliage and bedding plants), peanuts, peppers (bell and chile), potatoes, raspberry, rice, soybeans (dry), strawberries, sugar cane, tobacco (burley and flue-cured), tomatoes (fresh market and processing), and turf (lawn and garden). The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Montana, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, and Washington. The experimental use permit is effective from October 31, 1998 to October 31, 2000.

Persons wishing to review this experimental use permit are referred to the designated contact person. Inquiries concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 2, 1998.

Janet L. Andersen,

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

[FR Doc. 98–33335 Filed 12–15–98; 8:45 am]
BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

[BM–10–DEC–98–02]

Interest Rate Risk Management

AGENCY: Farm Credit Administration.

ACTION: Final policy statement.

SUMMARY: The Farm Credit Administration (FCA or Agency), through the FCA Board (Board), is issuing a final policy statement that provides guidance on interest rate risk management to Farm Credit System (System) institutions, excluding the Federal Agricultural Mortgage Corporation (Farmer Mac). The policy statement also describes the Agency's approach to evaluating interest rate risk when making a determination of capital adequacy. The policy statement identifies key elements of sound business principles and practices for interest rate risk management by a System institution. The policy statement also provides criteria by which examiners will evaluate the adequacy and effectiveness of a System institution's interest rate risk management.

EFFECTIVE DATE: December 10, 1998.

FOR FURTHER INFORMATION CONTACT:

Andrew D. Jacob, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4498, TDD (703) 883–4444,
or
Wendy R. Laguarda, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

The Agency published a proposed policy statement on interest rate risk management on May 21, 1998 (63 FR 27962). We received comments on the proposed policy statement from the System's Presidents' Finance Committee (System joint comments) and the Independent Bankers Association of America (IBAA comments). The comments, discussed in greater detail below, reflect the views of System banks and associations and community banks, respectively. We carefully considered the comments in the formulation of the final policy statement and have adopted the policy statement substantially as proposed. The final policy statement also includes minor technical, grammatical, and syntactical changes.

II. System Joint Comments

The System provided six comments on the proposed policy statement. First, the System expressed its concern that the policy statement does not apply to Farmer Mac and requested an explanation for the exclusion. The System banks and associations believe that the interest rate risk management principles set forth in the policy statement also are applicable to Farmer Mac.

The Agency did not make the policy statement applicable to Farmer Mac because the subject of interest rate risk must be addressed in risk-based capital regulations for Farmer Mac. The Farm Credit Act of 1971, as amended (Act), at 12 U.S.C. 2279bb–1, requires the Agency, acting through the Office of Secondary Market Oversight (OSMO), to issue regulations that will include a risk-based capital test which, along with other factors, will include interest rate risk. We also note that the statute precludes publishing these regulations prior to February 10, 1999. In light of the statutory provisions and forthcoming regulations, we decided not to apply this policy statement to Farmer Mac.

In the last sentence of section IV.A. of the policy statement, entitled ''Risk Limits,'' the System suggested that the phrase ''A System institution's board and senior management'' be replaced with ''Each System institution.'' The System recommended this change because it felt that System board responsibilities were adequately detailed in section II. of the policy statement. We decided not to make this change because we want to emphasize the responsibility of boards to set risk limits prior to the introduction of new business approaches involving new products, hedging activities, or position-taking strategies. We believe this phrase is necessary to specifically identify that this responsibility rests with the board and senior management.

In section IV.E. of the policy statement, entitled ''Additional Guidance on the Interest Rate Risk Management Process,'' the System wanted additional guidance on when or why a System association needs to establish limits on market value of equity (MVE). The Agency expects an association to establish an MVE limit when it implements decisions regarding the duration of its equity position, such as by mismatching the repricing or maturity of its assets or liabilities either directly or through the use of a derivative instrument. We have revised the first bullet of the second paragraph of section IV.E. of the policy statement to explain when an association should establish an MVE limit.

Also, in the first sentence of the third paragraph of section IV.E. of the policy statement, the System recommended replacing the phrase ''essentially all'' with the word ''primary'' in the sentence: ''Finally, a direct lender association that relies on its funding bank to manage essentially all sources of interest rate risk and that has minimal level of interest rate risk exposure should establish an interest rate risk management program that includes . . .'' The System commented that ''essentially all'' could be interpreted in a broad number of ways, including the impact of changing interest rates on earnings from an association's ''own funds position'' or spread compression due to competition. The FCA Board agrees that the phrase ''essentially all'' could be interpreted to include interest rate risk that is under the direct control of the association. The policy statement has been changed to use the phrase ''primary sources of interest rate risk.'' In the context of the policy statement, ''primary sources of interest rate risk'' encompasses interest rate risk from sources such as:

- Maturity or coupon adjustment timing differences of assets, liabilities, and off-balance-sheet instruments (repricing or mismatch risk);
- Changes in the slope of the yield curve (yield curve risk);
- Imperfect correlation in the adjustment of the rates earned and paid on different instruments with otherwise similar repricing characteristics (basis risk); and
- Interest rate-related options embedded in assets, liabilities, and off-balance-sheet instruments (options risk).

Finally, in the first and second bullets of the third paragraph of section IV.E. of the policy statement, the System recommended replacing the phrase ''tolerance for'' with ''philosophy regarding'' as well as deleting the phrase ''and exposure levels.'' This section of the proposed policy statement provides that an association should establish an interest rate risk management program that includes: ''A policy that establishes the board's tolerance for interest rate risk . . .'' and ''Procedures to ensure that the board and senior management understand the sources and exposure levels of interest rate risk . . . .'' The System suggests that its wording is more appropriate to reflect an association's interest rate risk management responsibilities when primary sources of interest rate risk are managed by its funding bank. We believe that an association should establish interest rate risk tolerances and quantify interest rate risk exposure levels under its direct control. Therefore, we have not made the changes suggested by the System. However, we have added the phrase ''within the association's direct control'' in the first and second bullets of the third paragraph in section IV.E. to make it clear that tolerance limits and exposure levels need only be established for those interest rate risks directly under an association's control. For example, although the bank may manage primary sources of interest rate risk, an association may still be exposed to risk from the following sources:

- Repricing of administered rate loans;
- Adjustments in loan spreads; and
- Rate movements on an association's loanable funds position.

We also have added to section IV.E in the second bullet of the third paragraph the phrase: ''and the sources of interest rate risk being managed by the funding bank.'' We added this phrase to emphasize that even when the funding bank manages primary sources of interest rate risk, it is still necessary for the association board and management to maintain an awareness of such risk.

III. IBAA Comments

The IBAA commented that the guidance on interest rate risk management developed by the FCA, particularly in the area of examination criteria, is not as thorough as similar guidance provided by other Federal financial institution regulatory agencies (*see* 61 FR 33166, June 26, 1996).[1] The FCA policy statement is a flexible document providing broad guidance on the subject of interest rate risk management. Our policy statement includes all the subject areas addressed in the joint policy statement issued by other Federal financial institution regulatory agencies. We believe that the policy statement appropriately covers all areas of interest rate risk management for System institutions. Finally, like other Federal financial institution regulators, we will include more detailed criteria for examining interest rate risk management practices in our publicly available FCA Examination Manual.

The final policy statement, as adopted by the Board, is set forth below in its entirety.

Policy Statement on Interest Rate Risk Management

[BM–10–DEC–98–02; FCA–PS–74]

Effective Date: December 10, 1998.
Effect on Previous Actions: None.
Source of Authority: Sections 5.9 and 5.17 of the Farm Credit Act of 1971, as amended.

I. Purpose

Interest rate risk is the exposure of a Farm Credit System (System) institution's financial condition to adverse movements in interest rates. This policy statement provides guidance

[1] Other Federal financial agencies that issued a joint policy statement on interest rate risk management are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

to System institutions on principles for prudent interest rate risk management. The policy statement also provides criteria by which the Farm Credit Administration (FCA or Agency) will evaluate the adequacy and effectiveness of a System institution's interest rate risk management.

II. Board of Directors' Responsibilities

Effective board of directors' (board) oversight of an institution's interest rate risk activities is the cornerstone of a sound risk management process and a critical element of a board's asset/liability management policy. A board should understand the nature and level of interest rate risks and how such risks relate to the overall business strategies of the institution. A board should also define its risk tolerance levels and expectations for interest rate risk management. To properly fulfill its responsibilities a board should, at a minimum:

- Approve major business strategies and policies addressing interest rate risk, including setting relevant risk limits, and integrating such strategies and policies into the institution's overall strategic and financial planning processes;
- Ensure that senior management implements a sound risk management process that facilitates the identification, measurement, monitoring, reporting, and control of interest rate risk;
- Monitor the institution's performance and overall interest rate risk profile to ensure that risk is maintained at prudent levels; and
- Ensure that adequate resources and proper control systems are devoted to interest rate risk management, including measurement activities.

III. Senior Management Responsibilities

Senior management is responsible for ensuring that interest rate risk is properly managed on both a long-range and day-to-day basis. In managing the institution's activities senior management should, at a minimum:

- Develop and implement procedures that translate the board's major business strategies and policies addressing interest rate risk, including risk limits, into operating standards;
- Ensure adherence to the lines of authority and responsibility that the board has approved for managing, measuring, and reporting interest rate risk exposures;
- Oversee the implementation and maintenance of a management information system and other systems that appropriately manage and control interest rate risk; and
- Establish proper internal controls and audits [2] of the interest rate risk management process.

An institution's board or senior management may delegate authority for implementing many aspects of board policy on risk management to an internal committee composed of qualified officers and staff members. The risk management committee should be a decision-making body involved in the acquisition, allocation, and pricing of the institution's resources in a manner consistent with both the goals established in the institution's business plan and the risk tolerances established by the board.

IV. Interest Rate Risk Management Process

Effective control of interest rate risk requires a comprehensive management process that includes the following elements:

- Policies and procedures designed to control the nature and amount of interest rate risk that the institution assumes;
- A system for identifying and measuring interest rate risk;
- A system for monitoring and reporting interest rate risk; and
- A system of internal controls and audits to ensure the integrity of the overall risk management process.

Each of these elements is discussed below.

A. Risk Limits

Each System institution should establish appropriate controls to effectively limit interest rate risk exposures within the risk tolerances established by its board. Established risk limits should be consistent with the institution's overall measurement of interest rate risk and should consider capital levels and earnings performance. Risk limits must be clearly defined, ensure that exposures will not lead to an unsafe or unsound condition, be consistent with the nature and complexity of the institution's activities, and be evaluated within the institution's total risk-bearing capacity. The risk limits should address the potential impact of changes in market interest rates on both reported earnings and the market value of equity (MVE). Exceptions to established risk limits should be appropriately controlled, approved, and reported. In addition, risk limits should be reviewed at least annually to ensure that they remain appropriate. A System institution's board and senior management should further ensure that adequate operational procedures, controls, and risk limits are in place prior to introducing new business approaches. New business approaches have the potential to increase materially an institution's interest rate risk exposure, particularly when they involve new products, hedging activities, or position-taking strategies.

B. Interest Rate Risk Identification and Measurement

Senior management should ensure the adequacy and completeness of the interest rate risk identification and measurement system. The quality and reliability of the identification and measurement system depend on the type of system used, the quality of the data, and various assumptions used in the model; therefore, close attention to these areas is needed. Senior management should ensure that the identification and measurement system:

- Enables management to identify in a timely and accurate manner risks arising from the institution's existing activities and from new business activities;
- Captures and measures all material sources of interest rate risk in ways that are consistent with the scope of the institution's activities [3] and considers all relevant repricing and maturity data such as current balances, contractual rates, principal payments, interest reset dates, maturities, index rates, and rate caps and floors;
- Utilizes assumptions that are clearly communicated to and understood by risk managers and the board of directors; and
- Measures an institution's vulnerability to loss under stressful market conditions, including a breakdown of key assumptions.

When assessing the scope of an institution's exposure, risk managers should consider the effect on earnings and, when appropriate, MVE. The effect on earnings is important because reduced earnings or losses can adversely

[2] "Audits" refers to audits performed by either internal or external auditors. An institution can rely on qualified internal auditors to perform the audit functions. However, we encourage institution boards to consider using external auditors if the interest rate risk exposures are complex and appropriate interest rate risk management practices are critical to controlling risk exposures at prudent levels.

[3] For a System institution with a high level of interest rate risk or a complex risk exposure, interest rate risk should be measured over a range of potential interest rate changes, economic scenarios, and yield curve shifts so as to capture effectively all material exposures (options, mismatch/repricing, basis, and yield curve). For a System association where the funding bank manages the majority of interest rate risk, any locally managed interest rate risk should be measured at least annually as part of the association's annual financial planning process.

affect liquidity and capital adequacy. The effect on MVE is important because adverse changes in the market value of assets, liabilities, and off-balance-sheet instruments can affect the future performance and liquidity of a System institution.

C. Monitoring and Reporting

Each System institution must have adequate information systems for monitoring and reporting interest rate risk exposures. These systems should provide the board, senior management, and any risk management committee with clear, concise, and timely summaries of the institution's aggregate exposures, compare current exposure to policy limits, and allow for a determination of whether the institution holds sufficient capital in relation to the level of risk exposure. Risk reports should provide sufficient information for the board and senior management to assess exposure. The frequency of internal reporting should be determined by the board and senior management and should depend on the amount and complexity of an institution's level of risk.

D. Internal Controls and Audits

Each System institution should maintain an effective system of internal controls as part of its interest rate risk management process. Controls should include a process for identifying and evaluating risk, establishing appropriate exposure limits and approval processes, and requiring reconciliations, audits, and other mechanisms designed to provide reasonable assurance that interest rate risk is managed in a safe and sound manner. The controls should clearly define official lines of authority and the appropriate separation of duties to avoid conflicts of interest, and should ensure that personnel follow established policies and procedures.

An institution with more complex risk exposures should ensure that its interest rate risk process is audited on a regular basis. Qualified individuals who are independent of the function they are assigned to audit or external auditors should conduct the audits. The audits should test the effectiveness of controls and ensure appropriate follow-up with management where risk limits have been exceeded or deficiencies in interest rate risk management are identified. Audits of risk measurement systems and models should include assessments of the assumptions, parameters, and methodologies used. The audit results should be reported to the board and senior management.

E. Additional Guidance on the Interest Rate Risk Management Process

The interest rate risk management process will vary among System institutions in accordance with the level of interest rate risk exposure. For instance, a System bank, direct lender association, or a service corporation that is managing major sources of interest rate risk should employ comprehensive interest rate risk management techniques. Similarly, measurement practices should address all applicable elements of an effective process for interest rate risk management discussed in this policy statement. These practices should help ensure the establishment and maintenance of adequate controls over the identification, measurement, monitoring, and reporting of all sources of interest rate risk.

The formality and comprehensiveness of the risk management process will vary among System associations depending on the extent to which the funding bank centrally manages interest rate risk. For instance, a direct lender association that is managing some sources of interest rate risk locally and that has the potential for a moderate level of interest rate risk exposure should implement an interest rate risk program that includes:

- A policy that defines the board's interest rate risk tolerance arising from the sources of interest rate risk being managed locally and that sets risk limits from an earnings perspective and, if appropriate considering the sources of interest rate risk being managed, an MVE perspective. For instance, a System association should impose an MVE limit when it implements decisions regarding the duration of its equity position, such as by mismatching the repricing or maturity of its assets or liabilities either directly or through the use of a derivative instrument;
- Procedures and practices established by senior management that adequately identify, measure, control, monitor, and report interest rate risk within the association's direct control;
- Procedures and practices established by senior management that ensure that the board is informed of the sources and exposure levels of interest rate risk;
- Reliable information systems and modeling capabilities that are commensurate with the nature of the interest rate risk being managed and that measure interest rate risk under various economic scenarios; and
- Consideration of interest rate risk exposures in the capital adequacy plan as required by § 1615.5200(b)(7).

Finally, a direct lender association that relies on its funding bank to manage primary sources of interest rate risk and that has a minimal level of interest rate risk exposure should establish an interest rate risk management program that includes:

- A policy that establishes the board's tolerance for interest rate risk within the association's direct control;
- Procedures and practices to ensure that the board and senior management are informed of the sources and exposure levels of interest rate risk within the association's direct control and the sources of interest rate risk being managed by the funding bank;
- Consideration of interest rate risk exposures in the capital adequacy plan as required by § 1615.5200(b)(7); and
- An analysis, prepared at least annually, of potential earnings exposure to changing interest rates.

V. FCA's Capital Adequacy Determination for Interest Rate Risk

FCA examiners will assess an institution's capital adequacy for interest rate risk based on the evaluation of an institution's level of interest rate risk exposure and its risk management practices. The results of an institution's interest rate risk management process will be considered when evaluating interest rate risk exposure levels in accordance with the FCA's Financial Institution Rating System.

Dated: December 11, 1998.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 98–33339 Filed 12–15–98; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

December 8, 1998.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a)

whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments on or before February 16, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room A1804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Application to Participate in an FCC Auction.

Form Numbers: FCC 175 and FCC 175–S.

Type of Review: Extension of an existing collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 12,400.

Estimated Time per Response: 45 mins. for Form 175; 15 mins. for Form 175–S.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 15,600 hours.

Total Annual Costs: $3,120,000.

Needs and Uses: The information will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. The rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants and to deter possible abuse of the bidding and licensing process. The Commission plans to use this form for all upcoming auctions and reauctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–33227 Filed 12–15–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC. 20573.

J.B.R. Marine Inc., 1930 S. Brea Canyon Road, Suite #C–240, Diamond Bar, CA 91765, Officer: Xiuji Zhang, President

Tropical Transfer Inc., 5701 Biscayne Boulevard, No. 901, Miami, FL 33137–2602, Officers: Julia Danvers, President; Alan Danvers, Treasurer

Lion Cargo Brokers, Inc., 8055 N.W. 77th Court, Suite 5, Miami, FL 33166, Officers: Gary M. Goldfarb, Vice President; Ramon A. Purtu, Vice President

Dated: December 10, 1998.

Joseph C. Polking,

Secretary.

[FR Doc. 98–33229 Filed 12–15–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Public Workshop: U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace

AGENCY: Federal Trade Commission.

ACTION: Initial Notice Requesting Academic Papers and Public Comment and Announcing Public Workshop.

SUMMARY: The Federal Trade Commission plans to hold a public workshop to examine U.S. perspectives on consumer protection in the global electronic marketplace, and seeks academic papers and public comment to inform this examination.

DATES: Papers and written comments are requested to be submitted on or before February 26, 1999. The workshop will be held during the spring of 1999.

ADDRESSES: Six hard copies of each paper and written comment should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., N.W., Washington, D.C., 20580. Comments should be captioned ''U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace—Comment, P994312.''

Form and Availability of Comments: To enable prompt review and accessibility to the public, papers and comments also should be submitted, if possible, in electronic form, on either one 5–1/4 or one 3–1/2 inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.)

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and Commission regulations, 16 C.F.R. Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: http://www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: The exact dates, location, and information about public participation in the workshop will be announced later by **Federal Register** notice. For questions about this request for academic papers and comments, contact either: Lisa Rosenthal, Legal Advisor for International Consumer Protection, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–2249, e-mail lrosenthal@ftc.gov; or Jonathan Smollen, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone 202–326–3457, e-mail jsmollen@ftc.gov.

SUPPLEMENTARY INFORMATION:

Background

The number of direct, international business-to-consumer transactions involving electronic commerce is expected to increase significantly in the future. Global networks have the potential to offer consumers substantial

benefits, including convenience and access to a wide range of goods, services, and information at lower cost. But these benefits cannot be realized fully until consumers develop confidence in commercial activities conducted over global networks and businesses are assured of a stable and predictable commercial environment. Accordingly, the present challenge is to encourage the development of a global marketplace that offers safety, transparency, and legal certainty. The Federal Trade Commission, by seeking public comment and holding a public workshop, aims to facilitate an ongoing dialogue on how government, industry, and consumers can work together to meet this important challenge.

Invitation to Comment

Interested parties, including academics, industry members, consumer advocates, and government representatives, are requested to submit academic papers or written comments on any issue of fact, law, or policy that may inform the Commission's examination of U.S. perspectives on consumer protection in the global electronic marketplace. Because U.S. perspectives on these issues should be informed by international approaches, comments should not be limited to examinations of domestic laws or policies. Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

The questions set forth below are intended only as examples of the issues relevant to the Commission's examination. Submitters are invited to comment on any relevant issue, regardless of whether it is identified below.

General

1. What current protections exist for consumers engaged in electronic commerce with foreign businesses?

a. To what extent to do current protections vary by sector or context?

b. To what extent do protections for consumers in the traditional marketplace apply to consumer transactions in the global electronic marketplace?

2. To what extent do existing laws, conventions, treaties, or practices provide effective protection for consumers engaged in electronic commerce with foreign businesses? To what extent do they need to be modified?

3. To the extent that existing laws, conventions, treaties, or practices need to be modified to provide effective protection for consumers engaged in electronic commerce with foreign businesses:

a. How should such modifications vary according to industry sector or context?

b. How would such modifications affect law enforcement actions by government agencies?

c. How would such modifications affect business-to-business transactions?

d. How would such modifications affect the development of the global electronic marketplace as a whole?

4. What efforts to examine consumer protection in the global electronic marketplace are already underway by private or public entities at the international, national, state, or local levels? What is the status of such efforts?

Conflicts of Law

5. When a consumer engages in electronic commerce with a foreign business, which laws govern the transaction?

a. How is that determined?

b. Which choice of law would best facilitate commerce and provide effective consumer protection?

c. Under what circumstances should a consumer and a foreign business be able to contractually agree on the governing law?

d. To what extent do existing laws, conventions, treaties, or practices affecting choice of law need to be modified?

6. When a consumer engages in electronic commerce with a foreign business, which court system or systems may adjudicate disputes arising from the transaction?

a. How is that determined?

b. Which forum choice would best facilitate commerce and provide effective consumer protection?

c. Under what circumstances should a consumer and a foreign business be able to contractually agree on the adjudicating court system?

d. To what extent do existing laws, conventions, treaties, or practices affecting jurisdiction need to be modified?

7. If a consumer were to obtain a judgment against a foreign business, under what circumstances would that judgment be recognized by a court system in another country?

a. Under what circumstances would the judgment be recognized if it had been obtained by a government agency acting on behalf of wronged consumers?

b. To what extent do existing laws, conventions, treaties, or practices affecting judgment recognition need to be modified?

8. To what extent do existing U.S. federal and state laws need to be reconciled with each other and with laws in other countries to provide effective protection for consumers engaged in electronic commerce with foreign businesses?

Electronic Contracts

9. To what extent do existing laws, conventions, treaties, or practices governing contracts provide effective protection for consumers engaged in electronic commerce with foreign businesses? To what extent do they need to be modified?

10. Given that electronic communications do not allow for traditional written signatures, under what circumstances should electronic signatures (or other technological means for a party to express intent to be bound) be legally recognized and binding?

11. How should the burden of proof and risk of loss be allocated with respect to potentially fraudulent uses of electronic signatures?

International Requirements

12. What are the minimum protections that should be available to consumers in the global electronic marketplace?

a. To what extent are businesses required to provide disclosures to consumers? To what extent should they be?

b. To what extent are mechanisms in place that enable consumers to complain about the practices of foreign businesses? To what extent should there be?

c. To what extent is there a time period during which consumers can rescind agreements entered into with foreign businesses (also referred to as a ''cooling-off period'')? To what extent should there be?

d. To what extent are there mechanisms in place that enable harmed consumers to obtain redress from foreign businesses? To what extent should there be?

e. Under what circumstances and to what extent are consumers using electronic payment methods, i.e. credit, debit, or stored-value cards, entitled to have their accounts credited (also referred to as ''charge-backs'')? To what extent should they be?

f. To what extent is there a need for uniform consumer protection requirements or harmonized consumer protection laws?

13. To what extent is there a need for international dispute resolution procedures or tribunals for consumers engaged in electronic commerce with foreign businesses?

Law Enforcement Agencies

14. What is the proper role for law enforcement agencies in providing

effective protection for consumers engaged in global electronic commerce?

15. To what extent do private actions provide effective protection for consumers engaged in electronic commerce with foreign businesses?

16. To what extent do existing laws, conventions, treaties, or practices with respect to the sharing of information among law enforcement agencies in different countries provide effective protection for consumers engaged in global electronic commerce? To what extent do they need to be modified?

17. To what extent do existing laws, conventions, treaties, or practices with respect to the coordination of law enforcement activities between different countries provide effective protection for consumers engaged in global electronic commerce? To what extent do they need to be modified?

18. To what extent is there a need for international dispute resolution procedures or tribunals for law enforcement agencies seeking to protect consumers engaged in electronic commerce with foreign businesses?

Consumer and Business Education

19. What steps have been, and should be, taken to educate consumers about the global electronic marketplace?

20. What steps have been, and should be, taken to educate business about consumer protection in the global electronic marketplace?

Industry Members

21. How does the provision of effective protection for consumers in the global electronic marketplace benefit industry members?

22. How does the provision of effective protection for consumers in the global electronic marketplace present challenges to industry members?

23. To what extent do/will the benefits and challenges industry members experience with respect to consumer protection in the global electronic marketplace differ from those experienced in the traditional marketplace?

24. To what extent do/will industry-led self-regulatory programs provide effective protection for consumers in the global electronic marketplace?

Development of the Global Electronic Marketplace

25. How much and how quickly will electronic commerce grow over the next five years?

a. What developments will spur its growth?

b. What developments will hinder its growth?

26. How will electronic commerce change over the next five years?

a. What will be the demographics of consumers and businesses engaged in electronic commerce?

b. What types of products and services will be sold electronically?

27. To what extent do/will new marketing techniques made possible by technological developments affect consumer protection?

28. To what extent do/will technological developments enable consumers to protect themselves?

Workshop

29. What should be the primary focus and scope of the Commission's initial public workshop on ''U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace?''

30. Which interests should be represented at the Commission's initial public workshop on ''U.S. Perspectives on Consumer Protection in the Global Electronic Marketplace?''

Authority: 15 U.S.C. 41 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–33281 Filed 12–15–98; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 9623147]

American College for Advancement in Medicine; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Dean Graybill, FTC/H–200, Washington, D.C. 20580. (202) 326–3284 or Richard Cleland, FTC/H–200, Washington, D.C. 20580. (202) 326–3088.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 8, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the American College for Advancement in Medicine (''ACAM'' or the ''proposed respondent''). ACAM is an incorporated non-profit professional association comprised principally of physicians. The Commission has alleged that ACAM promotes EDTA chelation therapy to the public as an effective treatment for atherosclerosis, *i.e.*, blocked arteries. Chelation therapy consists of the intravenous injection into the body of a chemical substance (ethylene diamine tetraacetic acid, (''EDTA'')), which, after bonding with metals and minerals in the bloodstream, is expelled through the body's excretory functions. ACAM promotes this service to consumers through print materials and a Web site.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission has alleged that proposed respondent has made false and unsubstantiated claims in its

advertising materials that are likely to mislead consumers concerning (1) the effectiveness of EDTA chelation therapy to treat atherosclerosis; and (2) the existence of scientific proof of the effectiveness of EDTA chelation therapy.

The proposed consent order addresses the alleged misrepresentations cited in the accompanying complaint by prohibiting proposed respondent from representing in any future advertising for chelation therapy that EDTA chelation therapy is effective to treat atherosclerosis unless the representation is supported by competent and reliable scientific evidence (Part I.A). In addition, the proposed order requires that proposed respondent have competent and reliable scientific evidence to support any claims about the effectiveness or comparative effectiveness of chelation therapy for any disease of the human circulatory system (Part I.B).

The proposed consent order also prohibits proposed respondent from misrepresenting in any future advertising for chelation therapy, the existence, contents, validity, results, conclusions or interpretations of any test, study, or research (Part II). Part III of the order allows proposed respondent to make representations permitted in labeling by the U.S. Food and Drug Administration.

The proposed consent order also requires that ACAM send a letter to its membership notifying them of the existence of the FTC order and advising them that any member who makes unsubstantiated advertising claims for chelation therapy could be subject to an enforcement action (Part IV). Other provisions in the consent order are customary record keeping, reporting and notification requirements as well as a ''sunsetting'' clause prescribing that the order automatically expires 20 years from either the date that the order becomes effective or the date of the last enforcement action.

The complaint and consent agreement in this matter address issues raised by certain statements that respondent made in its promotional brochures and other materials that were distributed to the public. The Commission's action should not be construed to regulate how doctors use or prescribe drugs in the course of treating their patients or other choice of therapy issues.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–33282 Filed 12–15–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9623270]

Max F. James; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agrement—that would settle these allegations.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 PA Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 8, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Max F. James (hereinafter ''James'' or ''respondent''). James is a distributor of nutritional supplements for New Vision International, Inc., a multi-level marketing company. In a separate action, the Commission has also accepted a similar agreement involving New Vision International, Inc., an affiliated company, and two individuals.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on James' participation in the creation and dissemination of advertisements for a regimen of nutritional supplements that he has called ''God's Recipe.'' The advertisements claimed that God's Recipe could mitigate or cure the effects of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder.

The proposed complaint alleges that James could not substantiate the following claims: (1) That God's Recipe can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms; (2) that God's Recipe can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; (3) that God's Recipe is an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder; and (4) that testimonials from consumers appearing in the advertisements for God's Recipe reflect the typical or ordinary experience of members of the public whose children have used the product.

Part I of the proposed consent order prohibits James, when advertising God's Recipe or any other food, drug or dietary supplements, from making claims (1) through (3), above, unless the claim is substantiated at the time it is made. Part II of the proposed order addresses

claims made through endorsements or testimonials. Under Part II, respondent may make such representations if he possesses and relies upon competent and reliable evidence that substantiates the representations; or the respondent must disclose either what the generally expected results would be for users of the advertised products, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonials in Advertising,'' 16 CFR 255.2(a).

Part III of the proposed order prohibits James from making unsubstantiated claims about the safety of any food, drug or dietary supplement, or about the ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder. Part IV of the proposed order contains language permitting James to make drug claims that have been approved by the FDA pursuant to either a new drug application or a tentative final or final standard. Part V states that James would be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990.

Part VI of the proposed order requires James to retain, and make available to the Commission upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that he relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

Part VII of the proposed order requires James to distribute the order to all current and future employees, agents and representatives having responsibilities under the order. Part VII would permit James to distribute a summary, in the form of a letter attached to the order as Appendix A, in lieu of the actual order.

The remainder of the proposed order contains standard requirements that James notify the Commission of changes in their employments status, and that he file one or more reports detailing his compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–33283 Filed 12–15–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 9623270]

New Vision International et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before February 16, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Gold or Sylvia Kundig, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, California 94103, (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(d) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for December 8, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from New Vision International, Inc., NVI Promotions, L.L.C., and their two principals, Jason P. Boreyko and Benson K. Boreyko (hereinafter ''New Vision'' or ''respondents''). New Vision is a multi-level marketing company that sells nutritional supplements. In a separate action, the Commission has also accepted a similar agreement involving Max F. James, a distributor of New Vision products.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter has focused on New Vision's advertisements for a regimen of nutritional supplements that they called ''God's Recipe.'' The advertisements claimed that God's Recipe could mitigate or cure the effects of Attention Deficit Disorder or Attention Deficit Hyperactivity Disorder.

The proposed complaint alleges that New Vision could not substantiate the following claims: (1) that God's Recipe can cure, prevent, treat or mitigate Attention Deficit Disorder or its symptoms; (2) that God's Recipe can cure, prevent, treat or mitigate Attention Deficit Hyperactivity Disorder or its symptoms; (3) that God's Recipe is an effective alternative treatment to the prescription drug Ritalin for Attention Deficit Disorder and Attention Deficit Hyperactivity Disorder; and (4) that testimonials from consumers appearing in the advertisements for God's Recipe reflect the typical or ordinary experience of members of the public whose children have used the product.

Part I of the proposed consent order prohibits New Vision, when advertising God's Recipe or any other food, drug or dietary supplement, from making claims (1) through (3), above, unless the claim is substantiated at the time it is made. Part II of the proposed order addresses claims made through endorsements or

testimonials. Under Part II, respondents may make such representations if they possess and rely upon competent and reliable evidence that substantiates the representations; or the respondents must disclose either what the generally expected results would be for users of the advertised products, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's ''Guides Concerning Use of Endorsements and Testimonials in Advertising,'' 16 CFR 255.2(a).

Part III of the proposed order prohibits respondents from making unsubstantiated claims about the safety of any food, drug or dietary supplement, or about the ability of such product to treat, cure, alleviate the symptoms of, prevent, or reduce the risk of developing any disease or disorder. Part IV of the proposed order contains language permitting New Vision to make drug claims that have been approved by the FDA pursuant to either a new drug application or a tentative final or final standard. Part V states that New Vision would be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990.

Part VI of the proposed order requires New Vision to retain, and make available to the Commission upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any materials that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

Parts VII and VIII of the proposed order require New Vision to distribute the order to relevant parties. Part VII requires New Vision to distribute a copy of the order to all current and future principals, officers, directors, and managers, and to any employee, agent or representative with responsibilities under the order. Part VIII.A requires the company to distribute a letter, attached to the order as Appendix A, to each current active distributor. Part VIII.B requires the company to distribute a letter, attached to the order as Appendix B, to future distributors for a period of five years. These substantially similar letters state that no distributor may make any claim regarding the therapeutic or curative properties of New Vision products unless she has received prior approval from New Vision. The letters also state that all distributor advertising must either be obtained from New Vision or pre-approved by New Vision. In addition, the letters state that failure to conform to these requirements will be grounds for suspension or termination.

Part IX of the proposed New Vision order contains some additional requirements in recognition of the fact that, as a multi-level marketing company, New Vision's contact with consumers is made almost exclusively through a network of distributors who are not covered by the order. For example, Part IX.A.1 would require the company to compel its distributors to submit all advertising to the company for pre-approval. Part IX.A.2 would require New Vision to establish a mechanism for suspending or terminating business dealings with any distributor who fails to submit advertising for pre-approval. Part IX.A.3 would require New Vision to send to each active distributor a notice, every six months, reminding them of the pre-approval requirement. To ensure that the company remains abreast of its distributor's marketing efforts over the Internet, Part IX.A.4 would require New Vision to conduct a monthly search of the World Wide Web for independent distributor advertising.

Part IX.B of the proposed order would require New Vision to police to distributors and investigate complaints that any distributor may be violating the order. Part IX.C would require New Vision to discontinue dealing with any distributor once respondents obtain actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that the distributor is making a representation that is prohibited by the order, unless that person immediately ceases such activity. If New Vision learns that the distributor has not permanently ceased making representations prohibited by the order, New Vision must immediately discontinue its dealings with the distributor.

The remainder of the proposed New Vision order contains standard requirements that the corporate respondents notify the Commission of any changes in corporate structure that might affect compliance with the order, that the individual respondents notify the Commission of changes in their employments status, and that New Vision file one or more reports detailing their compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–33284 Filed 12–15–98; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0260]

Submission for OMB Review; Comment Request Entitled Questionnaire: Catalog of Federal Domestic Assistance

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of request for an extension to a previously approved OMB Clearance (3090–0260).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement entitled Questionnaire: Catalog of Federal Domestic Assistance. The information collection was previously published in the **Federal Register** on October 6, 1998 at 63 FR 53672–53673, allowing for a 60-day public comment period. No comments were received.

DATES: Comment Due Date: January 15, 1999.

ADDRESSES: Additional comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jackie Garrett, Governmentwide Information Systems Division on (202) 401–8336.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0260, concerning Questionnaire: Catalog of Federal Domestic Assistance. Catalog users are not required to respond to the questionnaire. The questionnaire is voluntary to solicit customer satisfaction and opinions on ways to improve the Catalog.

B. Annual Reporting Burden

Respondents: 200; annual responses: 200; average hours per response: .10; burden hours: 20.

Copy of proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: December 10, 1998.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 98–33246 Filed 12–15–98; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Title IV–B Five Year Plan, Annual Progress and Services Report and CFS–101.

OMB No.: 0980–0047.

Description: Under title IV–B, subparts 1 and 2, of the Social Security Act States and Indian Tribes are to submit a five year Child and Family Services Plan, an annual progress and services report, and an annual budget request and estimated expenditure report (CFS–101). The plan is used by States and Indian Tribes to develop and implement services and describe coordination efforts with other federal, state and local programs. The annual Progress and Services Report is used to provide updates and changes in the goals and services under the five year plan. The CFS–101 will be submitted annually with the Annual Progress and Services Report to apply for appropriated funds for the next fiscal year.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
CFSP	300	1	250	75,000
Annual Progress and Services Report	300	1	120	36,000
CFS–101	300	1	5	1,500

Estimated Total Annual Burden Hours: 112,500.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–33273 Filed 12–15–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Runaway and Homeless Youth Management Information System (RHYMIS).

OMB No.: 0970–0123.

Description: The Family and Youth Services Bureau manages the Runaway and Homeless Youth Management Information System (RHYMIS) which is used by youth service agencies funded by FYSB for Basic Center and Transitional Living Programs. This information management system is used by all FYSB-funded RHY grantees. The RHYMIS helps youth services agencies manage their programs, assess service delivery, and plan for future service needs. When aggregated, these data provide critical planning, administrative, and evaluation information for FYSB.

RHYMIS is an automated data management system designed to capture and store information at each grantee site, facilitate all FYSB/DHHS reporting requirements, and produce a variety of standardized reports for other Federal, local, regional, and national purposes. The information gathered by each grantee forms the basis of the RHYMIS national database. The data collected consists of standardized definitions which allow for a variety of statistical analyses beyond simple aggregation, and gives national, as well as regional and state profiles of youth being served by FYSB-funded programs. The RHYMIS allows individual grantees to generate agency-specific reports based on their own data and reflecting the youth served in their own programs.

The data collection process is designed to collect various information about runaway and homeless youth, the programs that serve them, and other area services that are available to them. The information in RHYMIS addresses a broad range of issues to assure that situations relevant to the Basic Center and Transitional Living Programs will be addressed. RHYMIS is designed to collect information on:

- Youth characteristics and issues presented.
- Services provided to youth by agency.
- Educational events and promotional/instructional materials available.

Respondents: State, Local or Tribal Government.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Youth Program Status	400	175	2.2	154,000
Youth Profile	400	175	29.1	2,037,000
Agency Profile	400	1	.17	68
Program Profile	400	1	1.0	400
Staff Profile	400	1	1.2	480
Coordinating Agency	400	1	.3	120
Community Education	400	1	.4	160
Promotional/Instructional Materials	400	1	.2	80

Estimated Total Annual Burden Hours: 2,192,308.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: December 10, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–33274 Filed 12–15–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Intent To Reallot Part C—Protection and Advocacy Funds to States for Developmental Disabilities Expenditures

AGENCY: Administration on Developmental Disabilities, Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of Intent to Reallot Fiscal Year 1999 Funds, pursuant to section 125 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act, as amended (Act).

SUMMARY: The Administration on Developmental Disabilities herein gives notice of intent to reallot funds which were set aside in accordance with section 142(c)(5) of the Act. Of the $806,682 which was set aside for technical assistance and Indian Consortiums, $534,360 was utilized for technical assistance and $136,161 was awarded to an Indian Consortium. Therefore, the balance of $136,161 has been released for reallotment.

Any State or Territory which wishes to release funds or cannot use the additional funds under Part C—Protection and Advocacy program for Fiscal Year 1999 should notify Joseph Lonergan, Director, Division of Formula, Entitlement and Block Grants, Office of Administration, Office of Financial Services, Administration for Children and Families, Department of Health and Human Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, in writing within thirty (30) days of the date of this promulgation. Reallotment awards are anticipated to be dated 30 days from the date of this notice. This notice is hereby given in accordance with sections 125 and 142 of the Act.

FOR FURTHER INFORMATION CONTACT: Joanne Moore on (202) 205–4792.

The proposed reallotment for Part C—Protection and Advocacy program are set forth below:

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1999 REALLOTMENT

	Protection & Advocacy	Reallotment	Revised allotment
Total	$26,047,479 *	$136,161	$26,183,640
Alabama	436,987	2,284	439,271
Alaska	254,508	1,330	255,838
Arizona	360,189	1,883	362,072
Arkansas	263,883	1,379	265,262
California	2,234,168	11,681	2,245,849
Colorado	281,009	1,469	282,478
Connecticut	263,430	1,377	264,807
Delaware	254,508	1,330	255,838
Dist. of Columbia	254,508	1,330	255,838
Florida	1,086,982	5,683	1,092,665
Georgia	608,862	3,183	612,045
Hawaii	254,508	1,330	255,838
Idaho	254,508	1,330	255,838

ADMINISTRATION ON DEVELOPMENTAL DISABILITIES FISCAL YEAR 1999 REALLOTMENT—Continued

	Protection & Advocacy	Reallotment	Revised allotment
Illinois	901,195	4,712	905,907
Indiana	504,189	2,636	506,825
Iowa	259,794	1,358	261,152
Kansas	254,508	1,330	255,838
Kentucky	408,553	2,136	410,689
Louisiana	467,174	2,442	469,616
Maine	254,508	1,330	255,838
Maryland	343,626	1,796	345,422
Massachusetts	446,073	2,332	448,405
Michigan	819,631	4,285	823,916
Minnesota	355,911	1,860	357,771
Mississippi	311,898	1,630	313,528
Missouri	461,835	2,414	464,249
Montana	254,508	1,330	255,838
Nebraska	254,508	1,330	255,838
Nevada	254,508	1,330	255,838
New Hampshire	254,508	1,330	255,838
New Jersey	522,698	2,732	525,430
New Mexico	254,508	1,330	255,838
New York	1,391,367	7,274	1,398,641
North Carolina	643,130	3,362	646,492
North Dakota	254,508	1,330	255,838
Ohio	982,375	5,136	987,511
Oklahoma	310,137	1,621	311,758
Oregon	266,483	1,393	267,876
Pennsylvania	1,046,311	5,471	1,051,782
Rhode Island	254,508	1,330	255,838
South Carolina	364,853	1,907	366,760
South Dakota	254,508	1,330	255,838
Tennessee	494,739	2,586	497,325
Texas	1,542,970	8,067	1,551,037
Utah	254,508	1,330	255,838
Vermont	254,508	1,330	255,838
Virginia	510,974	2,671	513,645
Washington	395,431	2,067	397,498
West Virginia	275,882	1,442	277,324
Wisconsin	444,310	2,323	446,633
Wyoming	254,508	1,330	255,838
American Samoa	136,161	712	136,873
Guam	136,161	712	136,873
Puerto Rico	778,481	4,069	782,550
Virgin Islands	136,161	712	136,873
Northern Mariana Islands	136,161	712	136,873
AZ DNA People's Legal Services	136,161	712	136,873

* Includes the award of $136,161 to an Indian Consortium (AZ DNA People's Legal Services) in accordance with Section 142(b).

Dated: December 3, 1998.

Reginald F. Wells,

Deputy Commissioner, Administration on Developmental Disabilities.

[FR Doc. 98–33325 Filed 12–15–98; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of the Deputy Assistant Secretary for Administration; Statement of Organization, Functions, and Delegations of Authority

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KP, Office of the Deputy Assistant Secretary for Administration (ODASA) (63 FR 81) and (63 FR 42050), as last amended on January 2, 1998 and August 6, 1998. This reorganization realigns several functions within the ODASA.

Amend Chapter KP as follows:

I. Amend KP.10 Organization. Delete in its entirety and replace with the following:

KP.10 Organization. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

- Immediate Office of the Deputy Assistant Secretary for Administration (KPA).
- Office of Information Services (KPB).
- Office of Financial Services (KPC).
- Office of Management Services (KPD).
- Office of Customer Service and Administration (KPE).
- Office of State Systems (KPF).
- Executive Secretariat Office (KPG).
- Office of Equal Employment Opportunity/Civil Rights and Special Initiatives (KPH).
- Office of Human Resource Management (KPJ).
- Office of Administrative Services and Facilities Management (KPL).

II. Amend KP.20 Functions.

a. Delete Paragraph A in its entirety and replace with the following:

KP.20 Functions. A. Office of the Deputy Assistant Secretary for Administration directs and coordinates all administrative activities for the Administration for Children and Families. The Deputy Assistant Secretary for Administration serves as ACF's Chief Financial Officer (CFO); ACF's Chief Grants Management Officer; Federal Manager's Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as ACF's Chief Information Officer responsible for implementing the Information Technology Management Reform Act; and Reports Clearance Officer. The Deputy Assistant Secretary for Administration serves as the ACF liaison to the General Counsel and, as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters.

The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Executive Secretariat Office; Office of Administrative Services and Facilities Management; Office of Customer Service and Administration; Office of Equal Employment Opportunity/Civil Rights and Special Initiatives; Office of Human Resource Management; Office of Information Services; Office of Financial Services; Office of Management Services; and Office of State Systems. The Deputy Assistant Secretary for Administration represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with reinvention and continuous improvement initiatives.

b. Delete Paragraph E in its entirety and replace with the following:

E. The Office of Customer Service and Administration (OCSA) develops and maintains a customer service plan for the Deputy Assistant Secretary for Administration (DASA) and conducts customer surveys for the DASA; facilitates and assists in developing and writing standard operating procedures for all components within the Office of the Deputy Assistant Secretary for Administration (ODASA); assists in office-specific training of ODASA staff; assists ODASA components with the provision of office-specific and functional training to program and regional offices; coordinates permanent and temporary teams formed within ODASA; develops and maintains ODASA staff directory and users' guide for ODASA services.

OCSA is responsible for overseeing ODASA's salaries and expenses budget. Provides direction to meet the human resource management needs within ODASA; coordinates with the office which handles ACF's human resources activities and the Department to provide ODASA staff with personnel services including position management, staffing, recruitment, employee and labor relations, employee assistance, payroll, staff development and training, and special hiring and placement programs; and maintains systems to track personnel actions to keep the Deputy Assistant Secretary for Administration and, as appropriate, the Directors of offices within ODASA informed about the status of personnel actions, current full-time equivalency usage and salaries and expenses resources, and employee programs and benefits. All ODASA personnel related issues, performance management activities and other administrative functions within ODASA are handled within this office.

OCSA advises the Deputy Assistant Secretary for Administration on ACF organizational development activities; develops policies and procedures for implementing organizational development and other management improvement projects or programs; and applies tools and techniques such as re-engineering practices to design organizational development interventions aimed at improving ACF processes.

c. Delete Paragraph H in its entirety and replace with the following:

H. Office of Equal Employment Opportunity/Civil Rights and Special Initiatives (OEEO/CR&SI) serves as the principal advisor through the Deputy Assistant Secretary for Administration to the Assistant Secretary on all aspects of the Equal Employment Opportunity and Civil Rights program, organizational analysis, delegations of authority and special initiatives.

Serves as the liaison between ACF and the HHS Office for Civil Rights. The Office directs and manages the ACF Equal Employment Opportunity and Civil Rights program in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. Immediate oversight is provided by a staff under the direction of the ACF EEO Officer. Plans, develops, and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. Responsible for implementing and evaluating a cost-effective, timely, and impartial system for processing individual complaints of discrimination under Title VII of the Civil Rights Act of 1964, as amended. Provides information, guidance, advice, and technical assistance to ACF supervisors and managers on Affirmative Employment planning and other means of achieving parity and promoting work force diversity. Responsible for ensuring that ACF-conducted programs do not discriminate against recipients on the basis of race, color, national origin, age or disability. Monitors and implements civil rights compliance actions under Title VI, Section 504 of the Rehabilitation Act of 1973, as amended and the Age Discrimination Act of 1975, as amended. Implements the applicable provisions of the Americans with Disabilities Act of 1990.

The Office advises the Assistant Secretary through the Deputy Assistant Secretary for Administration on all aspects of organizational analysis including: planning for new organizational elements; and planning, organizing and performing studies, analyses and evaluations related to structural, functional and organizational issues, problems and policies to ensure organizational effectiveness. Provides technical assistance to ACF components on developing and finalizing reorganization proposals. As appropriate, serves as liaison to the HHS Office of the Assistant Secretary for Management and Budget to coordinate organizational proposals requiring Secretarial approval; and prepares functional statements and official organizational charts. Administers ACF's system for review, approval, and documentation of delegations of authority.

The Office provides leadership for all special initiative activities for ACF; participates in pilot projects; and represents ACF on committees which relate to the functions of the Office. Manages and coordinates the ACF Incentive Awards Program.

d. Delete Paragraph J in its entirety and replace with the following:

J. The Office of Human Resource Management (OHRM) directs and manages the personnel operations and services for the Administration for Children and Families (ACF). Provides advice and assistance to ACF managers in their personnel management activities including workforce planning, recruitment, selection, position management, performance management, and incentive awards. Provides a variety of services to ACF employees, including provision of employee assistance

services and career, retirement and benefits counseling. Serves as ACF liaison to the Department on all payroll matters. Provides the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, personnel management evaluation, personnel action processing and recordkeeping. Manages the merit promotion, special hiring and placement programs. Provides leadership in directing and managing agency-wide staff development and training activities for ACF.

The Office provides leadership, oversight, and coordination for the planning, analysis, and development of human resource policies and programs. Serves as liaison between ACF, the Department, and the Office of Personnel Management. Provides technical advice and assistance on policy, legal and regulatory matters. Formulates and interprets policies pertaining to all areas related to personnel administration and management. Formulates and interprets new human resource programs and strategies.

Formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service (SES), and SES equivalent recruitment, staffing, position establishment, compensation, award, performance management and other related personnel areas. Manages the performance recognition systems and the responsibilities of the Executive Resources Board (ERB) and the Performance Review Board (PRB). Coordinates the Schedule C and Executive personnel activity with the Office of the Secretary. Is the focal point for data, reports, and analyses relating to SES, Schedule C and other executive personnel, such as those in Executive Level positions.

Provides management advisory service on all labor management and employee relations issues. Plans and coordinates ACF-wide employee relations and labor relations activities, including the application and interpretation of the Federal Labor-Management Relations Program, collective bargaining agreements, disciplinary and adverse action regulations, and appeals. Pursues human relations innovations such as alternative dispute resolutions and serves as the focal point in all issues pertaining to the Labor-Management Partnership Council. Provides leadership in assuring the integrity, effectiveness and impartiality of ACF's alternative dispute resolution programs, grievances, and merit systems program. Participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71).

Administers ACF's personnel security responsibilities and ethics program. Coordinates the ethics program with the Department's Office of Special Counsel for Ethics.

The Office of responsible for the functional management of all program, common needs and management training in the agency, including policy development, guidance, and technical assistance and evaluation of aspects of program, career, employee, supervisory, management and executive training. Provides leadership in implementing the recommendations of the Staff Development and Training Team by managing/overseeing and monitoring the ACF Training Resource Center and instutionalizing long-term development training for ACF employees. Supports the daily work and special projects of ACF employees by managing for Information Resource Center (library).

e. Delete Paragraph K in its entirety.

Dated: December 3, 1998.

Elizabeth M. James,

Deputy Assistant Secretary for Administration.

[FR Doc. 98–33324 Filed 12–15–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anesthetic and Life Support Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anesthetic and Life Support Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 12, 1999, 9 a.m. to 5 p.m.

Location: FDA Bldg. 5630, conference room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12529. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear presentations and discuss the cardiovascular safety data submitted regarding new drug application (NDA) 20–997, Chirocaine™ (levobupivacaine injection), Darwin Discovery Ltd., a local anesthetic agent indicated for surgical anesthesia and pain management.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 5, 1999. Oral presentations from the public will be scheduled between approximately 9:15 a.m. and 9:45 a.m and between 1:15 p.m. and 1:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 5, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 8, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–33291 Filed 12–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Oncologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Oncologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 12, 1999, 8:30 a.m. to 5:30 p.m., and January 13, 1999, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12542. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 12, 1999, the committee will discuss: (1) New drug application (NDA) 21–029, Temodal® (temozolomide) Capsules, Schering Corp., indicated for the treatment of adult patients with malignant glioma (glioblastoma multiforme and anaplastic astrocytoma) at first relapse, and (2) NDA 50–766 Prograf® (tacrolimus) capsules, 1 milligram (mg) and 5 mg, and Prograf (tacrolimus) injection 5 mg (for IV infusion only), Fujisawa Healthcare, Inc., indicated for the prophylaxis of graft-versus-host disease in patients receiving allogenic bone marrow transplants. On January 13, 1999, the committee will discuss: (1) NDA 20–954 Busulfex™ (busulfan) Injection, Orphan Medical, Inc., indicated for use in combination with other chemotherapeutic agents and/or radiotherapy as a conditioning regimen prior to hematopoietic progenitor cell transplantation. Diseases in which patient benefit from this mode of therapy has been demonstrated include acute lymphocytic leukemia, acute nonlymphocytic leukemia, acute myeloid leukemia, chronic myeloid leukemia, non-Hodgkins lymphoma, Hodgkins disease, multiple myeloma, myelodysplastic syndrome, breast cancer, ovarian cancer, and genetic diseases, and (2) NDA 20–765 OraTest™ (tolonium chloride), Zila, Inc., an oral rinse that is indicated for use as a diagnostic adjunct in patients with oral lesions suspected or known to be malignant, to help in detection of all sites of cancer, definition of borders or cancerous lesions, and selection of sites to be biopsied.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 4, 1999. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9 a.m., and 1:45 p.m. and 2 p.m. on January 12, 1999; and between approximately 8:15 a.m. and 8:30 a.m., and 1:15 p.m. and 1:30 p.m. on January 13, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 4, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. After the scientific presentations, a 30-minute open public session will be conducted for interested persons, who have submitted their request to speak by January 4, 1999, to address issues specific to the submission or topic before the committee.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 8, 1998.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 98–33290 Filed 12–15–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Health Professions Preparatory, Pregraduate and Indian Health Professions Scholarship Programs

AGENCY: Indian Health Service, HHS.

ACTION: Update of Standing Notice of Availability of Funds for Health Professionals Preparatory, Pregraduate and Indian Health Professions Scholarship Programs published in 62 FR 5443, February 5, 1997.

SUMMARY: The Indian Health Service (IHS) announces the availability of approximately $3,578,200 to fund scholarships for the Health Professions Preparatory and Pregraduate Scholarship Programs for FY 1999 awards. These programs are authorized by section 103 of the Indian Health Care Improvement Act (IHCIA), Pub. L. 94–437, as amended by Pub. L. 100–713, Pub. L. 102–573, and by Pub. L. 104–313. The Indian Health Scholarship (Professions) authorized by section 104 of the IHCIA, Pub. L. 94–437, as amended by Pub. L. 100–713, Pub. L. 102–573, and by Pub. L. 104–313, has approximately $7,636,100 available for FY 1999 awards.

Part-time and full-time scholarships will be funded for each of the three scholarship programs for the academic year 1999–2000.

The Health Professions Preparatory Scholarship Grant Program is listed as No. 93.123 in the Office of Management and Budget Catalog of Federal Domestic Assistance (CFDA). The Health Professions Pregraduate Scholarship Grant Program is listed as No. 93.971, and the Indian Health Professions Scholarship Grant Program is listed as No. 93.972 in the CFDA.

DATES: The application deadline for new applicants is April 15, 1999. The application deadline for continuation applicants is April 1, 1999. Applications shall be considered as meeting the deadline if they are received by the appropriate Scholarship Coordinator on the deadline date or postmarked on or before the deadline date. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

APPLICATIONS: New applicants applying for Scholarships under the three programs must utilize the forms contained in the ''Application for Participation in the IHS Scholarship Program'', (OMB No. 0917–0006, 04/30/2001). Application packets may be obtained by calling or writing to the addresses listed below.

FOR FURTHER INFORMATION CONTACT: Please address application inquiries to the appropriate Indian Health Service Area Scholarship Coordinator, as listed below.

IHS Area Office Scholarship Coordinator/and States/Locality Served:

Aberdeen Area IHS: Ms. Lila Jean Topalian, Scholarship Coordinator, IHS Aberdeen Area, Federal Building, Room 309, 115 4th Avenue, SE., Aberdeen, SD 57401 Tele: 605–226–7553
- Iowa
- Nebraska
- North Dakota
- South Dakota

Alaska Area Native Health Service: Ms. Rose Jerue, Scholarship Coordinator, IHS Alaska Area, 4141 Ambassador Drive, Rm. 349, Anchorage, Alaska 99508, Tele: 907–729–1332
- Alaska

Albuquerque Area IHS: Ms. Alvina Waseta, Scholarship Coordinator, IHS Albuquerque Area, 5300 Homestead Road, NE, Albuquerque, NM 87110, Tele: 505–248–4513
- Colorado
- New Mexico

Bemidji Area IHS: Ms. Barbara Fairbanks, Scholarship Coordinator, IHS Bemidji Area, 522 Minnesota Avenue, NW, Bemidji, MN 56601, Tele: 218–759–3350
Illinois
Indiana
Michigan
Minnesota
Wisconsin
Billings Area IHS: Mr. Sandy MacDonald, Scholarship Coordinator, IHS Billings Area, Area Personnel Office, PO Box 2143, 2900 4th Avenue, North, Billings, MT 59103, Tele: 406–247–7210
Montana
Wyoming
California Area IHS: Ms. Sara G. Cotterill, Scholarship Coordinator, IHS California Area, 1825 Bell Street—Suite 200, Sacramento, CA 95825, Tele: 916–566–7033
California
Hawaii
Nashville Area IHS: Mr. Jesse Thomas, Scholarship Coordinator, IHS Nashville Area, 711 Stewarts Ferry Pike, Nashville, TN 37214, Tele: 615–736–2431
Alabama
Arkansas
Connecticut
Delaware
Florida
Georgia
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Mississippi
District of Columbia
New Hampshire
New Jersey
New York
North Carolina
Ohio
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
Navajo Area IHS: Ms. Roselinda Allison, Scholarship Coordinator, IHS Navajo Area, PO Box 9020, Window Rock, AZ 86515, Tele: 520–871–1422
Arizona
New Mexico
Utah
Oklahoma City Area IHS: Ms. Barbara Roy Scholarship Coordinator, IHS Oklahoma City Area, Five Corporate Plaza, 3625 NW 56th Street, Oklahoma City, OK 73112, Tele: 405–951–3939
Kansas
Missouri
Oklahoma
Phoenix Area IHS: Ms. Lena Fast Horse, Scholarship Coordinator, IHS Phoenix Area, 2 Renaissance Square, 40 North Central Avenue #600, Phoenix, AZ 85004, Tele: 602–364–5220
Arizona
Nevada
Utah
Portland Area IHS: Mr. Gary Small, Scholarship Coordinator, IHS Portland Area, 1220 SW 3rd Street, Rm 440, Portland, OR 97204–2892, Tele: 503–326–2015
Idaho
Oregon
Washington
Tucson Area IHS: Mr. Cecil Escalante, Scholarship Coordinator, IHS Tucson Area, 7900 S.J. Stock Road Tucson, AZ 85746, Tele: 520–295–2441
Arizona
Texas

Other programmatic inquiries may be addressed to Ms. Patricia Lee-McCoy, Chief, Scholarship Branch, Indian Health Service, Twinbrook Metro Plaza, Suite 100, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–6197. (This is not a toll free number.) For grants information, contact Ms. Margaret Griffiths, Acting Grants Scholarship Coordinator, Grants Management Branch, Division, of Acquisition and Grants Operations, Indian Health Service, Room 100, 12300 Twinbrook Parkway, Rockville, Maryland, 20852; Telephone 301–443–0243. (This is not a tool-free number.)

SUPPLEMENTARY INFORMATION: An addition to the list of priority health professions for Indian Health Scholarships (Professions) that was published in 62 FR 5443, February 5, 1997, is Business Administration at the Bachelor and Master levels.

Dated: December 7, 1998.

Michael H. Trujillo,

Assistant Surgeon General Director.

[FR Doc. 98–33228 Filed 12–15–98; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

California Desert District Advisory Council; Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: California Desert District Advisory Council—Notice of Renewal.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972 Public Law 92–463. Notice is hereby given that the Secretary of the Interior has renewed the Bureau of Land Management's (BLM) California Desert District Advisory Council.

The purpose of the Council is to provide counsel and advice to the BLM District Manager concerning planning and management of the public land resources within the BLM California Desert District and implementation of the comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area.

Certification Statement

I hereby certify that the renewal of the California Desert District Advisory Council is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20240, telephone (202) 452–0377.

Dated: December 9, 1998.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 98–33230 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–915–5700–00; N–62891]

Application for Recordable Disclaimer of Interest; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States of America, pursuant to the provisions of Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), proposes to disclaim all interest in the following described land to Horace Countryman, nunc pro tunc, the owner of record: a tract of land which is located within 200 feet of each side of the centerline of the Central Pacific Railroad Company track as it was established over and across; T. 19 N., R. 19 E., M.D.M., Nevada, sec. 10, Lot 1 in the SE¼; sec. 11, Lots 4, 5, and NW¼ SW¼.

DATES: Comments or objections should be received on or before March 16, 1999.

ADDRESSES: Comments or objections 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, 775–861–6532.

SUPPLEMENTARY INFORMATION: Pursuant to Section 2 of the Act of July 1, 1862, 12 Statute 489, as amended (the Act), the Central Pacific Railroad Company, as succeeded in interest by the Southern Pacific Transportation Company, received a grant of a right-of-way 400 feet in width over and across public land for construction of a transcontinental railroad. By the terms of the Act, the right-of-way attached to the land upon notification to the General Land Office at the time the line of the railroad was definitely fixed on the ground. Patent to the subject land was issued to Mr. Horace Countryman in 1865 prior to notification by the Central Pacific Railroad Company that the line of the railroad was definitely fixed on the ground. Further, Mr. Countryman's settlement on the subject land originated prior to passage of the Act, and the patent, upon issuance, related back to the date of his settlement. Therefore, the 400-foot right-of-way granted to Central Pacific Railroad Company by the Act did not become an encumbrance on the title to the subject land.

The Bureau of Land Management has determined that the United States has no claim to or interest in the land described and issuance of the proposed recordable disclaimer of interest would remove a cloud on the title to the land. Also, see FR Doc. 98–318, 63 FR 1121–1122, January 8, 1998.

Authority: 43 CFR Part 1864.

Dated: December 10, 1998.

Michael R. Ford,

Deputy State Director, Natural Resources, Lands and Planning.

[FR Doc. 98–33254 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Submission of Study Package to Office of Management and Budget; Review Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service, Padre Island National Seashore.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service (NPS) is proposing in 1998–99 to conduct on-site surveys of visitors to Padre Island National Seashore and Mustang Island regarding their perception and understanding of beach garbage (that has washed ashore from the Gulf of Mexico) and their preference regarding shoreline garbage cleaning methods.

	Estimated numbers of responses	Burden hours
Visitor Survey to Determine the Public Perception of and the Response to Marine Debris by the Visiting Public to Padre Island National Seashore	1500	300

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Record Keeping Requirement, the NPS invites public comment on these three proposed information collection requests (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS goal in conducting these surveys is to understand visitor perception of beach debris and preference regarding shoreline debris cleaning methods.

There was no public comments received as a result of publishing in the **Federal Register** a 60-day notice of intention to request clearance of information collection for this survey.

DATES: Public comments will be accepted on or before January 15, 1999.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before (insert date 30 days from date of publication in the **Federal Register.**)

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGES SUBMITTED FOR OMB REVIEW, CONTACT: John Miller, Voice: 512–949–8173 x 227, Email: john__miller@nps.gov

SUPPLEMENTARY INFORMATION:

Title: Visitor Survey to Determine the Public Perception of and the Response to Marine Debris by the Visiting Public to Padre Island National Seashore.

Bureau Form Number: None.

OMB Number: To be requested.

Expiration Date: To be requested.

Type of request: Request for new clearance.

Description of need: The National Park Service needs information to incorporate into a research report on beach garbage for Padre Island National Seashore which will guide further management and planning for the Seashore.

Automated data collection: At the present time, there is no automated way to gather this information, since it includes asking visitors about their perceptions, expectations, and preferences in the Padre Island National Seashore area.

Description of respondents: A sample of individuals who use the beaches of Padre Island National Seashore and Mustang Island.

Estimated average number of respondents: 1500.

Estimated average number of responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated average burden hour per response: 10–15 minutes.

Frequency of response: 1 time per respondent.

Estimated annual reporting burden: 300 hours.

Diane M. Cook,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 98–33250 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Mary McLeod Bethune Council House General Management Plan, Environmental Impact Statement, Mary McLeod Bethune Council House National Historic Site

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement for the Mary McLeod Bethune Council House General Management Plan.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an Environmental Impact Statement for the General Management Plan for the Mary McLeod Bethune Council House National Historic Site. This statement will be approved by the National Capital Regional Director.

The effort will result in a comprehensive general management that addresses strategies for the preservation of the Council House and the archives, appropriate visitor use and interpretation, accessibility, and the use of the facilities. In addition to the no-action, four additional alternatives are being considered. The first one places dual focus on the house and the museum, the second emphasizes the archives, the third one concentrates on activities and programs, and the fourth one focuses on the house as museum.

Major issues include inadequate and insufficient space for exhibits, archives, staff, volunteers, parking; lack of accessibility and facilities, such as rest rooms; need for specific staff with certain expertise; and visitor and staff safety.

Scoping meetings were conducted during the summer and fall of 1998. The results from these meetings will be included in a forthcoming newsletter. Copies of the information can be obtained from Susan Calafate Boyle, Job Captain, Denver Service Center, National Park Service, PO Box 25287, Lakewood, Colorado 80225, (303) 969–2319.

FOR FURTHER INFORMATION: Contact Superintendent John Hale, National Capital Parks East, (202) 690–5185.

Dated: November 25, 1998.

Terry Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 98–33249 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Yosemite Valley Plan, Yosemite National Park, Mariposa County, California; Notice of Intent to Prepare a Supplemental Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1502.9(c)), and in order to foster coordinated valley planning and operations, the National Park Service intends to supplement the 1980 Final General Management Plan/Environmental Impact Statement (1980 GMP/EIS) with a single, comprehensive *Yosemite Valley Plan* for Yosemite National Park. The Yosemite Valley Plan (YVP) will integrate alternatives (or elements thereof) and environmental analysis formerly part of four distinct initiatives: (a) the 1992 and 1996 Draft Yosemite Valley *Housing Plan*/EIS intended to supplement the 1980 GMP/EIS; (b) the 1997 Draft Yosemite Valley *Implementation Plan*/EIS intended to supplement the 1980 GMP/EIS; (c) the Yosemite *Lodge Development Concept Plan*/Environmental Assessment; and (d) a *Yosemite Falls* facilities design project. In addition, the YVP will implement previously approved actions set forth in the 1992 *Concessions Management Plan*.

Notice is hereby given that the National Park Service (NPS) will prepare a new Supplemental Environmental Impact Statement (SEIS) to update the 1980 GMP/EIS. This SEIS/YVP consolidates ongoing conservation planning and impact analysis efforts into one plan for the valley, so as to provide for a holistic, landscape-view of critical initiatives so vital for preserving the valley environs for visitor inspiration now and in the future. The decision to prepare a consolidated SEIS/YVP also results from proactive public involvement; and in response to public comment, the SEIS/YVP may include new or modified alternatives or mitigation strategies.

Background

In July, 1992 a Draft Yosemite Valley Housing Plan/Supplemental Environmental Impact Statement intended to amend the 1980 GMP/EIS was issued (57 FR 34146), with the public comment period ending September 30, 1992. This document examined the effects of a proposal and four alternatives for housing NPS and concession employees who work in Yosemite Valley. After reviewing public comments, the NPS identified two additional alternatives. A second Draft Housing Plan/SEIS was issued in December 1996 (61 FR 64361) with the public comment period ending March 31, 1997. Housing alternatives that are still under consideration and responses to the 1992 and 1996 public comments will be included in the consolidated SEIS/YVP.

The 1997 Draft Yosemite Valley Implementation Plan/SEIS examined the effects of alternatives for implementing 1980 GMP goals of reclaiming priceless natural beauty, reducing traffic congestion, allowing natural processes to prevail, reducing visitor crowding, and promoting visitor understanding and enjoyment in Yosemite Valley. It was intended to develop a coherent, comprehensive site plan for all necessary visitor services in Yosemite Valley. It included alternatives for relocating non-essential NPS and concession functions and facilities out of sensitive resource areas and hazardous areas; and for redesigning essential buildings, roads, campgrounds, interpretive centers and concession facilities. It identified alternative site plans for past and current implementation of the 1980 GMP, as well as the 1992 Concession Services Plan, the draft Yosemite Valley Housing Plan, and various transportation studies. The Draft Valley Implementation Plan/SEIS was issued in November 1997 (62 FR 60264) with an extended public comment period ending February 23, 1998 (63 FR 3000). Public open houses and workshops were held. Implementation alternatives that are still under consideration and responses to the 1997–98 public comments will be included in the consolidated SEIS/YVP.

In April 1997, as part of the park's urgent response to a disastrous flood, the Yosemite Lodge Development Concept Plan/Environmental Assessment was released for public review, with the public comment period ending May 16, 1997. Public walk-throughs and public information sessions were conducted. The DCP considered alternative site plans for the lodge area lodging, housing, circulation and visitor services. Subsequent to various legal proceedings, an approved Finding of No Significant Impact was formally rescinded on December 3, 1998. Lodge DCP alternatives that are still under consideration and a summary of the public comment will be included in the consolidated SEIS/YVP.

After several Yosemite Falls Design Elements, Issues and Questions workshops were held during 1998, a

preliminary Draft Program Statement was prepared for internal review which addressed alternatives for site design at the falls. Design elements such as falls view area, main entry area, picnic area, main trail, main bridge, eastern channel trail, parking, revegetation, and signs were considered. Yosemite Falls site plans that are still under consideration will be included in the consolidated SEIS/YVP.

Scoping/Decision Process

The existing four park stewardship initiatives summarized above yielded very extensive and detailed baselines which will be corroborated, clarified, or refined as necessary in the consolidation effort. Moreover, incisive public comment and agency consultations provided a valuable foundation for preparing those documents. As noted above, all comments received during past scoping activities or formal response periods are safeguarded in detailed administrative records, and will be duly re-considered in developing the consolidated SEIS/YVP. Consequently at this time it is necessary to submit only new issues or concerns not voiced previously. Also, all past respondents are being incorporated into a single mailing list—information about this comprehensive conservation planning and impact analysis process will be timely distributed via newsletters, mailings, and regional and local news media. To request being added now to the inclusive mailing list, or to obtain details about information options, please contact park staff via telephone at (209) 372–0261. Interested individuals, organizations, and agencies wishing to provide written comments on new issues or concerns should respond to: Superintendent, Attn: SEIS/YVP, P.O. Box 577, Yosemite National Park, CA 95389. Any new comments must be postmarked not later than January 15, 1999.

Availability of the Draft SEIS/YVP for review and written comment will be announced by formal Notice, via local and regional news media, and direct mailing. At this time the Draft SEIS/YVP is anticipated to be available for public review during late spring 1999. Comments on the Draft SEIS/YVP will be fully considered, and incorporated in a Final SEIS/YVP as appropriate. At this time it is anticipated that the Final SEIS/YVP would be completed during fall 1999. Notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the Final SEIS/YVP is distributed. This is expected to occur by the end of 1999. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Yosemite National Park.

Dated: December 9, 1998.

Patricia L. Neubacher,

Acting Regional Director, Pacific West.

[FR Doc. 98–33248 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Dam Adaptive Management Work Group will conduct an open public meeting to discuss administrative and program related issues. The meeting will discuss the following agenda items: Administrative Issues, 1999 Beach/Habitat-Building Flows, 1999 Basin Hydrology, Flood Avoidance Measures, Beach/Habitat Maintenance Flows, Grand Canyon Monitoring and Research Center Fiscal Year 2000 Annual Plan and 5-Year Strategic Plan, Fiscal Year 2000 and 2001 Budgets Information Technology, Conceptual Model, Science Advisory Board, Lake Powell Scope of Work, Temperature Control Device, and the Programmatic Agreement on Cultural Resources.

The Technical Work Group will conduct three (3) open public meetings. The first meeting will discuss AMWG agenda items, the second meeting will discuss results of the AMWG meeting, and the third meeting will discuss the 5-Year Strategic Plan, Grand Canyon Monitoring and Research Center Report on Science, 1999 Beach/Habitat-Building Flows, Conceptual Model, Basin Hydrology, and Physical Resources Program Presentations.

Dates and Locations

The AMWG public meeting will be held at the following time and location:

January 12–13, 1999—Phoenix, Arizona: The meeting will begin at 9:30 a.m. and end at 4:30 p.m. on the first day. The second day of the meeting will begin at 8 a.m. and end at 11:45 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona. The TWG public meetings will be held at the following times and locations:

January 11, 1999—Phoenix, Arizona: The meeting will begin at 1 p.m. and end at 4 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

January 13, 1999—Phoenix, Arizona: The meeting will begin at 1 p.m. and end at 4 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

February 16, 1999—Grand Canyon National Park: The meeting will begin at 12 noon and end at 5 p.m. The meeting will be held at the Albright Training Center, Grand Canyon National Park.

Time will be allowed at each meeting for any individual or organization wishing to make formal oral comments (limited to 10 minutes), but written notice must be provided at least FIVE (5) days prior to the meeting to Mr. Bruce Moore, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (80-1) 524–3702, faxogram (801) 524–5499, e-mail at: bmoore@uc.usbr.gov.

Official agendas for each of the three public meetings will be available 15 days prior to each meeting on the Bureau of Reclamation's website under the Adaptive Management Program at http://www.uc.usbr.gov.

FOR FURTHER INFORMATION CONTACT: Bruce Moore, telephone (801) 524–3702, faxogram (802) 524–5499, e-mail at: bmoore@uc.usbr.gov.

Dated: December 10, 1998.

Eluid Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 98–33275 Filed 12–15–98; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–811 (Preliminary)]

Drams of One Megabit and Above From Taiwan

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C.

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford did not participate in this investigation.

§ 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of dynamic random access memory semiconductors (DRAMs) of one megabit and above, provided for in subheadings 8542.13.80 and 8473.30.10 through 8473.30.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On October 22, 1998, a petition was filed with the Commission and the Department of Commerce by Micron Technology, Inc., Boise, ID, alleging that an industry in the United States is materially injured and is threatened with material injury by reason of LTFV imports of DRAMs of one megabit and above from Taiwan. Accordingly, effective October 22, 1998, the Commission instituted antidumping investigation No. 731–TA–811 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 29, 1998 (63 FR 58066). The conference was held in Washington, DC, on November 13, 1998, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 7, 1998. The views of the Commission are contained in USITC Publication 3149 (December 1998), entitled Dynamic Random Access Memory Semiconductors of One Megabit and Above from Taiwan: Investigation No. 731–TA–811 (Preliminary).

Issued: December 9, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–33322 Filed 12–15–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–401]

Pianos: Economic and Competitive Conditions Affecting the U.S. Industry

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 4, 1998.

SUMMARY: Following the receipt of a request on November 12, 1998, from the Committee on Ways and Means of the U.S. House of Representatives, the Commission instituted investigation No. 332–401, Pianos: Economic and Competitive Conditions Affecting the U.S. Industry, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. David Lundy (202–205–3439) or Mr. Ralph Watkins (202–205–3492), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Commission received the Committee's letter on November 12, 1998. The Committee asked that the Commission institute a factfinding investigation of the current conditions affecting the domestic piano industry, particularly that portion of the industry producing upright pianos. As requested by the Committee, the Commission will include the following information in its report to the extent possible:

(1) An overview of the global market for pianos, including such factors as consumption, production, and trade during the period 1994–98.

(2) A profile of the U.S. piano industry, including leading producers, importers, distributors, and suppliers of pianos.

(3) Profiles of leading manufacturers in Japan, Korea, China, and Indonesia.

(4) A comparison of the strengths and weaknesses of U.S. and foreign producers regarding factors of competition such as production costs, access to raw materials, labor costs, availability of skilled/experienced labor force, financing, level of technology in the manufacturing process, product appearance, quality as a musical instrument, pricing, and home market strength.

The Committee requested that the Commission in its examination of foreign industries and markets concentrate principally on Japan, Korea, China, and Indonesia. The Committee also requested the Commission take into account currency fluctuations and devaluations in considering the factors of competition. The Commission expects to submit its report to the Committee by May 12, 1999.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on February 17, 1999. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., January 29, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., February 5, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., March 1, 1999. In the event that, as of the close of business on January 29, 1999, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after January 29, 1999 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on March 1, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules does not authorize the filing of submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: December 7, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–33320 Filed 12–15–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921–129 (Review)]

Polychloroprene Rubber From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on polychloroprene rubber from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: Date of Commission Action.

FOR FURTHER INFORMATION CONTACT: Gail Burns (202–205–2501), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On November 5, 1998, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (63 FR 63748, November 16, 1998) . A record of the Commissioners' votes and a statement of Chairman Lynn M. Bragg are available from the Office of the Secretary and at the Commission's web site.

Participation in the review and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the review will be placed in the nonpublic record on May 11, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on June 3, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 25, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 28, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is May 20, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's

rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is June 14, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before June 14, 1999. On July 1, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 6, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: December 11, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–33321 Filed 12–15–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division

Agency Information Collection Activities; Proposed Collection: Comment Request

ACTION: Notification of Information Collection Under Review; Extension of a currently approved collection; Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

Office of Management and Budget (OMB) approval is being sought for the information collection listed above. This proposed information collection was previously published in the **Federal Register** on August 5, 1998 and allowed 60 days for public comment. No comments were received.

The purpose of this notice is to allow an additional 30 days for public comments from the public and affected agencies. Comments are encouraged and will be accepted for 30 days from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulations, part 1320.10.

Written comments and suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC, 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Evaluate whether the data collection instrument will 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.

The proposed collection is described below:

(1) Type of information collection. Extension of a currently approved collection.

(2) The title of the form/collection. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965.

3. The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form Number: None. Civil Rights Division, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: State, Local, and Tribal Government. Other: None. Jurisdictions specifically covered under the Voting Rights Act are required to obtain preclearance from the Attorney General before instituting changes affecting voting. They must convince the Attorney General that voting changes are not racially discriminatory. The procedures facilitate the provision of information that will enable the Attorney General to make the required determination.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 10,103 respondents with the average response at 10.021 hours.

(6) An estimate of the total public burden (in hours) associated with the collection: 47,365 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: December 11, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–33315 Filed 12–15–98; 8:45 am]

BILLING CODE 4410–13–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

National Institute of Justice

[OJP (NIJ)–1202]

RIN 1121–ZB38

Announcement of the Availability of the National Institute of Justice (NIJ) Solicitation ''Fiscal Year 1999 Arrestee Drug Abuse Monitoring (ADAM) Research and Evaluation Grants''

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice solicitation ''Fiscal Year 1999 Arrestee Drug Abuse Monitoring (ADAM) Research Grants.''

DATES: Due date for receipt of proposals is close of business February 2, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

NIJ seeks proposals to use the ADAM program to conduct research using primary data collection or secondary data analysis and to foster research on the development of the ADAM program itself.

It is anticipated that up to five grants will be awarded. Available funding is $750,000 with $250,000 set aside to address issues concerning violence against women through the use of ADAM data.

The FY 1999 ADAM Research Grant offers an opportunity to use an ongoing Federally-supported and locally-implemented data collection system to investigate questions on a wide range of issues including: drug abuse and drug control policy, criminal behavior and law enforcement, domestic violence and sexual assault, social services and public health, job market and other economic concerns, and methods of drug use surveyance and other sensitive topics.

Research sponsored through this solicitation will be executed through data collection at the 35 ADAM sites. Secondary analysis of existing ADAM data that furthers methodological advancement may also be supported. The solicitation is open to current ADAM site management staff as well as other investigators who are able to establish an acceptable working relationship with the site management team. Research using primary data collection will be executed at the 35 ADAM sites and the applicant must obtain access to the arrestees through ADAM site management in order to ensure that relations with the local jail facility are not disturbed and that normal ADAM data collection is not significantly disrupted.

For more information on the ADAM program refer to the ADAM website at http://www.adam-nij.net.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Fiscal Year 1999 Arrestee Drug Abuse Monitoring (ADAM) Research Grants'' (refer to document no. SL000311). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 98–33247 Filed 12–15–98; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,033, TA–W–35,033A]

Anvil Knitwear, Incorporated, Whiteville, North Carolina, Mullins, South Carolina; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance in November 13, 1998, applicable to all workers of Anvil Knitwear, Incorporated, Whiteville, North Carolina. The notice will be published soon in the **Federal Register.**

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information provided by the company shows that worker separations occurred at Anvil Knitwear's Mullins, South Carolina facility in October, 1998. The workers are engaged in employment related to the production of knit tops. Accordingly, the Department is amending the certification to cover workers of Anvil Knitwear, Incorporated, Mullins, South Carolina.

The intent of the Department's certification is to include all workers of Anvil Knitwear, Incorporated adversely affected by increased imports.

The amended notice applicable to TA–W–35,033 is hereby issued as follows:

All workers of Anvil Knitwear, Incorporated, Whiteville, North Carolina (TA–W–35,033) and Mullins, South Carolina (TA–W–35,033A) who became totally or partially separated from employment on or after September 17, 1997 through November 13, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 1st day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33310 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,264]

Anvil Knitwear, Incorporated, Whiteville, North Carolina; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 23, 1998 in response to a worker petition which was filed on behalf of workers at Anvil Knitwear, Incorporated, Whiteville, North Carolina. The notice will soon be published in the **Federal Register**.

An active certification covering the petitioning group of workers is already in effect (TA–W–35,033). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 1st day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33311 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,285]

Boise Cascade Wood Products Division, Elgin Stud Mill, Elgin, Oregon; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 30, 1998 in response to a worker petition which was filed on November 3, 1998 on behalf of workers at Boise Cascade, Wood Products Division, Elgin Stud Mill, Elgin, Oregon.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 8th day of December, 1998

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33303 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–32,435A, TA–W–32,435B, TA–W–32,435C, TA–W–32,435D]

Frank H. Fleer Corporation, Mt. Laurel, New Jersey, and Costa Mesa, California, Slidell, Louisiana, Lake Forest, Illinois; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 26, 1996, applicable to all workers of Frank H. Fleer Corporation located in Philadelphia, Pennsylvania. The notice was published in the **Federal Register** on August 26, 1996 (61 FR 43791).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at Costa Mesa, California, Slidell, Louisiana, and Lake Forest, Illinois locations of Frank H. Fleer Corporation. These locations provided marketing and sales services for the entertainment cards and confectionery that was produced at the Philadelphia, Pennsylvania location of Frank H. Fleer Corporation.

The intent of the Department's certification is to include all workers of Frank H. Fleer Corporation adversely affected by increased imports of entertainment cards and confectionery.

Accordingly, the Department is amending the worker certification to include the workers of Frank H. Fleer Corporation located in Costa Mesa, California, Slidell, Louisiana, and Lake Forest, Illinois.

The amended notice applicable to TA–W–32,435 is hereby issued as follows:

''All workers of Frank H. Fleer Corporation, Mt. Laurel, New Jersey (TA–W–32,435A), Costa Mesa, California (TA–W–32,435B), Slidell, Louisiana (TA–W–32,435C), and Lake Forest, Illinois (TA–W–32,435D) who became totally or partially separated from employment on or after May 23, 1995 through July 26, 1998 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington D.C. this day 17th of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33306 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,034]

Geneva Steel, Vineyard, Utah; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on October 23, 1998, applicable to workers of Geneva Steel in Provo, Utah. The notice was published in the **Federal Register** on November 10, 1998 (63 FR 63078).

The Department reviewed the certification for workers of the subject firm producing steel products and found that the decision document incorrectly identified the city in which the plant is located. Provo, Utah is a mailing address; the plant is located in Vineyard, Utah. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,034 is hereby issued as follows:

''All workers of Geneva Steel, Vineyard, Utah, who became totally or partially separated from employment on or after September 18, 1997 through October 23, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 4th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33307 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,974]

Lightalarms Electronics Corporation, Baldwin, New York; Notice of Negative Determination on Reconsideration

On February 11, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on February 24, 1998 (63 FR 9264).

The Department initially denied TAA to workers of Lightalarms-Baldwin because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The company made a strategic business decision to shift production to another domestic facility. The workers at the subject firm were engaged in employment related to the production of emergency lighting products.

The petitioner asserted that the subject firm shifted production of emergency lighting products to Canada and imported them into the U.S.

On reconsideration, the Department requested that Lightalarms provide additional information about imports of emergency lighting products, and information concerning overall domestic employment and production related to emergency lighting products.

Additional information provided by the company indicates that overall domestic employment related to the production of emergency lighting products has increased since the shift in production from the subject facility to its other domestic facility. The investigation also revealed that the subject firm is not importing like or directly competitive articles into the U.S. from Canada.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Lightalarms Electronics Corporation, Baldwin, New York.

Signed at Washington, D.C., this 9th day of December 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33304 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,724]

Nazdar, Chicago, Illinois; Notice of Negative Determination on Reconsideration

On September 21, 1998, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The petitioner presented new evidence that the customer survey undertaken by the Department did not reflect declining customers. The notice was published in the **Federal Register** on October 9, 1998 (63 FR 54499).

The Department initially denied TAA to workers of Nazdar because the ''contributed importantly'' group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The workers at the subject firm were engaged in employment related to the production of screen printing ink.

On reconsideration, the Department requested that Nazdar provide additional customers. A survey of customers which had reduced purchases from the Chicago facility of Nazdar was conducted. Surveyed customers did not purchase imported screen printing inks during the relevant period.

Conclusion

After reconsideration, I affirm the original notice of negative determination regarding eligibility to apply for worker adjustment assistance for workers and former workers of Nazdar, Chicago, Illinois.

Signed at Washington, DC, this 20th day of November 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33309 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,358]

Pioneer Natural Resources USA, Incorporated, Headquartered in Midland, Texas, and Operating in The Following States: New Mexico TA–W–34,358C, Kansas TA–W–34,358D, Louisiana TA–W–34,358E; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 10, 1998, applicable to all workers of Pioneer Natural Resources USA, Incorporated, headquartered in Midland, Texas. The notice was published in the **Federal Register** on July 13, 1998 (63 FR 37590).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Pioneer Natural Resources USA, Incorporated operating at various locations in New Mexico, Kansas and Louisiana. The workers are engaged in employment related to the production of crude oil.

The intent of the Department's certification is to include all workers of Pioneer Natural Resources USA, Incorporated adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Pioneer Natural Resources USA, Incorporated operating at various locations in New Mexico, Kansas and Louisiana.

The amended notice applicable to TA–W–34,358 is hereby issued as follows:

''All workers of Pioneer Natural Resources USA, Incorporated, headquartered in Midland, Texas (TA–W–34,358), operating at various locations in New Mexico (TA–W–34,358C), Kansas (TA–W–34,358D), and Louisiana (TA–W–34,358E) who became totally or partially separated from employment on or after February 8, 1997 through June 10, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington, D.C. this 3rd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33305 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34,106]

Farah USA, Incorporated, Savane International Corporation, El Paso, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1998 applicable to all workers of Farah USA, Incorporated located in El Paso, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of prototype garments. New information received from the company shows that Savane International Corporation is the parent firm of Farah USA, Incorporated located in El Paso, Texas. The company also reports that some workers separated from employment at Farah USA, Incorporated had their wages reported under a separate unemployment insurance (UI) tax account for Savane International Corporation, also located in El Paso, Texas. Based on these findings, the Department is amending the certification to reflect this matter.

The intent of the Department's certification is to include all workers of Farah USA, Incorporated who were adversely affected by increased imports.

The amended notice applicable to TA–W–34,106 is hereby issued as follows:

''All workers of Farah USA, Incorporated, Savane International Corporation, El Paso, Texas who became totally or partially separated from employment on or after December 9, 1996 through February 25, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.''

Signed at Washington D.C. this 20th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33308 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221 (a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 28, 1998.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 28, 1998.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 30th day of November, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 11/30/1998

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,270	TDS, Inc (Comp).	Oklahoma City, OK	11/16/1998	Field Mud Loging Services.
35,271	Essex Group, Inc (IBT)	Pana, IL	11/12/1998	Automobile Wire.
35,272	Mead Corp (UPWIU)	Rumford, ME	11/13/1998	Publishing and Specialty Paper.
35,273	Bend Door (Wrks)	Bend, OR	11/16/1998	Door Parts.
35,274	W.L. Gore & Associates (Wrks)	Phoenix, AZ	11/16/1998	Flat and Round Cable Assemblies.
35,275	Motorola—SPS-SFM-EV (Wrks)	Tempe, AZ	11/11/1998	Test Power Amplifiers.
35,276	Dawson Production Serv. (Wrks)	Midland, TX	11/17/1998	Oilwell Services.
35,277	Eaton Corp (Comp)	Winamac, IN	11/13/1998	Automobile Control Switches.
35,278	Molycorp, Inc (Comp)	Questa, NM	11/04/1998	Molybdenum Oxide & Concentrates.
35,279	Foxpoint Sportswear, Inc (Comp)	Wynne, AR	11/10/1998	Outerwear.
35,280	Lenox, Inc/Kirk Stieff (Wrks)	Baltimore, MD	11/16/1998	Casting & Engraving Frames, Dishes.
35,281	National Garment Co (Comp)	St. Louis, MO	11/16/1998	Children's Clothing.
35,282	Compaq Computer Corp (Wrks)	Houston, TX	11/11/1998	Computers, Printer Circuit Assembly.
35,283	H and H Atlas, Inc (Wrks)	Bronx, NY	11/13/1998	Swimwear.
35,284	Shell Exploration & Prod (Comp)	Houston, TX	11/16/1998	Crude Oil, Natural Gas.
35,285	Boise Cascade Corp (UBCJ)	LaGrande, OR	11/03/1998	Lumber Studs.
35,286	Cyclone Drilling, Inc (Wks)	Gillette, WY	11/17/1998	Oil Drilling.
35,287	Hanover Accessories (Wrks)	Pawtucket, RI	11/16/1998	Jewelry and Hair Accessories.
35,288	John's Manville (Wrks)	Waterville, OH	11/16/1998	Fiberglass.
35,289	Graham-Field Health Prod (Comp)	Hauppauge, NY	11/13/1998	Labtron Products.
35,290	Ag-Chem Equipment Co. (Wrks)	Jackson, MI	11/27/1998	Rogators, Terragators.
35,291	American Eagle Outfitters (Wrks)	New York, NY	11/16/1998	Warehouse, Distribution—Garments.
35,292	STA Right Fusing, Inc (UNITE)	Pittston, PA	11/17/1998	Ladies' Dresses.
35,293	Carborundum Corp (OCAW)	Keasbey, NJ	11/19/1998	Ceranic Refractories.
35,294	Altura Energy, Ltd (Comp)	Houston, TX	11/10/1998	Oil and Gas.
35,295	Intervascular, Inc (Comp)	Clearwater, FL	09/21/1998	Vascular Prostheses.
35,296	Carbide/Graphite Group (Wrks)	St. Marys, PA	11/13/1998	Electrodes.
35,297	General—Electro Mech. (IAMAW)	West Seneca, NY	11/13/1998	Drivematic Fastening Systems.
35,298	Fort James Corp (Comp)	Old Town, ME	11/19/1998	Hardwood Pulp.
35,299	Unocal (Comp)	Sugar Land, TX	11/20/1998	Oil and Gas.
35,300	Asarco, Inc (USWA)	Omaha, NE	11/16/1998	Refined Lead, Bismuth.
35,301	Sharpsville Quality Prod. (Wrks)	Sharpsville, PA	11/19/1998	Ingot Molds.
35,302	Inter-National Childrens (Wrks)	Ohatchee, AL	11/18/1998	Children's Clothing.
35,303	Kehoe Pipeline (Wrks)	Watford City, ND	11/19/1998	Oilfield Construction.
35,304	Rockwell International (Comp)	Milwaukee, WI	11/30/1998	Industrial Controls.
35,305	Inland Wood Products (Wrks)	Plummer, ID	11/18/1998	Dimensional Lumber.
35,306	Tennford Weaving (UNITE)	Wartburg, TN	11/18/1998	Woven Cloth Labels.
35,307	Garment Finishers (Wrks)	El Paso, TX	11/19/1998	Stonewashed Jeans.
35,308	BJ Services (Wrks)	Midland, TX	11/10/1998	Oilfield Services.

[FR Doc. 98–33302 Filed 12–15–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02262, et al.]

Pioneer Natural Resources USA, Incorporated Headquartered in Midland, Texas, et al.; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II. of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 10, 1998, applicable to all workers of Pioneer Natural Resources USA, Incorporated, Headquartered in Midland, Texas. The notice was published in the **Federal Register** on July 13, 1998 (63 FR 37591).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Pioneer Natural Resources USA, Incorporated operating at various locations in New Mexico, Kansas and Louisiana. The workers are engaged in employment related to the production of crude oil.

The intent of the Department's certification is to include all workers of Pioneer Natural Resources USA, Incorporated adversely affect by increased imports from Canada. Accordingly, the Department is amending the certification to cover workers of Pioneer Natural Resources USA, Incorporated operating at various locations in New Mexico, Kansas and Louisiana.

The amended notice applicable to NAFTA—02262 is hereby issued as follows:

''All workers of Pioneer Natural Resources USA, Incorporated, headquartered in Midland, Texas (NAFTA–02262), operating at various locations in New Mexico (NAFTA–02262C), Kansas (NAFTA–02262D) and Louisiana (NAFTA–02262E) who became totally or partially separated from employment on or after March 10, 1997 through June 10, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.''

Signed at Washington, D.C. this 3rd day of December, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33313 Filed 12–15–98; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance of NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of December, 1998.

In order for an affirmative determination to be made and a certification of edibility to apply for worker adjustment assistance to the issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or practically separated,

(2) that sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,128; Sonju's Auto Body Coatings & Refinishing Co., Inc., Kalispell, MT.

TA–W–35,078; BWD Automotive of Alabama, Selma, AL.

TA–W–35,066; Funtime Sportswear Inc. Moscow, PA.

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,227; Malone Manufacturing, Inc., Champlain Distribution Center, Champlain, NY.

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–34,885; Modern Industrial Plastics, Brookville, OH.

TA–W–34,995; EMC Technology LLC, Cherry Hill, NJ.

TA–W–35,100; AET, Covington, VA.

TA–W–35,054; Bridgton Knitting Mills, Bridgton, ME.

TA–W–35,088; Horace Small Apparel Co., Brownsville, TX.

TA–W–34,792; Brockway Standard (New Jersey), Inc., Elizabeth, NJ.

TA–W–35,131; Matsushita Semiconductor Corp of America (MASCA), Puyallup, WA.

TA–W–35,074; Woodwork Corp. of America. A Subsidiary of DBA Products Co., Merrill, WI.

TA–W–35,113; Thorn Apple Valley, Forrest City, AR.

TA–W–35,004; Harris Semiconductor Corp., Findlay, OH.

TA–W–35,061; Photran Corp. Lakeville, MN.

TA–W–35,009; Spalding Sports Worldwide, Chicopee, MA.

TA–W–35,053; Spartan Mills, Startex Mill, Startex, SC.

TA–W–35,021; Vastar Resources, Woodward, OK and Laverne, OK.

TA–W–35,169; Jayo Sportswear, Inc., Bethlehem, PA.

TA–W–34,973; GEM State Lumber Co., Juliaetta, ID.

TA–W–34,887; Malden Mills Industries, Inc., Lawrence, MA.

TA–W–34,811; GE Lighting, Providence Base Plant, Providence, RI.

TA–W–34,808; Koehler Manufacturing Co., Marlboro, MA.

TA–W–35,080; International Assembly Specialists, Tucson, AZ.

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,055; Courtland Manufacturing Co., Inc., Appomattox, VA; A; Lynn Manufacturing, Lynchburg, VA, B; Sangil Manufacturing, Appomattox, VA, C; Duti Duds, Lynchburg, VA, D; Lake Apparel, Boydton, VA, E; Courtland Distributions, Appomattox, VA: September 22, 1997.

TA–W–34,848; Meredith Manufacturing Co., Brantley, AL; July 28, 1997.
TA–W–35,175; Electronic Components & Systems, Inc., Tucson, AZ: October 27, 1997.
TA–W–35,147; Fashions By Gariffo, New York, NY: October 8, 1997.
TA–W–35,043; Louis Allis Co., Milwaukee, WI: September 14, 1997.
TA–W–34,956; Thomas & Betts Electrical Div., Athens, TN: August 20, 1997.
TA–W–35,117; Justin Clothing, New Bedford, MA: October 16, 1997.
TA–W–35,157; Tultex Corp., Martinsville, VA: October 9, 1997.
TA–W–35,150; American Lantern C., McKenzie, TN: September 10, 1997.
TA–W–35,067; General Electric Co., Electromaterials Div., Coshoton, OH: September 26, 1997.
TA–W–34,937; Mobil Exploration & Producing U.S., Inc (MEPUS) Mobil Exploration & Producing Services, Inc. (MEPSI) Mobil Exploration & Producing Technical Center (MEPTEC) Mobil Business Resources Corp. (MBRC) Headquartered in Dallas, TX and Operating in the following States: A; AL, B; CA, C; CO, D; KS, E; LA, F; NJ, G; NM, H; OK, I; TX, J; Ut, K; WY: October 3, 1998.
TA–W–34,909; Ahoskie Apparel, Inc., Ahoskie, NY: August 13, 1997.
TA–W–35,171; Walbro Corp., Cass City, MI: October 23, 1997.
TA–W–34,970; Bayer Corp., Houston, TX: September 14, 1997.
TA–W–34,965 & A; Arco Western Energy, Headquartered in Bakersfield, CA & Operating in the State of TX: August 20, 1997.
TA–W–35,077; William Carter Co., Centreville, MS: September 22, 1997.
TA–W–35,154; Len-Jeff, Inc., Kulpmont, PA: October 16, 1997.
TA–W–35,098; Hardin Knitwear, New York, NY: September 29, 1997.
TA–W–35,092 & A, B; Eastland Shoe Manufacturing Co., Freeport, ME, Lisbon, ME, Fryburg, ME: May 24, 1998.
TA–W–35,041; JRF Enterprises, Scottsboro, AL: September 21, 1997.
TA–W–35,108; Gulf States Steel, Inc., Gadsden, AL: September 19, 1997.
TA–W–34,996 & A; Fleer Corp., Fleer Confections Div., Byhalia, MS: September 3, 1997 and Mt. Laurel, NJ: July 27, 1998.
TA–W–34,176; Household Products, Inc., Formerly Black & Decker, Household Products Div., Asheboro Plant, Asheboro, NC: October 22, 1997.
TA–W–35,115; Santoro Manufacturing, Fall River, MA: October 16, 1997.
TA–W–35,269; Walls Industries, Inc., Ashville, AL: November 17, 1997.
TA–W–35,185; Allegheny Ludlum Steel Corp, Brackenridge, PA: October 23, 1997.
TA–W–34,904; Paris Accessories, Beth-Lynn Div., Allentown, PA: August 11, 1997.
TA–W–34,880; Preston Glove Co., Preston, MS: August 13, 1997.
TA–W–34,886; Austin Apparel, Inc., Phoenix City, AL: July 24, 1997.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of December, 1998.

In order for an affirmative determination to be made and certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) that sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) that imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) that there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02679; General Motors Corp., Metal Fabricating Div., Kalamazoo, MI.
NAFTA–TAA–02615; Gem State Lumber Co., Juliaetta, ID.
NAFTA–TAA–02704; Jayo Sportswear, Inc., Bethlehem, PA.
NAFTA–TAA–02645; Lear Corp., Romulus, MI.
NAFTA–TAA–02659; The Photran Corp., Lakeville, MN.
NAFTA–TAA–02699; Longview Fibre Co., Leavenworth Wood Products, Leavenworth, WA.
NAFTA–TAA–02622; Paris Accessories, Beth Lynn Div., Allentown, PA.
NAFTA–TAA–02636; Boise Cascade, Wood Products Div., LaGrande, OR.
NAFTA–TAA–02665; Horace Small Apparel Co., Brownsville, TX.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02718; Tri-State Associated Wholesale Grocers, EL Paso, TX.
NAFTA–TAA–02649; International Assembly specialists, Tucson, AZ.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–02684; Holloway Sportswear, Inc., Deridder, LA; October 15, 1997.
NAFTA–TAA–02716; Courtland Manufacturing Co., Inc., Appomattox, VA: A; Lynn Manufacturing, Lynchburg, VA, B; Sangil Manufacturing, Appomattox, VA, C; Duti Duds, Lynchburge, VA, D; Lake Apparel, Boydton, VA and E; Courtland Distribution, Appomattox, VA: October 27, 1997.
NAFTA–TAA–02703; Household Products, Inc., Asheboro Plant, Asheboro, NC: October 22, 1997.
NAFTA–TAA–02706; Electronic Components & Systems, Inc., Tucson, AZ: October 27, 1997.
NAFTA–TAA–02630 & A; Paramount Headwear, Inc., VA Buren, MO and Salem, MO; September 17, 1997.
NAFTA–TAA–02691; Justin Clothing, New Bedford, MA: October 19, 1997.
NAFTA–TAA–02637; Louis Allis Co., Milwaukee, WI: September 14, 1997.
NAFTA–TAA–02694; Tultex Corp., Martinsville, VA: October 9, 1997.
NAFTA–TAA–02692; Santoro Manufacturing, Fall River, MA: October 19, 1997.

NAFTA–TAA–02602; NAFTA–TAA–02667, NAFTA–TAA–02626; Russell Corp., Midland, GA, Marianna, FL and Slocomb, AL: September 8, 1997.
NAFTA–TAA–02670; Beloit Corp., Dalton, MA: October 5, 1997.
NAFTA–TAA–02723; Romart, Inc., Scranton, PA: November 4, 1997.
NAFTA–TAA–02683; Georgia Pacific, Lebonite Hardboard Div., Lebanon, OR: October 13, 1997.
NAFTA–TAA–02621; Marcelle's Fashions, Inc., El Paso, TX: September 1, 1997.
NAFTA–TAA–02707; Detroit Steel Products Co., Inc., Morristown, IN: October 26, 1997.

I hereby certify that the aforementioned determinations were issued during the month of December, 1998. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: December 7, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–33312 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10661, et al.]

Proposed Exemptions; MONY Life Insurance Company

AGENCY: Pension and Welfare Benefits Administration, Labor

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

MONY Life Insurance Company (MONY), Located in New York, NY

[Application No. D–10661]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Section I.—Covered Transactions

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective November 16, 1998, to the (1) receipt of common stock of the MONY Group, Inc. (the Holding Company), a subsidiary of MONY, or (2) the receipt of cash or policy credits, by or on behalf of any eligible policyholder (the Eligible Policyholder) of MONY which is an employee benefit plan (the Plan), other than an Eligible Policyholder which is a Plan maintained by MONY or an affiliate for its employees, in exchange for such Eligible Policyholder's membership interest in MONY, in accordance with the terms of a plan of reorganization (the Plan of Reorganization) adopted by MONY and implemented pursuant to section 7312 of the New York Insurance Law.

This proposed exemption is subject to the conditions set forth below in Section II.

Section II. General Conditions

(a) The Plan of Reorganization is implemented in accordance with procedural and substantive safeguards that are imposed under New York Insurance Law and is subject to review and supervision by the Superintendent of Insurance of the State of New York (the Superintendent).

(b) The Superintendent reviews the terms of the options that are provided to Eligible Policyholders of MONY as part of such Superintendent's review of the Plan of Reorganization, and the Superintendent only approves the Plan of Reorganization following a determination that such Plan of Reorganization is fair and equitable to all Eligible Policyholders and is not detrimental to the public.

[1] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

(c) Each Eligible Policyholder has an opportunity to vote to approve the Plan of Reorganization after full written disclosure is given to the Eligible Policyholder by MONY.

(d) Any election by an Eligible Policyholder that is a Plan to receive Holding Company stock, cash or policy credits, pursuant to the terms of the Plan of Reorganization is made by one or more independent fiduciaries of such Plan and neither MONY nor any of its affiliates exercises any discretion or provides investment advice with respect to such election.

(e) After each Eligible Policyholder entitled to receive stock is allocated at least 7 shares of Holding Company stock, additional consideration is allocated to Eligible Policyholders who own participating policies based on actuarial formulas that take into account each participating policy's contribution to the surplus of MONY which formulas have been approved by the Superintendent.

(f) All Eligible Policyholders that are Plans participate in the transactions on the same basis within their class groupings as other Eligible Policyholders that are not Plans.

(g) No Eligible Policyholder pays any brokerage commissions or fees in connection with their receipt of Holding Company stock or in connection with the implementation of the commission-free sales and purchase programs.

(h) All of MONY's policyholder obligations remain in force and are not affected by the Plan of Reorganization.

Section III. Definitions

For purposes of this proposed exemption:

(a) The term ''MONY'' means ''MONY Life Insurance Company'' and any affiliate of MONY as defined in paragraph (b) of this Section III.

(b) An ''affiliate'' of MONY includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with MONY. (For purposes of this paragraph, the term ''control'' means the power to exercise a controlling influence over the management or policies of a person other than an individual.)

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term ''Eligible Policyholder'' means a policyholder who is eligible to vote and to receive consideration under MONY's Plan of Reorganization. Such Eligible Policyholder is a policyholder of the mutual insurer on the date the Plan of Reorganization is adopted by the Board of Trustees of MONY and on the effective date of the reorganization.

(d) The term ''policy credit'' means an increase in the accumulation account value [2] (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

Effective date: If granted, this proposed exemption will be effective as of November 16, 1998, the date of MONY's Plan of Reorganization.

Summary of Facts and Representations

1. MONY, which was formerly structured under the laws of the State of New York as a mutual life insurance company called ''The Mutual Life Insurance Company of New York,'' is one of the oldest insurance companies in the United States, having been organized in 1842. In 1867, MONY became the first mutual company to declare annual policyholder dividends. Its principal place of business is located at 1740 Broadway, New York, New York.

MONY is licensed to conduct insurance business in all 50 states including the District of Columbia. As of December 31, 1997, MONY had total assets of $16.6 billion, total liabilities of $15.7 billion (including liabilities for policyholder benefits of $9.3 billion) and surplus of about $835 million.

MONY's principal products include life insurance, annuities (including tax deferred annuities described in section 403(b) of the Code (TDAs) and individual retirement annuities (IRAs) described in section 408(b) of the Code) and pension products. With its affiliates and subsidiaries, MONY provides fiduciary and other services to Plan policyholders which are covered under the Act and the Code. Such services may include plan administration, investment management, securities brokerage and related services. As a result of providing these services to Plan policyholders, MONY and its affiliates would become parties in interest with respect to the Plans.

2. Because it was formerly organized as a mutual life insurance company, MONY had no authorized, issued or outstanding stock. Instead, policyholders were both customers and owners of the company. Specifically, the life insurance, endowment, annuity and certain other insurance and pension contracts issued by MONY combined both insurance coverage and proprietary rights, i.e., membership rights. In this regard, MONY policyholders were entitled to vote on the conversion of the company from a mutual life insurance company to a stock company. In addition, some owners of MONY insurance contracts had rights to the equity or surplus of the company in certain circumstances and some policyholders had rights to share in the divisible surplus as annually determined by MONY (policyholder dividends). MONY's Board of Trustees annually determined the divisible surplus of the company that would be distributed as policyholder dividends.

3. MONY represents that stock life companies have many advantages over mutual companies. Unlike stock life companies, mutual life insurance companies do not have ready access to outside capital resources because they may not enhance their capital base by issuing equity securities to the public or institutional investors. Therefore, access to equity, or for that matter, debt capital markets is significantly limited. In addition, MONY notes that since mutual life insurance companies may not use stock for acquisitions or for executive compensation, they have less flexibility in corporate structure. Because these restrictions have hampered the growth of mutual life insurance companies, MONY explains that the total market share of mutual life insurance companies has declined significantly in the past twenty years.

For these reasons, MONY proposed to reorganize into a stock life insurance company to enhance its long-term strength and allow it to obtain the equity and debt capital it would need in the competitive markets in which it and its subsidiaries operate. As part of its Plan of Reorganization, MONY will distribute to Eligible Policyholders 100 percent of the value of the company in the form of stock, cash or policy credits in exchange for their membership interests. It is anticipated that all of MONY's policyholders will benefit from a stronger balance sheet and the likelihood of a higher credit rating.

Therefore, MONY requests an individual exemption from the Department that would cover the receipt of Holding Company stock, cash or policy credits by Eligible Policyholders that are Plans in exchange for their existing membership interests in

[2] In general, a policy's accumulation account value is expressed in dollar terms and reflects contributions and interest credited under the policy, less expenses and withdrawals. Accumulation values may be applied for the purchase of annuity benefits, or depending on the provisions of the contract, withdrawn by the policyholder in a lump sum or installments. Under MONY's Plan of Demutualization, where a policy eligible for distributions under such Plan has an accumulation value, the policy's accumulation value will be increased by an amount equal to the distribution the policyholder is entitled to under the Plan.

MONY.[3] MONY is not requesting an exemption for distributions of Holding Company stock for the Plans it and its affiliates maintain for their own employees because it believes such stock would constitute ''qualifying employer securities'' within the meaning of section 407(d)(5) of the Act and that section 408(e) of the Act would apply to such distributions.[4] If granted, the exemption will be effective as of November 16, 1998, which is the date of MONY's Plan of Reorganization.

4. To become a stock insurance company, MONY proposed to reorganize under section 7312 of the New York Insurance Law. In this regard, MONY's Board of Trustees adopted a Plan of Reorganization on August 14, 1998 under which MONY would, subject to the approval of its policyholders and the Superintendent, be organized as a stock life insurance company subsidiary of a holding company (i.e., the Holding Company). The stock of the Holding Company would then be distributed to the policyholders.

Section 7312 establishes a rigorous approval process for the reorganization of a life insurance company. The demutualization must be initiated by the board of trustees of the insurance company which must approve the reorganization plan by a vote of at least three-fourths of the entire board. The board of trustees must also make an express finding that the plan is ''fair and equitable'' to all affected policyholders.

Once approved by the board of trustees, the reorganization plan must be submitted to the Superintendent for review and approval. To become effective, the Superintendent must determine that the reorganization plan meets the requirements imposed by section 7312, including the requirements that the plan be fair and equitable to the policyholders, not be detrimental to the public and following the reorganization, the insurer must have an amount of surplus which the Superintendent deems to be reasonably necessary for its future solvency.

To assist the Superintendent in performing his or her duties, section 7312(h)(1) permits the Superintendent to appoint independent consultants. Specifically, section 7312(h)(2) requires the Superintendent to appoint an independent actuary to advise him or her on matters relating to the reorganization. The actuary will provide a memorandum describing his review. In the case of its Plan of Reorganization, MONY has hired the actuarial firm of Tilinghast Towers-Perrin (TT–P) to conduct an actuarial review and the investment banking firm of Chase Securities, Inc. as investment banking consultant.

Under New York Insurance Law, the Superintendent is also required to hold a public hearing on the plan of reorganization at which time policyholders and other interested persons are invited to express their views on the plan. The purpose of the public hearing is to determine whether the reorganization plan is fair and equitable to policyholders and is not detrimental to the public. During the hearing, interested persons may comment on the fairness of the terms of the plan. Notice of the hearing, a copy of the plan, a summary of the plan and other materials approved by the Superintendent must be provided to each policyholder of the insurance company whose policy or contract is in force on the date of adoption of the plan of reorganization. The notice must also be published in three newspapers of general circulation.

Once the reorganization plan has been approved by the insurer's board of trustees and after the public hearing, the Superintendent is required to approve such plan if he or she finds that (a) the plan does not violate New York Insurance Law; (b) the plan is fair and equitable to all policyholders and is not detrimental to the public; and (c) after giving effect to the reorganization, the reorganized insurer will have an amount of capital and surplus the Superintendent deems to be reasonably necessary for its future solvency. The Superintendent must also determine that the reorganization plan does not fail to meet the following requirements of section 7312(c). In other words, (a) the plan must demonstrate a purpose and specific reasons for the proposed reorganization; (b) the plan must be fair and equitable to the policyholders; (c) the plan must provide for the enhancement of the operations of the reorganized insurer; and (d) the plan must not substantially lessen competition in any line of insurance business. A decision by the Superintendent to approve a plan of reorganization is subject to judicial review in the New York courts.

The policyholders of the mutual life insurance company must also approve the plan of reorganization. Each policyholder is entitled to one vote and the plan must be approved by a vote of at least two-thirds of all votes cast by policyholders entitled to vote.

5. MONY completed the development of its Plan of Reorganization and received approval from its Board of Trustees of the proposed conversion on August 14, 1998. On October 19, 1998, the New York State Insurance Department (the New York Insurance Department) held a public hearing with respect to MONY's Plan of Reorganization. On November 2, 1998, the vote by MONY policyholders approving the Plan was completed. Formal approval of the Plan by the New York Insurance Department occurred on November 10, 1998.

6. MONY has established a subsidiary (i.e., the Holding Company) whose stock it exclusively owns. On November 16, 1998, the effective date of the Plan of Reorganization, MONY, itself, issued common stock to the Holding Company. In addition, MONY surrendered to the Holding Company and the Holding Company cancelled all of the Holding Company common stock held by MONY. MONY then became a subsidiary of the Holding Company.

As a result of the reorganization, MONY became, by operation of New York Insurance Law, a stock life insurance company. MONY's charter and by-laws were extinguished in accordance with New York Insurance Law. Further, MONY's name was changed from ''The Mutual Life Insurance Company of New York'' to ''MONY Life Insurance Company.'' However, all of MONY's insurance policies would remain in force and all policyholders would be entitled to receive all of the benefits under their policies and contracts to which they would have been entitled if the Plan of Reorganization had not been adopted.

7. MONY's Plan of Reorganization provides for Eligible Policyholders to receive consideration in exchange for the surrender of their membership interests as soon as practicable after the reorganization date. Eligible Policyholders are those policyholders whose MONY policies were both in force on the date of adoption of the Plan of Reorganization by MONY's Board of Trustees and were still in force on the effective date of the Plan.

Under the Plan of Reorganization, certain Eligible Policyholders will receive common stock of the Holding Company as consideration for their membership interest in the mutual insurance company. Said interest will be extinguished as a result of the reorganization (Stock Eligible Policyholders).

[3] MONY estimates that approximately 30,000 of its policyholders are Plans whose contracts are supported by several hundred million dollars in assets.

[4] The Department expresses no opinion herein on whether the Holding Company stock will constitute qualifying employer securities and whether such distributions will satisfy the terms and conditions of section 408(e) of the Act.

Aside from requiring the Holding Company to issue shares of Holding Company stock to Stock Eligible Policyholders, the Holding Company was permitted to sell shares of such stock, for cash, in an initial public offering (the IPO) on the date of the reorganization. The Holding Company also arranged for listing the Holding Company stock on the New York Stock Exchange (NYSE). Such stock is currently traded on the NYSE.

Also under MONY's Plan of Reorganization, certain Eligible Policyholders will receive cash or policy credits in lieu of Holding Company stock. In this regard, if there were an IPO, Eligible Policyholders who affirmatively indicated a preference to receive cash instead of Holding Company stock, and who were allocated 75 shares or less, as determined by MONY's Board of Trustees and approved by the Superintendent prior to the reorganization, would receive cash instead of Holding Company stock.[5] Assuming there were no IPO, such Eligible Policyholders would receive Holding Company stock, regardless of having expressed an interest for cash.

In addition, Eligible Policyholders whose mailing address is outside the United States or Canada will receive cash unless the Plan of Reorganization requires them to receive policy credits. Eligible Policyholders who hold TDA or IRA contracts will receive policy credits in the form of enhanced policy values in exchange for their membership interests.[6] Such Eligible Policyholders are generally not able to hold stock under applicable tax laws. Further, individuals, who are covered by Plans that are qualified under sections 401(a) or 403(a) of the Code, and who hold life insurance or annuity contracts will receive policy credits. All other Eligible Policyholders, who are not entitled to receive Holding Company stock, will receive cash in exchange for their membership interests.[7]

The cash or policy credits distributed to Eligible Policyholders, who are not entitled to receive Holding Company stock, will have a value equal to the stock such policyholders would otherwise have received based on the price per share of the Holding Company stock in the IPO or, if there were no IPO, a number equal to a percentage of the book value of the Holding Company stock on November 16, 1998, the effective date of the Plan of Reorganization as determined by MONY's actuarial consultant, PricewaterhouseCoopers, LLP, (PwC) and approved by the Superintendent, in consultation with its actuary, TT–P.[8] In total, MONY expects to distribute approximately $1 billion in value to Eligible Policyholders. Said amount represents the entire value of MONY's enterprise. MONY proposes to distribute the consideration to Eligible Policyholders on December 24, 1998.

8. The Holding Company stock will be allocated to Stock Eligible Policyholders as follows: (a) each Stock Eligible Policyholder will receive at least 7 shares; and (b) the remainder of the shares will be allocated to Stock Eligible Policyholders who own participating policies based on the estimated contributions to surplus made by each Eligible Policyholder.[9] As stated above, the allocation methodology must be fair and equitable. Therefore, MONY has retained PwC to assist it in developing an equitable allocation methodology, and the Superintendent has retained TT–P to evaluate the allocation methodology. Further, no Stock Eligible Policyholder will pay any brokerage commissions or other transaction costs in connection with such policyholder's receipt of stock.

9. The Plan of Reorganization states that amounts to be distributed to Eligible Policyholders that are Plans will be held in an escrow or similar arrangement in the event that the Department does not provide exemptive relief prior to the date of the reorganization. Under the escrow arrangement, Plan policyholders will not receive their distribution until such time as the exemption is granted, but no later than the third anniversary of the effective date of the reorganization. The escrow arrangement is subject to the terms and conditions of the New York Insurance Department. Although it is currently contemplated that the New York Insurance Department may require MONY to adopt the escrow arrangement, MONY notes that this arrangement may be determined to be unnecessary if the proposed exemption specifies the date of reorganization as the effective date of the exemption.

10. In addition, the Plan of Reorganization provides for the establishment of a commission-free sales program whereby Stock Eligible Policyholders who receive between 25 and 99 shares of Holding Company stock will be given the opportunity to sell their Holding Company stock on the open market at least 60 days prior to the commencement date of the program. Further, the Plan of Reorganization provides for a commission-free purchase program whereby Stock Eligible Policyholders who receive 99 or fewer shares of Holding Eligible Company stock will be permitted to purchase the number of shares necessary to bring their respective total number of shares up to 100. Stock Eligible Policyholders who participate in the commission-free sales and purchase programs will do so without the payment of any brokerage commissions or similar fees. Moreover, MONY and its affiliates will not provide ''investment advice'' as described in section 3(21) of the Act with regard to

[5] With respect to these policyholders, MONY represents that it will not provide ''investment advice'' on the form of consideration elected.

[6] However, TDA or IRA policyholders who are in ''payout status'' will receive shares of Holding Company Stock instead of policy credits.

[7] Consistent with sections 7312(a)(2), 7312(e) and 4210 of New York Insurance Law, the Plan of Reorganization generally provides that the policyholder eligible to participate in the distribution of stock, cash or policy credits resulting from the Plan of Reorganization is ''the person whose name appears * * * on the insurer's records as owner'' of the policy. MONY further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, MONY represents that it is required under the foregoing provisions of New York Insurance Law and the Plan of Reorganization to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

Notwithstanding the foregoing, MONY's Plan of Reorganization provides a special rule applicable to an insurance policy issued to a trust established by MONY. This rule applies whether or not the trust, or any arrangement established by any employer participating in the trust, constitutes an employee benefit plan subject to the Act. Under this special rule, the holder of each individual ''certificate'' issued in connection with the insurance policy is treated as the policyholder and owner for all purposes under the Plan of Reorganization, including voting rights and the distribution of consideration. The trustee of any such trust established by MONY will not be considered a policyholder or owner and will not be eligible to vote or receive consideration.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when MONY incurs the obligation to distribute Holding Company stock, cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[8] MONY wishes to clarify that the Superintendent was empowered to approve the Plan of Reorganization and, in connection with such Plan, the methodology utilized to determine the book value of the Holding Company. However, the Superintendent is not specifically authorized to review and approve the actual calculation of the book value of the Holding Company at the time the distribution occurs.

[9] MONY notes that both the fixed and variable components of an insurance policy will be provided in exchange for the policyholder's membership interests.

the program. The commission-free sales and purchase programs will commence on the first business day after the nine month anniversary of the effective date of the reorganization and will continue for three months. The programs may be extended with the approval of the Superintendent if the Board of Directors of MONY determines such extension would be appropriate and in the best interest of MONY and its stockholders.

11. Although policyholder membership interests in MONY were extinguished as a result of the reorganization, MONY's insurance policies will remain in force. Eligible Policyholders will be entitled to receive all benefits under their policies to which they would have been entitled if the Plan of Reorganization had not been adopted. In effect, no actual exchange of contracts will take place. The contractural terms and benefits of MONY's life insurance, endowment, annuity, pension plan, and other insurance contracts, including the face values, insurance in force, borrowing terms, amount or pattern of death benefit, premium pattern, interest rate or rates guaranteed on issuance of the contract, and the guaranteed mortality and expense charges, will remain unchanged.

12. As part of its long-term strategic plan to convert to a stock life insurance company, MONY, the Holding Company and a group of investment funds (the Investors) [10] affiliated with Goldman, Sachs & Co. (Goldman Sachs) have entered into an investment agreement (the Investment Agreement). Under the Investment Agreement, MONY issued $115 million of 15 year, 9.5 percent surplus notes (the Surplus Notes) to the Investors on December 30, 1997. The Surplus Notes are direct and unsecured obligations of MONY. In accordance with section 1307 of the New York Insurance Law, each payment of principal and interest on the Surplus Notes may only be made with the prior approval of the New York Insurance Department. The Surplus Notes are subordinate to all existing and future indebtedness, policy claims and other creditors of MONY. Proceeds from the Surplus Notes issuance are being added to MONY's capital base.

Also under the Investment Agreement, MONY sold warrants (the Warrants) providing the Investors with the opportunity to purchase a minority interest of 7 percent or less of the Holding Company stock upon MONY's conversion to a stock company. The Warrants were sold to the Investors on December 30, 1997 at an aggregate purchase price of $10 million. The exercise price for the Warrants will be the IPO share price.

Further, the Investment Agreement provides that following the reorganization, MONY has an option to draw upon an additional $100 million from the Investors through the issuance of non-voting convertible preferred stock. Although MONY does not currently expect that it will exercise the option, the contingent capital commitment would allow it to have additional capital access, particularly in the event it does not complete the IPO.

Finally, under the Investment Agreement, the Investors have been granted board representation rights. Under the Agreement, MONY and the Holding Company have agreed to use their best efforts to cause one of the persons proposed by the Investors to be elected to its board. The Investors' right to board representation will terminate when the Investors no longer own Holding Company stock and/or the right to acquire such stock (through the ownership of Warrants and/or convertible preferred stock) equal to 5 percent of the voting power of the Holding Company stock.

It is represented that Goldman Sachs's investment will add significantly to MONY's financial strength and in no way affect MONY's policy commitments or other obligations.

13. In summary, it is represented that the transactions have satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Reorganization, which is being implemented pursuant to stringent procedural and substantive safeguards imposed under New York law and supervised by the Superintendent, will not require any ongoing involvement by the Department.

(b) One or more independent Plan fiduciaries had an opportunity to determine whether to vote to approve the terms of the Plan of Reorganization and was solely responsible for all such decisions.

(c) The proposed exemption will allow Eligible Policyholders that are Plans to acquire Holding Company stock, cash or policy credits in exchange for their membership interests in MONY and neither MONY nor its affiliates will exercise any discretion or provide investment advice with respect to such acquisition.

(d) No Eligible Policyholder will pay any brokerage commissions or fees in connection with such Eligible Policyholder's receipt of Holding Company stock or with respect to the implementation of the commission-free sales and purchase programs.

(e) As a result of the Plan of Reorganization, all Eligible Policyholders will receive approximately $1 billion from MONY which represents MONY's full equity value and have the opportunity to participate in MONY's future earnings.

(f) Each Eligible Policyholder that is a Plan had an opportunity to comment on the Plan of Reorganization and to vote to approve such Plan of Reorganization after receiving full and complete disclosure of its terms.

(g) The Superintendent made an independent determination that the Plan of Reorganization was in the interest of all MONY policyholders including Plans.

(h) All of MONY's policyholder obligations will remain in force and will not be affected by the Plan of Reorganization.

Notice to Interested Persons

MONY will provide notice of the proposed exemption to Eligible Policyholders which are Plans within 30 days of the publication of the notice of pendency in the **Federal Register.** Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 20 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 60 days after the date of publication of this pendency notice in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

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[10] The Investors consist of GS Mezzanine Partners, L.P.; GS Mezzanine Partners Offshore, L.P.; Stone Street Fund 1997, L.P.; and Bridge Street Fund 1997, L.P. At the time of the investment, it is represented that one member of MONY's Board of Trustees was a limited partner in Goldman Sachs. However, no other affiliation between MONY and the other Investors existed at the time of the Investment Agreement.

In addition, the Investors have specifically represented to MONY that their investment in the aforementioned limited partnerships will either not involve plan assets or will not constitute a prohibited transaction. In this regard, section 3.2(d) of the Investment Agreement provides that—

Each Investor represents that either (a) it is not (i) an employee benefit plan (as defined in section 3(3) of ERISA) which is subject to the provisions of Title I of ERISA, (ii) a plan described in section 4975(e)(1) of the Code or, (iii) an entity whose underlying assets are deemed to be assets of a plan described in (i) or (ii) above by reason of such plan's investment in the entity, or (b) the Investor's purchase and holding of [the Surplus] Notes will be exempt under a prohibited transaction class exemption issued by the U.S. Department of Labor.

Individual Retirement Accounts (the IRAs) for Sharilyn Brune, Richard C. Glowacki, Carl B. Mockensturm, Arthur T. Parrish, W. Alan Robertson, David A. Snavely and Duane Stranahan, Jr. (collectively, the IRA Participants); Located in Holland, OH

[Application Nos. D–10636–D–10642, respectively)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, effective December 1, 1998 to (1) the cash sale by the IRAs [11] to TTC Holdings, Inc. (TTC), the parent of The Trust Company of Toledo, N.A. (TTCOT), the trustee of the IRAs and a disqualified person, of certain preferred stock (the Preferred Stock) issued by TTC; and (2) the arrangement for the subsequent purchase by the IRA Participants in their individual capacities, from TTC, pursuant to an agreement with TTC, of an equal number of shares of common stock (the Common Stock) issued by TTC, provided the following conditions are met:

(a) The terms and conditions of the sale and purchase transactions were at least as favorable to each IRA as the terms obtainable in an arm's length transaction with an unrelated party.

(b) The sale by the IRAs of the Preferred Stock and the purchase by the IRA Participants of the Common Stock, in their individual capacities, were one-time transactions for cash which occurred on the same business day;

(c) Each IRA received from TTC, as the sales price for the Preferred Stock, cash consideration reflecting the fair market value of such stock as determined by a qualified, independent appraiser;

(d) Each IRA Participant purchased, in his or her individual capacity, shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by TTC;

(e) No IRA was required to pay any commissions, fees or other expenses in connection with each sale transaction; and

(f) An independent fiduciary (the Independent Fiduciary) determined that the transactions described herein were in the best interest and protective of the IRAs at the time of the transactions; supervised and monitored such transactions on their behalf; assured that the conditions of the proposed exemption were met; and took whatever actions were necessary and proper to protect the interests of the IRAs, including reviewing amounts paid by TTC for the Preferred Stock.

Effective date: If granted, this proposed exemption will be effective as of December 1, 1998.

Summary of Facts and Representations

1. TTC of 6135 Trust Drive, Holland, Ohio was incorporated in April 1990 as an Ohio ''for profit'' corporation. TTC is the holding company of TTCOT, a nondeposit trust company. TTCOT, also located in Holland, Ohio, is a wholly owned subsidiary of TTC.

2. TTCOT is a bank as that term is defined in section 202(a)(2) of the Investment Advisers Act of 1940, as amended (the Advisers Act).[12] TTCOT has been approved by the Office of the Comptroller of the Currency to operate as a trust company. For the past 8 years, it has engaged in the business of a freestanding trust-only business. TTCOT provides a range of trust, investment management and custodial services for employee benefit trusts and various personal trusts throughout northwestern Ohio and southwestern Michigan. However, TTCOT does not have the power to accept deposits, make loans or provide other services characteristic of a commercial bank. TTCOT is regulated by the Office of the Comptroller of the Currency. As a member of the Federal Reserve System, TTCOT is also subject to the regulations of the Federal Reserve Board. The trust powers of TTCOT are limited to the laws of the State of Ohio.

3. The IRAs are individual retirement accounts established under section 408(a) of the Code.[13] At present, TTCOT serves as a directed trustee for the IRAs which are further described as follows:

(a) *The Sharilyn Brune IRA.* This IRA was originally established by Sharilyn Z. Brune with The Ohio Company. However, on October 30, 1997, TTCOT was appointed as the successor, directed trustee of the IRA. Ms. Brune, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of August 26, 1998, Ms. Brune's IRA had total assets having a fair market value of $112,808.

(b) *The Richard Glowacki IRA.* This IRA was originally established by Richard C. Glowacki with the former Society Bank and Trust (Society Bank), which is currently known as KeyBank. However, on June 29, 1992, TTCOT was appointed as the successor, directed trustee of the IRA. Mr. Glowacki, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of July 31, 1998, Mr. Glowacki's IRA had total assets having a fair market value of $1,274,017.

(c) *The Carl B. Mockensturm IRA.* This IRA was originally created by Carl B. Mockensturm with the former Shearson Lehman Bros., which is currently known as Lehman Bros. However, on April 1, 1997, TTCOT was appointed as the successor, directed trustee of the IRA. Mr. Mockensturm, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of July 31, 1998, Mr. Mockensturm's IRA had total assets having a fair market value of $535,766.

(d) *The Arthur T. Parrish IRA.* This IRA was originally established by Arthur T. Parrish and Scudder Investment. However, on January 3, 1991, TTCOT was appointed as the

[11] Pursuant to 29 CFR 2510.3–2(d), the IRAs are not within the jurisdiction of Title I of the Employee Retirement Income Security Act of 1974 (the Act). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[12] The Advisers Act defines the term ''bank'' to include ''(A) a banking institution organized under the laws of the United States, (B) a member bank of the Federal Reserve System, (C) any other banking institution or trust company, whether incorporated or not, doing business under the laws of any State or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by State or Federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this subchapter, and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in clauses (A), (B), or (C) of this paragraph.''

[13] Section 408(a) of the Code defines the term ''individual retirement account'' as a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries but only if the written governing instrument creating the trust meets the following requirements: (a) except in the case of a rollover contribution described in subsection (d)(3) in Code sections 402(c), 403(a)(4) or 403(b)(8), no contribution will be accepted unless it is in cash and contribution will be accepted unless it is in cash and contributions will not be accepted for the taxable year in excess of $2,000 on behalf of the individual; (b) the trustee is a bank or such other person who demonstrates to the satisfaction of the Secretary [of the Treasury] that the manner in which such other person will administer the trust will be consistent with the requirements of this section; (c) no part of the trust funds will be invested in life insurance contracts; (d) the interest of an individual in the balance in his account is nonforfeitable; (e) the assets of the trust will not be commingled with other property except in a common trust fund or common investment fund; and (f) under regulations prescribed by the Secretary, rules similar to the rules of section 401(a)(9) and the incidental death benefit requirements of section 401(a) shall apply to the distribution of the entire interest of an individual for whose benefit the trust is maintained.

successor, directed trustee of the IRA. Mr. Parrish, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of July 31, 1998, Mr. Parrish's IRA had total assets having a fair market value of $438,924.

(e) *The W. Alan Robertson IRA.* This IRA was originally created by W. Alan Robertson and the former Society Bank. However, on October 4, 1997, TTCOT was appointed as the successor, directed trustee of the IRA. Mr. Robertson, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of July 31, 1998, Mr. Robertson's IRA had total assets having a fair market value of $383,997.

(f) *The David A. Snavely IRA.* This IRA was originally created by David A. Snavely and The Ohio Company. However, on October 4, 1997, TTCOT was appointed as the successor, directed trustee of the IRA. Mr. Snavely, the only participant in the IRA, is not an officer, director, principal or employee of either TTC or TTCOT. As of July 31, 1998, Mr. Snavely's IRA had total assets having a fair market value of $244,229.

(g) *The Duane Stranahan, Jr. IRA.* This IRA was originally created by Duane Stranahan, Jr. and the former Society Bank. However, on January 25, 1991, TTCOT was appointed as the successor, directed trustee of the IRA. Mr. Stranahan, the only participant in the IRA, is the Chairman of the Board and a director TTCOT. As of July 31, 1998, Mr. Stranahan's IRA had total assets having a fair market value of $412,661.

4. TTC was formerly capitalized with two classes of stock—one class of common stock (i.e., the Common Stock) and one class of preferred stock (i.e., the Preferred Stock). Both classes of stock had equal voting rights and were without par value. There were 3,531 shares of Common Stock outstanding which were divided evenly among Theodore T. Hahn, Julie B. Higgins and David Snavely, the founders, principals and partners of TTC.

The Preferred Stock was initially issued in units of 200 shares, each in combination with a $10,000, 9 percent debenture (the Debenture) subordinated to the secured debt of TTC. The Debenture has a maturity date of December 31, 2000.[14] The Preferred Stock and the Debentures were both constituent parts of a single offering unit which could not be severed by the purchaser. The price for each unit was $30,000. Of this amount, $20,000 was allocated to the Preferred Stock and $10,000 to the Debenture. Thus, the total subscription price was $3 million.

There were 20,000 shares of Preferred Stock that were issued and outstanding. These shares were held by approximately 65 shareholders. Among the shareholders were 19 employee benefit plans and IRAs holding a total of 4,400 shares of Preferred Stock or 18.7 percent of the 23,531 aggregate shares of Preferred and Common Stock that were issued and outstanding.

The Preferred Stock gave each shareholder a $100 per share liquidation preference but it did not pay any dividends. Each share of Preferred Stock was convertible into one share of Common Stock at the option of the shareholder. In addition, the Preferred Stock entitled the holder to voting privileges that were identical to those given to shareholders of the Common Stock.

5. Through a Confidential Offering Memorandum dated May 31, 1990 (the principal terms of which are described above in Representation 4), each IRA Participant was given the opportunity, by the founders of TTC, to acquire shares of Preferred Stock and Debentures in a direct, limited private placement at the time of the initial offering. In this regard, each IRA Participant could direct their respective IRA to purchase shares of Preferred Stock and a Debenture. Based on the financial projections provided in the Confidential Offering Memorandum, it was TTCOT's belief that the investors might recognize the opportunity for equity appreciation through such an investment.

Therefore, on October 8, 1990, each IRA acquired shares of the Preferred Stock from TTC along with the Debentures. The IRAs paid cash for the Preferred Stock and the attendant Debentures in the following amounts:

IRA	Shares of preferred stock acquired	Amount paid for preferred stock	Amount paid for debentures	Percentage of IRA's assets represented by preferred stock and debentures (percent)
Brune	200	$20,000	$10,000	75
Glowacki	200	20,000	10,000	9
Mockensturm	200	20,000	10,000	15
Parrish	200	20,000	10,000	17
Robertson	200	20,000	10,000	30
Snavely	200	20,000	10,000	45
Stranahan	800	80,000	40,000	90

[14] The original Debenture debt represents a ten year note totaling $1 million that was issued in October 1990. Interest has accrued on the unpaid principal amount of the note from the date of issuance at the rate of 9 percent per annum based upon the actual number of days elapsed. Interest was initially paid commencing January 1, 1991 and semiannually on each July 1 and January 1, thereafter.

The principal amount of the Debentures has been payable in five, equal, consecutive, annual installments (20 percent of the original principal amount of each Debenture), each due on December 31, 1996 through 2000, unless prepaid. In other words, the terms of the Debentures have provided for installment repayments of debt of $200,000 each, beginning on December 31, 1996. As noted, the scheduled $200,000 installment was made in December 1996. A scheduled $200,000 installment and a $200,000 prepayment were made in December 1997 and a scheduled $200,000 installment and a final prepayment will be paid by December 31, 1998.

The terms of the Debentures also permit any portion of the unpaid principal balance to be prepaid at any time, provided, however, that the prepayments are concurrently made on a *pro rata* basis to all holders. Prepayments credited to the unpaid principal amount of the Debentures will be used to reduce the amount thereof due and payable at the next succeeding payment date.

The IRAs incurred no fees or commissions in connection with the acquisition transaction. However, at the time of the acquisition, Mr. David Snavely was the President of TTCOT and Mr. Duane Stranahan was a director of TTC.[15]

6. While owning the Preferred Stock, each IRA Participant became a minority shareholder of TTC. However, no IRA Participant owned shares of Preferred Stock in an individual capacity. In addition, none of the IRAs acquired additional shares of Preferred Stock or Debentures nor did they incur any servicing fees in connection with their holding of these investments.

Also during its time of ownership by the IRAs, the value of the Preferred Stock increased from $100 per share in 1990 to $291.70 per share as of December 31, 1997. As for the Debentures, which are being redeemed in annual installments of $200,000, the outstanding principal amount was $400,000 as of March 31, 1998.

7. TTC recently obtained authority from its shareholders to amend, by total restatement, its Amended and Restated Articles of Incorporation. The primary purpose for the adoption of the Amended and Restated Articles of Incorporation is to enable TTC to change its corporate tax status, in accordance with section 1362 of the Code,[16] from a ''Subchapter-C corporation'' to a ''Subchapter-S corporation'' for the taxable years commencing January 1, 1999. The amendment would also provide for the full conversion of the Preferred Stock into Common Stock. In addition, the Board of Directors of TTC has determined that it would be valid to assume that TTC would continue to generate significant pre-tax income and that by eliminating its ''Subchapter-C corporation'' tax status, TTC could substantially increase its return to its shareholders.

8. As a result of TTC's proposal to change its corporate tax status, an entity such as an employee pension benefit plan would be considered an ''eligible shareholder'' (i.e., an entity identified in the Code as being eligible to own and hold shares in a Subchapter-S corporation). However, an entity such as an IRA would be considered an ineligible shareholder (i.e., an entity identified in the Code as being ineligible to own and hold shares in a Subchapter-S corporation). Therefore, on or about May 4, 1998, TTC sent documentation to all of its shareholders including the IRA Participants of the above referenced IRAs. Specifically, TTCOT indicated that it wished to redeem, by cancellation and at the current market value,[17] all shares of the Preferred Stock currently held by the ineligible shareholders, including the IRAs, as well as eligible shareholders who might suffer adverse tax consequences from continued ownership of shares in a Subchapter-S corporation. The Board of Directors and the management of TTC believed that the shares of stock would continue to appreciate in value as well as allow each shareholder to receive a distributable share of the income of TTC.

In addition to the sale transaction, TTC provided a mechanism whereby each ineligible shareholder could designate a related party who would purchase, simultaneously with or immediately after the sale, the number of shares of Common Stock equal to the number of shares of Preferred Stock sold by the designating former shareholder. The purchase transaction would be a cash transaction at the same price per share as that paid by TTC to the IRA as the sales price for the Preferred Stock.

Accordingly, TTCOT requests an administrative exemption from the Department to permit, effective December 1, 1998, the sale by the subject IRAs of their respective shares of Preferred Stock to TTC for a cash price that was based upon the fair market value of such stock. The proposed exemption would also permit, effective December 1, 1998, the purchase, by the IRA Participants, in their individual capacities, of shares of Common Stock from TTC. Neither the IRAs nor the IRA Participants were required to pay any commissions, fees or incur any other expenses in connection with the sale and purchase transactions. As noted above, the Debentures will be repaid in full before December 31, 1998 and, therefore, are not subject to this exemption.

9. The sales price for the Preferred Stock was determined based upon a written valuation of the shares dated May 6, 1998 and prepared by Austin Financial Services, Inc. (AFSI), a qualified, independent consulting firm with substantial experience in the financial services industry. AFSI, a Toledo, Ohio-based investment banking firm, was retained by TTC to value TTC and determine the fair market value of the outstanding shares of Common Stock from a fully-diluted standpoint. The valuation, which was performed by Dr. Douglas V. Austin, President and CEO of AFSI and Mr. Steven A. Bires, Vice President of AFSI, also included an appraisal of the Preferred Stock.

In conducting its valuation of TTC, AFSI reviewed relevant financial information of TTC in order to derive its opinion of the fair market value of the Common and Preferred Stock. In its evaluation, AFSI considered a number of valuation methodologies for valuing closely-held companies but it ultimately selected the discounted cash flow and capitalization of earnings approaches. After an appropriate weighting of these approaches, AFSI placed the fair market value of TTC at $7,263,035 or 324.82 percent of TTC's total equity. This equated to a fair market value of $308.66

[15] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions with respect to the exclusive benefit rule under section 401(a) of the Code. (See Rev. Rul. 73–532, 1973–2 C.B. 128.) The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for IRAs, mandates that the trust be created for the exclusive benefit of an individual or his or her beneficiaries. However, the Department is not expressing an opinion herein on whether violations of section 408(a) have taken place with respect to the purchase and retention of TTC Preferred Stock and the Debentures by certain of the IRA Participants.

Further, the Department notes that although TTC owns 100 percent of the outstanding stock of TTCOT, under section 4975(e)(2)(H) of the Code, TTC would not be considered a disqualified person with respect to the IRAs because TTCOT, a fiduciary as well as a service provider to the IRAs, is not a ''person'' described in subparagraph (C), (D), (E) or (G) of that section. To the extent that TTC is not a disqualified person with respect to the IRAs, the purchase of the Preferred Stock and the Debentures at the direction of the IRA Participants would not involve a transaction described in section 4975(c)(1)(A) or (B) of the Code. While TTC may not be a disqualified person with respect to the IRAs, the purchase and holding of the Preferred Stock and the Debentures by certain IRA Participants may raise questions under section 4975(c)(1)(D) and (E) of the Code depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Mr. Snavely, as an officer of TTCOT, and Mr. Stranahan, as a director of TTC, may have had interests in the acquisition transaction which affected their best judgment as fiduciaries of their IRAs. In such circumstances, the transactions may have violated section 4975 (c)(1)(D) and (E) of the Code. See ERISA Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchase and holding of the Preferred Stock and the Debentures by the IRAs of Messrs. Snavely and Stranahan, the Department is not extending exemptive relief with respect to such transactions.

[16] Section 1362 of the Code contains provisions which allow a small business corporation to elect and terminate Subchapter-S corporate status.

[17] These shareholders would include the following employee benefit plans for which exemptive relief has also been requested from the Department: (D–10630) Genito-Urinary Surgeons, Inc. Profit Sharing Plan; (D–10631) Michael J. Rosenberg Money Purchase Pension Plan; (D–10632) Robert Savage Qualified Retirement Plan; (D–10633) Toledo Clinic Inc. Employees 401(k) Profit Sharing Plan; (D–10634) Hart Associates, Inc. Profit Sharing Plan; and (D–10635) Midwest Fluid Power Company Savings & Profit Sharing Plan.

per share on the total 23,351 shares of outstanding Preferred and Common Stock as of March 31, 1998 (or an aggregate value of $61,732 each for the Brune, Glowacki, Mockensturm, Parrish, Robertson and Snavely IRAs and $246,928 for the Stranahan IRA).[18] The appraisal was updated prior to the consummation of the sale and purchase transactions.

10. Each of the IRA Participants made a determination that the subject transactions would be in the interests of their IRAs. Upon arriving at this conclusion, TTC made a decision to retain, at the expense of TTCOT, the law firm of Callister Nebeker & McCullough (CNM) of Salt Lake City, Utah, to serve as the Independent Fiduciary with respect to the sale and purchase transactions. Specifically, the Independent Fiduciary was appointed to review and opine on the prudence and terms of the subject transactions, supervise and monitor such transactions on behalf of the IRAs, assure that the conditions of the proposed exemption were met, and take whatever actions were necessary and proper to enforce and protect the interests of the IRAs, including reviewing amounts paid by TTC for the Preferred Stock. The duties of the Independent Fiduciary were to be performed by Messrs. Jeffrey N. Clayton and W. Waldan Lloyd, both of whom are attorneys with the CNM.

The Independent Fiduciary represented that CNM has, from time to time, acted as an independent fiduciary for employee benefit plans subject to the provisions of the Act. The Independent Fiduciary noted that CNM has an employee benefits section which routinely advises plan fiduciaries regarding compliance with fiduciary standards under the Act and that members of CNM have substantial experience in this area. The Independent Fiduciary also represented that neither CNM, nor Messrs. Clayton and Lloyd had any relationship with any of the IRAs, TTC or TTCOT. Further, the Independent Fiduciary stated that it understood and accepted the duties, responsibilities and liabilities in acting as a fiduciary with respect to the subject IRAs.

The Independent Fiduciary was authorized to approve the disposal of the Preferred Stock, including the authority to determine whether or not the IRAs should be permitted to enter into the transactions and to negotiate the terms of such transactions on behalf of the IRAs. When rendering services to the subject IRAs, the Independent Fiduciary stated that it would rely on data supplied by TTCOT and the IRAs. However, the Independent Fiduciary was permitted to hire experts, consultants and other advisors and assistants.

Based upon its assumptions, a review of listed documents and certain limitations, the Independent Fiduciary believed that the sale and purchase transactions were in the best interest of the IRAs and the IRA Participants because (a) the Preferred Stock lacked liquidity since it was not traded on the open market; (b) the sales price for the Preferred Stock would give the IRAs cash that could be reinvested in more liquid investments; and (c) the subject IRAs would be compelled to liquidate their shares of Preferred Stock in order to comply with the prohibitions on Subchapter-S corporation stock ownership if TTC and TTCOT change their corporate tax status. Therefore, the Independent Fiduciary believed the price to be received by the IRAs for their shares of TTC Preferred Stock would constitute ''adequate consideration'' within the meaning of section 3(18) of the Act.

12. The Independent Fiduciary appointed Houlihan Valuation Advisors (HVA), an independent appraisal firm maintaining offices in Salt Lake City, Utah, to provide an opinion as to the fairness (the Fairness Opinion) of the sale transaction from a financial point of view. Because the IRAs were to receive ''adequate consideration'' for their shares of Preferred Stock, the sole purpose of the Fairness Opinion was to determine whether the proposed acquisition price would constitute adequate consideration for the IRAs. HVA's Fairness Opinion, which was dated June 16, 1998, was prepared by Mr. David Dorton, CFA, ASA. Mr. Dorton is a member of HVA.

While noting that the Preferred Stock had a $100 per share liquidation preference, HVA stated that the fair market value of TTC was significantly higher than its liquidation value. Therefore, HVA believed the liquidation preference was virtually meaningless. Thus, for purposes of its analysis, HVA deemed the Preferred Stock to be equivalent to the Common Stock due to its convertibility features, identical voting privileges and non-payment of dividends.

In preparing the Fairness Opinion, HVA stated that it reviewed a number of documents, including but not limited to, (a) TTC's audited financial statements for the years ended December 31, 1992 through 1997; (b) AFSI's appraisal report; (c) various information furnished by TTC pertaining to the company, its operational structure, shareholder listings, compensation paid to key personnel, etc.; (d) a summary of transactions involving the Preferred Stock; and (e) operating projections for TTC. After reviewing these documents, HVA represented that it undertook generally recognized financial analysis and valuation procedures to ascertain the financial condition of TTC as well as to estimate the fair market value of the Preferred Stock to be sold to TTC. To this end, HVA explained that it utilized four valuation methodologies: (a) book value (including liquidation value), (b) transaction value, (c) market value (derived from market value ratios of publicly-traded ''comparable'' firms); and (d) income value (based on the present value of future benefits.

Based upon its analysis, HVA concluded that the proposed sale transaction would be fair to the IRAs and that the IRAs would be receiving adequate consideration for the Preferred Stock. HVA also reserved the right to supplement or withdraw the Fairness Opinion prior to the closing of the sale transaction if material changes occurred which might impact on the value of TTC or the value of the Preferred Stock. Further, HVA proposed to update the Fairness Opinion prior to the sale and purchase transactions.

13. In summary, it is represented that the transactions satisfied the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) the terms and conditions of the sale and purchase transactions were at least as favorable to each IRA as the terms obtainable in an arm's length transaction with an unrelated party; (b) the sale by the IRAs of the Preferred Stock and the purchase by the IRA Participants of the Common Stock were one-time transactions for cash which occurred on the same business day; (c) each IRA received from TTC, as the sale price for the Preferred Stock, cash consideration reflecting the fair market value of such stock as determined by a qualified, independent appraiser; (d) each IRA Participant purchased, in his or her individual capacity, shares of the Common Stock which were equal in number to the shares of Preferred Stock sold by TTC; (e) no IRA was required to pay any commissions, fees or other expenses in connection with each sale transaction; and (f) the transactions described herein were approved by an

[18] AFSI notes that a minority discount could have been applied to the sales price for the Preferred Stock since the proposed transactions do not involve controlling interests in such stock. However, based on instructions from TTC, the sales price has been computed without taking into consideration a minority discount to ensure that each IRA will receive a higher fair market value for the Preferred Stock.

Independent Fiduciary which determined that the transactions described herein were in the best interest and protective of the IRAs at the time of the transactions; supervised and monitored such transactions on their behalf; assured that the conditions of the proposed exemption were met; and took whatever actions were necessary and proper to protect the interests of the IRAs, including reviewing amounts paid by TTC for the Preferred Stock.

Notice to Interested Persons

Because Sharilyn Brune, Richard C. Glowacki, Carl B. Mockensturm, Arthur T. Parrish, W. Alan Robertson, David A. Snavely and Duane Stranahan, Jr. are the sole participants of their respective IRAs, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Therefore, comments and request for a public hearing are due 30 days from the date of publication of this proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department at (202)219–8881. (This is not a toll-free number.)

Individual Retirement Accounts (the IRAs) for Robert C. Hummel, Garth L. Gibson, Hugh B. Force, Lynn Morgan Ruyle, Robb A. Ruyle, Ellen K. Davidson and Michael Davidson (Collectively; the Participants); Located respectively in Greeley, Colorado; Montrose, Colorado; Fort Collins, Colorado; Montrose, Colorado; Montrose, Colorado; Green River, Wyoming; and Green River, Wyoming

[Application Nos. D–10683, D–10684, D–10685, D–10686, D–10687, D–10697 and D–10698]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sales (the Sales) of certain shares of closely-held common stock of First Mountain Company (the Stock) by the IRAs [19] to the Participants, disqualified persons with respect to the IRAs, provided that the following conditions are met:

1. The terms and conditions of the Sales are at least as favorable to each IRA as those obtainable in an arm's-length transaction with an unrelated party;

2. The Sale of the Stock by each IRA is a one-time transaction for cash;

3. Each IRA receives the fair market of the Stock, as established by a qualified, independent appraiser, at the time of the Sale; and

4. The IRAs do not pay any commissions, costs or other expenses in connection with the Sales.

Effective date: The proposed exemption, if granted, will be effective as of December 15, 1998.

Summary of Facts and Representations

1. The IRAs are individual retirement accounts, as described in Section 408(a) of the Code. The IRAs are self-directed. Among the assets of each IRA were shares of the common Stock of First Mountain Company (the Company),[20] a one-bank holding company domiciled in the State of Colorado and registered with the Board of Governors of the Federal Reserve System. The only asset of the Company is Montrosebank (the Bank), located in Montrose, Colorado. As of November 1998, the Company was a Subchapter ''C'' corporation. However, the Company plans to change its status and be taxed as a Subchapter ''S'' corporation under the Code effective January 1, 1999.

The applicant describes the Participants, the IRAs, and their former holdings in the Stock as follows:

(a) The IRA of Robert C. Hummel currently holds assets of approximately $624,520, which include 8,000 shares of the Stock. The IRA of Robert C. Hummel acquired shares of the Stock on May 24, 1995 at a price of $10 per share, for a total investment of $80,000.

(b) The IRA of Garth L. Gibson, the Secretary and the President of the Bank and a member of the Board of Directors of the Company and the Bank, currently holds assets of approximately $58,866.60, which include 3,940 shares of the Stock. The IRA of Garth L. Gibson acquired shares of the Stock on May 24, 1995 at a price of $10 per share, for a total investment of $39,400.

(c) The IRA of Hugh B. Force currently holds assets of approximately $31,012.44, which include 1,626 shares of the Stock. The IRA of Hugh B. Force acquired the shares of the Stock on May 24, 1995 at a price of $10 per share, for a total investment of $16,260.

(d) The IRA of Lynn Morgan Ruyle currently holds assets of approximately $77,016.11, which include 5,155 shares of the Stock. The IRA of Lynn Morgan Ruyle acquired 4,740 shares of the Stock on May 24, 1995 at a price of $10 per share. Subsequently, this IRA acquired 415 additional shares of the Stock on May 2, 1997, also at a price of $10 per share, for a total investment of $51,550.

(e) The IRA of Robb A. Ruyle, a member of the Board of Directors of the Company and the Bank, currently holds assets of approximately $57,190.73, which include 3,828 shares of the Stock. The IRA of Robb A. Ruyle acquired 3,120 shares of the Stock on May 24, 1995 at a price of $10 per share. Subsequently, this IRA acquired 708 additional shares of the Stock on May 2, 1997, also at a price of $10 per share, for a total investment of $38,280.

(f) The IRA of Ellen K. Davidson, currently holds assets of approximately $19,356.84, which include 1,286 shares of the Stock. The IRA of Ellen K. Davidson acquired the shares of the Stock on May 24, 1995 at a price of $10 per share, for a total investment of $12,860.

(g) The IRA of Michael Davidson currently holds assets of approximately $22,400.36, which include 1,494 shares of the Stock. The IRA of Michael Davidson acquired the shares of the Stock on May 24, 1995 at a price of $10 per share, for a total investment of $14,940.

The applicant also represents that Union Colony Bank is the custodian for all of the IRAs, except for the Robb A. Ruyle and Lynne Morgan Ruyle IRAs. The custodian for the Ruyle IRAs is Edward Jones & Company, a national brokerage firm.

2. The applicant requests an exemption for the Sale of the Stock by each individual IRA to its respective Participant. As noted above, business and income tax considerations have recently caused the Company to elect to be taxed as a Subchapter ''S'' corporation pursuant to the Code, effective January 1, 1999. However, section 1361 of the Code only permits eligible shareholders to hold stock in a Subchapter ''S'' corporation. Because the IRAs are not eligible shareholders for purposes of the Code, the Participants wish to purchase the Stock from their IRAs. It is represented that each IRA acquired shares of the Stock for investment purposes and that each IRA made a profit on its original investment. The applicant states that the IRAs acquired the Stock directly from the issuer (i.e., the Company). The applicant also states that the Stock held collectively by the IRAs did not

[19] Because each IRA has only one Participant, there is no jurisdiction under 29 CFR 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[20] The applicant represents that the Company has only common Stock, and no preferred Stock.

represent a significant portion of the outstanding shares of the Stock (see Table in Paragraph 3 below).

Four of the seven IRAs (i.e., the IRAs of Garth L. Gibson, Lynn Morgan Ruyle, Robb A. Ruyle, and Ellen K. Davidson) have 99.99% of their total assets invested in the Stock.[21] In addition, the IRAs of Michael Davidson and of Hugh B. Force have 99.64% and 78.33% of their total assets, respectively, invested in the Stock. The IRA of Robert C. Hummel has only 19.14% of its total assets invested in the Stock.

3. The applicant further represents that no IRA held a majority interest in the Company at any time. The following table sets forth each IRA's percentage ownership in the Company at the time of the Sale.

IRA	Percent of Stock held
Robert C. Hummel	4.46
Garth L. Gibson	2.20
Hugh B. Force	0.91
Lynn Morgan Ruyle	2.87
Robb A. Ruyle	2.14
Ellen K. Davidson	0.70
Michael Davidson	0.83

Certain of the Participants hold shares of the Stock in their individual capacities. Specifically, Michael Davidson and Ellen K. Davidson hold 3,220 shares of the Stock as joint tenants. Hugh B. Force holds 3,374 shares of the Stock in his individual capacity. Garth L. Gibson and Cynthia A. Gibson hold 6,641 shares of the Stock as joint tenants. In addition, Robb A. Ruyle and Lynne Morgan Ruyle hold 3,017 shares of Company Stock as joint tenants. However, the applicant states that purchasing the Stock from their respective IRAs will not make any of the Participants a majority shareholder in the Company.

4. The Stock was appraised on October 9, 1998 by Van Dorn & Bossi Certified Public Accountants (the Appraisal), an independent, qualified appraiser located in Broomfield and Boulder, Colorado. In determining the fair market value of the Stock, the Appraisal relied on information regarding the valuation of two other banks in Colorado with closely-held stocks. The Appraisal valued all outstanding shares of the Stock held by the IRAs, considering factors such as the lack of marketability for the Stock and the valuation of shares which represented less than a controlling interest in the Company. The Company has a total of 179,240 shares of the Stock outstanding at the time of the Sale. The shares of the Stock owned by the Participants through their IRAs represent approximately 14.13% of the total outstanding shares of the Company. The Appraisal stated that the aggregate shares of the Stock owned by the IRAs is so small when compared to the total outstanding shares of the Company, that no controlling interest would be gained by any potential purchaser of the shares of the Stock. Thus, the Appraisal stated that a discount of 35% for the lack of control is appropriate, and applied that discount when valuing the shares of Stock involved in the subject transactions.

The Appraisal concluded that the fair market value of the Stock would be $14.94 per share at the time of the Sale. Therefore, the aggregate value of the shares of the Stock to be sold by the IRAs to the Participants was determined to be $378,415. Specifically, each IRA will receive the following amount at the Sale:

IRA	Number of Shares	Rec'd at Sale
Robert C. Hummel	8,000	$119,520
Garth L. Gibson	3,940	58,863.60
Hugh B. Force	1,626	24,292.44
Lynn Morgan Ruyle	5,155	77,015.70
Robb A. Ruyle	3,828	57,190.32
Ellen K. Davidson	1,286	19,212.84
Michael Davidson	1,494	22,320.36

5. The applicant represents that the transactions are administratively feasible because each Sale will be a one-time transaction for cash. The transactions are also in the best interest of the IRAs because each IRA will dispose itself of all of its shares of the Stock at a price which equals the Stock's fair market value at the time of the Sale. As a result, greater diversification of the IRAs' assets will be achieved by reinvesting the proceeds of the Sales in other assets. Furthermore, it is represented that the transactions are protective of the rights of the Participants and beneficiaries of the IRAs because each IRA will receive the fair market value of the Stock owned by the IRA, as determined by a qualified, independent appraiser. Finally, the IRAs will not incur any commissions, costs, or other expenses as a result of each Sale.

6. In summary, the applicant represents that the transactions will satisfy the statutory criteria of section 4975(c)(2) of the Code because:

A. The terms and conditions of the Sales are at least as favorable to each IRA as those terms which are obtainable in an arm's-length transaction with an unrelated party;

B. The Sale of the Stock by each IRA will be a one-time transaction for cash;

C. Each IRA will receive the fair market value of the Stock, as established by a qualified, independent appraiser; and

D. The IRAs will not pay any commissions, costs or other expenses in connection with the Sales.

Notice to Interested Persons

Because the Participants are the sole participants of their respective IRAs, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due 30 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section

[21] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. See, e.g.. Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes the tax qualification provisions for the IRAs, mandates that the trust be created for the exclusive benefit of an individual or his beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether violations of the Code have taken place with respect to the purchase and subsequent holding of the Stock by the IRAs.

Further, to the extent that the Company (or the other sellers) were not disqualified persons with respect to the IRAs under section 4975(e)(2) of the Code, the purchase of the Stock would not have constituted a prohibited transaction under section 4975(c)(1)(A) of the Code. However, the purchase and holding of the Stock by the IRAs whose Participants are officers and directors of the Company and/or the Bank raises questions under section 4975(c)(1)(D) and (E) of the Code depending on the degree (if any) of the IRA Participant's interest in the transaction. Section 4975(c)(1)(D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the income or assets of a plan and prohibits a fiduciary from dealing with the income or assets of a plan in his own interest or for his own account. Those IRA Participants who are officers and/or directors of the Company or the Bank, may have had interests in the transactions which affected their best judgement as fiduciaries of their IRAs. In such circumstances, the transactions may have violated section 4975(c)(1)(D) and (E) of the Code. See Advisory Opinion 90–20A (June 15, 1990). Accordingly, to the extent there were violations of section 4975(c)(1)(D) and (E) of the Code with respect to the purchases and holdings of the Stock by the IRAs, the Department is extending no relief for these transactions.

408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of December, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 98–33261 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 98–57; Exemption Application No. L–10595, et al.]

Grant of Individual Exemptions; Service Employees International Union Local 252 Welfare Fund

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Service Employees International Union Local 252 Welfare Fund (the Fund)

Located in Wynnewood, Pennsylvania

[Prohibited Exemption Application Number 98–57;

Exemption Application Number L–10595]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the sale (the Sale) of certain improved real property located in Wynnewood, Pennsylvania (the Property) to the Service Employees International Union Local 252 (Local 252), a party in interest with respect to the Fund, provided the parties adhere to the following conditions:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are at least as favorable to the Fund as those obtainable in an arm's length transaction with an unrelated party;

(c) The Sales price is an amount which represents the greater of: (1) the total cost to the Fund of acquiring the Property; or (2) the fair market value of the Property on the date of Sale as determined by a qualified, independent appraiser; and

(d) The Fund does not incur any expenses with respect to the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published in the **Federal Register** on Friday, June 19, 1998, at 63 FR 33726.

Written Comments and Hearing Requests: The Department received one written comment with respect to the proposed exemption. The comment letter was submitted on behalf of the Brandywine Nursing and Rehabilitation Center, Inc. (Brandywine), a party to a series of collective bargaining agreements with the Service Employees International Union Local 252 (Local 252). In the letter, Brandywine raised several concerns regarding the proposed exemption.

First, Brandywine represented that the notice of proposed exemption was not provided in a timely manner. Although this representation was disputed by the applicant, the Department decided to provide Brandywine with 30 days additional time to supplement its comments so as to avoid any potential prejudice.

Second, Brandywine expressed its concern that the applicant failed to provide current financial information for the Fund. Brandywine pointed out that this lack of current accounting raises concerns in light of certain developments in the amount of assets in the Funds. Specifically, Brandywine represented that it reviewed the Fund's Form 5500 for fiscal years 1995 and 1996 and believes that the Property may not have been properly accounted for by the Fund.

The applicant responded by stating that it provided the most current information available when it submitted the two most recently filed Form 5500s. In addition, the applicant has since supplemented the file by providing a copy of the financial information used to complete the Form 5500 for 1998 fiscal year. The applicant represented that the value of the Property and any transaction related to the Property was properly accounted for in the Fund's financial statements and the report of the Independent Certified Public Accountant.

Third, the Commentator believed that the application failed to accurately reflect the true cost of the building. The commentator noted that the Fund represented purchasing the building for $725,000, but that the financial statements used to prepare the ''Report of the Independent Certified Public Accountant'' for the fiscal year 1997 Form 5500 indicate that the building cost approximately $740,000. In addition, the commentator points to the same documents which indicate that the Fund spent approximately $70,000 on improvements to the Property.

In response, the applicant stated that the difference between the $725,000 and the $740,000 amounts represent settlement costs of approximately $15,000. Accordingly, the applicant agrees that these costs should be included in the ''total cost of acquiring the Property'' pursuant to paragraph (c)(1) of the conditions herein. With respect to the approximately $70,000 spent by the Fund on improvements to the Property, the applicant represents that the appraiser took these improvements into consideration when valuing the Property at $725,000.

Fourth, the commentator questioned the validity of the appraisal. Specifically, Brandywine questioned why the appraiser failed to discuss the reason for the Property's 24% decline in value between July 1994 and the present. Brandywine also believed that the appraisal failed to account for (1) the active real estate market in the vicinity of the Property and (2) the improving quality of the commercial district where the Property is located.

The applicant responded that the Property was appraised by a qualified, independent real estate appraiser with approximately 25 years of experience. The applicant pointed out that the appraiser, Mr. Paul J. Leis, is an MAI and CRE Member and is currently certified by the states of Pennsylvania, New Jersey, Delaware, and Maryland. With regard to the appraisal, the applicant represented that it is comprehensive and that it consisted of the following: (1) An inspection of the subject property, (2) comparable sales inspections, (3) consideration of relevant economic and demographic data, (4) consideration of relevant zoning and other restrictions, (5) highest and best use analysis, (6) application of the appropriate valuation methods, (7) reconciliation of value estimates and (8) a value conclusion for the subject property. Based on the foregoing, the applicant believes that the appraisal accurately reflects the fair market value of the Property.

Fifth, the commentator argued that the supplemental information provided by the applicant contains serious omissions regarding the current state of Local 252 and its relationship with employers who have historically contributed to the Fund. Specifically, the commentator pointed to an unfair labor practice charge Brandywine filed against Local 252 on May 5, 1998 with the Region Four Office of the National Labor Relations Board (NLRB) located in Philadelphia, Pennsylvania. Furthermore, Brandywine alleged that the Regional Director of the Region Four office was in the process of filing a complaint against Local 252.

In response, the applicant stated that it has not received any complaint from the NLRB and that, even assuming one is issued, such complaint, as alleged by Brandywine, has no bearing on this request or to the subject matter of the application.

In summary, the Department has considered the entire record, including the comment submitted and the applicant's response to the comment, and has decided to grant the exemption as proposed in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

Mohammad J. Iqbal Employee Profit Sharing Plan and Trust (the Plan)

Located in Elizabethtown, KY

[Prohibited Transaction Exemption 98–58; Exemption Application Number D–10614]

Exemption

The restrictions of 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of 12 Krugerrand gold coins (the Coins) by the individually directed account (the Account) in the Plan of Dr. Mohammad J. Iqbal (Dr. Iqbal), to Dr. Iqbal, a party in interest and disqualified person with respect to the Plan, provided that the following conditions are met:

(a) The Sale is a one-time transaction for cash;

(b) The terms and conditions of the Sale are as least as favorable to the Account as those obtainable in an arm's length transaction with an unrelated party;

(c) The Account receives the fair market value of the Coins as of the date of Sale; and

(d) The Account is not required to pay any commissions, costs, or other expenses in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 9, 1998 at 63 FR 60389.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

Individual Retirement Accounts (Collectively, the IRAs) for William N. Albright, Victor Hamre, and Richard Pearson (Collectively, the Participants)

Located in Westerville, Ohio; Chicago, Illinois; and New York, New York, respectively

[Prohibited Transaction Exemption 98–59; Exemption Application No. D–10656, 10657, 10658]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sales (the Sales) of certain shares of stock (the Stock) in the First Community Bancshares Corp. by each IRA to its respective Participant, a disqualified person with respect to the IRA,[1] provided that the following conditions are met:

(a) The terms and conditions of the Sales will be at least as favorable to each

[1] There is no jurisdiction under 29 CFR § 2510.3(b) since the IRAs have only one participant. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

IRA as those obtainable in arm's length transactions with an unrelated party;

(b) The Sales will be one-time transactions for cash;

(c) The IRAs will receive the fair market value of the Stock as established by a qualified, independent appraiser; and

(d) The IRAs will pay no commissions, costs or other expenses with respect to the Sales.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption please refer to the notice of proposed exemption published on November 9, 1998 at 63 FR 60389.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Motta of the Department, telephone (202) 219–8891 (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 11th day of December, 1998.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 98–33262 Filed 12–15–98; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW, Room 10235, Washington, DC, 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: 1999 Survey of Doctoral Recipients.

OMB Control Number: 3145–0020.

Summary of Collection: The Bureau of the Census will conduct this study for NSF in 1999. The National Research Council (NRC) conducted the survey from 1973 through 1995, and the National Opinion Research Center (NORC) conducted the 1997 survey. Questionnaires will be mailed in April 1999 and nonrespondents to the mail questionnaire will receive computer assisted telephone interviewing. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. The first **Federal Register** notice for this survey was 63 FR 50604, published September 22, 1998.

Need and Use of the Information: The purpose of this longitudinal study is to provide national estimates of the doctorate level science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of the three components of the Scientists and Engineers Statistical Data System (SESTAT). NSF uses this information to prepare Congressionally mandated reports such as *Science and Engineering Indicators* and *Women and Minorities in Science and Engineering.* A public release file of collected data, edited to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

Description of Respondents: Individuals.

Number of Respondents: 34,000.

Frequency of Responses: Biennially reporting.

Total Burden Hours: 14,167.

Title: 1999 Survey of Recent College Graduates.

OMB Control Number: 3145–0077.

Summary of Collection: Westat Inc. has served as NSF contractor conducting this survey in the previous two cycles and will conduct the study for NSF in the 1999 survey cycle. Computer assisted telephone interviewing (CATI) will begin in May 1999 and questionnaires will be sent to those that cannot be reached or are unwilling to cooperate on the telephone. The survey will be collected in conformance with the privacy act of 1974 and the individual responses to the survey are voluntary. The first **Federal Register** notice for this survey was 63 FR 53104, published October 2, 1998.

Need and Use of the Information: The purpose of this study is to provide cross sectional and longitudinal estimates of

recent science and engineering graduates to use in preparing national estimates of the Nation's science and engineering workforce national estimates. The study is one of three components Scientists and Engineers Statistical Data System (SESTAT). NSF uses this information to prepare Congressionally mandated reports such as *Science and Engineering Indicators and Women and Minorities in Science and Engineering.*

Description of Respondents: Individuals.

Number of Respondents: 24,975.

Frequency of Responses: Biennially reporting.

Total Burden Hours: 12,487.

Title: 1999 National Survey of College Graduates.

OMB Control Number: 3145–0141.

Summary of Collection: The Bureau of the Census, as in the past, will conduct this study for NSF. Questionnaires will be mailed in April 1999 and nonrespondents to the mail questionnaire will receive computer assisted telephone interviewing. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. The first federal register notice for this survey was 63 FR 49615, published September 16, 1998.

Need and Use of the Information: The purpose of this longitudinal study is to provide national estimates on the experienced science and engineering workforce and changes in employment, education and demographic characteristics over time. The study is the third component of the Scientists and Engineers Statistical Data System (SESTAT). NSF uses this information to prepare Congressionally mandated reports such as *Science and Engineering Indicators and Women and Minorities in Science and Engineering.* A public release file on collected data, edited to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

Description of Respondents: Individuals.

Number of Respondents: 37,600.

Frequency of Responses: Biennially reporting.

Total Burden Hours: 15,666.

Dated: December 10, 1998.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 98–33241 Filed 12–15–98; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–413 and 50–414]

Duke Energy Corporation; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–35 and NPF–52 issued to Duke Energy Corporation for operation of the Catawba Nuclear Station, Units 1 and 2, respectively, located in York County, South Carolina.

The proposed amendments would modify Section 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' of the joint Improved Technical Specifications (ITS). Specifically, the amendments would correct the lube oil inventory requirement from a range of 575–600 gallons to a range of 375–400 gallons. The current range was erroneously specified based on incorrect information in the Catawba Updated Final Safety Analysis Report.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no significant effect on accident probabilities or consequences. The Diesel Generator Lube Oil System is not an accident initiating system; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the system is not being modified by this proposed amendment. The amendment merely aligns ITS requirements with the existing design and function of the system. Therefore, there will be no impact on any accident consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators, since the Diesel Generator Lube Oil System is an accident mitigating system.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The Diesel Generator Lube Oil System is already capable of performing as designed. No safety margin will be impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the German Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 15, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the German Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first preferring conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first preferring conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the German Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Paul R. Newton, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated December 7, 1998, which is available for public inspection at the Commission's Public Document Room, the German Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the York County Library, 138 East Black Street, Rock Hill, South Carolina.

Dated at Rockville, Maryland, this 10th day of December 1998.

For the Nuclear Regulatory Commission.

Peter S. Tam,

Senior Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 98–33256 Filed 12–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Duke Energy Corporation; Correction to Notice of Issuance of Amendments

[Docket Nos. 50–369 and 50–370]

The U.S. Nuclear Regulatory Commission issued Amendment No.

184 to Facility Operating License No. NPF–9 and Amendment No. 166 to Facility Operating License No. NPF–17 issued to Duke Energy Corporation, which revised the Technical Specifications (TSs) for operation of the McGuire Nuclear Station, Units 1 and 2. The amendments implemented a full conversion of the McGuire TSs to a set of TSs based upon NUREG–1431, ''Standard Technical Specifications—Westinghouse Plants.''

The Notice of Issuance was published in the **Federal Register** on October 19, 1998 (63 FR 55902). Correction is being made to the date of issuance stated in the second column on page 55903. The date of issuance should read as follows ''Dated at Rockville, Maryland, this 30th day of September 1998.''

Dated at Rockville, Maryland, this 10th day of December 1998.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33257 Filed 12–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company, Salem Nuclear Generating Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric and Gas Company (PSE&G, the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise Technical Specification (TS) Section 4.2.1, ''Aquatic Monitoring,'' of Appendix B, Environmental Protection Plan (EPP), to require that PSE&G adhere to the Incidental Take Statement issued by the National Marine Fisheries Service (NMFS), but removes the specific language of the Incidental Take Statement. Removing the specific language from Section 4.2.1 enables PSE&G to use relief granted by NMFS and the Commission on a case-by-case basis without further action by the NRC staff.

The proposed action is in accordance with the licensee's application for amendment dated August 1, 1997, as supplemented by letters dated October 6, 1997, February 18 and July 7, 1998.

The Need for the Proposed Action

The proposed action would provide PSE&G with the flexibility to utilize relief granted by the Commission and NMFS on a case-by-case basis without further action by the NRC staff. The current wording of Section 4.2.1 would require, in the event of changes to the Biological Opinion or the Incidental Take Statement, that PSE&G continue to maintain, for example, daily cleaning of the trash racks, from June 1 through October 15, 1998, even though granted relief by the NMFS, until an amendment request could be submitted and approved by the Commission. The revision would enable PSE&G to have the ability to use approvals from the Commission and NMFS without requiring amendments to the TS. Changes to the Incidental Take Statement must be proceeded by consultation between the Commission, as the authorizing agency, and NMFS.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed changes do not change the requirements or intent of Section 4.2.1. PSE&G would continue to adhere to the specific requirements within the Incidental Take Statement, to the Biological Opinion. The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impact.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Salem Nuclear Generating Station, Units 1 and 2.

Agencies and Persons Consulted

In accordance with its stated policy, on November 4, 1998, the staff consulted with the New Jersey State official, Mr. R. Pinney of the New Jersey Department of Environmental Protection, Bureau of Nuclear Engineering, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 1, 1997, as supplemented by letters dated October 6, 1997, February 18 and July 7, 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 Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Dated at Rockville, Maryland, this 8th day of December 1998.

For the Nuclear Regulatory Commission.

Robert A. Capra,

Director, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33252 Filed 12–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–259, 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2 and 3; Environmental Assessment and Finding of No Significant Impact

Introduction

The U.S. Nuclear Regulatory Commission (NRC, or the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–33, DPR–52 and DPR–68 issued to the Tennessee Valley Authority (TVA or the licensee) for operation of the Browns Ferry Nuclear Plant (BFN) Units 1, 2 and 3, located in Limestone County, Alabama.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in response to the licensee's application dated February 20, 1998, for exemption from the requirements of 10 CFR 50.71(e)(4) regarding submission of revisions to the Updated Final Safety Analysis Report (UFSAR) and design-change reports for facility changes made under 10 CFR 50.59 for the BFN units. Under the proposed exemption, the licensee would schedule updates to the single, unified FSAR for the three BFN units within 6 months following Unit 2 refueling outages.

The Need for the Proposed Action

10 CFR 50.71(e)(4) requires licensees to submit updates to their UFSAR within 6 months after each refueling outage provided that the interval between successive updates does not exceed 24 months. Since the BFN Units 1, 2, and 3 share a common UFSAR, the licensee must update the same document within 6 months after a refueling outage for each of the three units. Allowing the exemption would maintain the UFSAR current within 24 months of the last revision.

Environmental Impacts of the Proposed Action

No changes are being made in the types or amounts of any radiological effluent that may be released off site. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. The Commission concludes that granting the proposed exemption would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed exemption does not affect non-radiological plant effluents and has no other environmental impact. The Commission concludes that there are no significant non-radiological impacts associated with the proposed exemption.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (no alternative action). Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement dated September 1, 1972 for BFN Units 1, 2 and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on November 20, 1998, the NRC staff consulted with the Alabama State official, Mr. Kirk Whatley of the State Office of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the application for exemption dated February 20, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC and at the local public document room located at the Athens Public Library, 405 E. South Street, Athens, Alabama.

Dated at Rockville, Maryland, this 10th day of December 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. 98–33255 Filed 12–15–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 14, 21, 28, 1998 and January 4, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 14

Tuesday, December 15

11:00 a.m.
Affirmation Session (Public Meeting) (if needed)

Week of December 21—Tentative

There are no meetings scheduled for the week of December 21, 1998.

Week of December 28—Tentative

There are no meetings scheduled for the week of December 28, 1998.

Week of January 4

Wednesday, January 6—Tentative

11:30 a.m.
Affirmation Session (Public Meeting) (if needed)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the internet at http://www.nrc.gov/SECY/smj/schedule.htm

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In attition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

* * * * *

Dated: December 11, 1998.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 98–33466 Filed 12–14–98; 2:51 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 20, 1998, through December 4, 1998. The last biweekly notice was published on December 2, 1998 (63 FR 66590).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 15, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of amendments request: November 19, 1998.

Description of amendments request: The proposed amendment revises Technical Specification 3.7.6, ''Service Water (SRW) System'' to allow operation of Calvert Cliffs with one SRW plate and frame heat exchanger (PHE) secured for maintenance or other reasons, and removing one containment air cooler (CAC) from service to enable the affected subsystem to remain operable. Specifically, the proposed change adds ''One SRW heat exchanger inoperable'' as a new condition for Limiting Condition for Operation (LCO) 3.7.6. The required actions for the new condition are to secure one CAC within one hour and restore the heat exchanger to operable condition within 7 days, or be in Mode 3 in 6 hours and Mode 5 in 36 hours. This limits the effect of one inoperable PHE to only one containment cooling train made inoperable by the PHE. Consequently, the new action statement introduced in the SRW LCO for an inoperable PHE is similar to the one that already exists in the CAC LCO for one inoperable containment cooling train.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

None of the systems associated with the proposed revision to the Calvert Cliffs Technical Specifications are accident initiators. The Saltwater (SW) and SRW systems are used to mitigate the effects of accidents analyzed in the Updated Final Safety Analysis Report (UFSAR). The SW and SRW Systems provide cooling to safety-related equipment following an accident. The CACs are provided with SRW to remove heat from the Containment in the event of an accident. They support accident mitigation functions; therefore, the proposed modification does not increase the probability of an accident previously evaluated.

The proposed revision will provide greater availability of safety-related equipment during PHE maintenance activities. It ensures that the safety features provided by the SW and SRW, except for the isolated CAC, are maintained, i.e., the availability of safety-related equipment required to mitigate the radiological consequences of an accident described in the UFSAR is enhanced by the flexibility provided by this Technical Specification revision.

Furthermore, the proposed revision will not change, degrade, or prevent actions described or assumed in any accident described in the UFSAR. The proposed activity will not alter any assumptions previously made in evaluating the radiological consequences of any accident described in the UFSAR.

Therefore, the proposed modification does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

None of the systems associated with this modification are identified as accident initiators in the UFSAR. The SW and SRW Systems and the CACs are used to mitigate the effects of accidents analyzed in the UFSAR. None of these functions required of these systems have been changed by the proposed revision to the Technical Specifications. This activity does not modify any system, structure, or component such that it could become accident initiator, as opposed to its current role as an accident mitigator.

Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety design basis for the SW and SRW Systems is the availability of sufficient cooling capacity to ensure continued operation of equipment during normal and accident conditions. The redundant cooling capacity of these systems, assuming a single failure, is consistent with assumptions used in the accident analysis.

With one SRW subsystem inoperable, the remaining SRW subsystem is adequate to perform the heat removal function. However, the reliability is reduced because a single failure in the operable SRW subsystem could result in loss of SRW function. The proposed change will allow continued operation of some SRW-cooled components while a PHE is being out-of-service. The second SRW subsystem will still be available to perform the SRW function. In addition, the reliability of many diesel generator-backed components will be improved since the second diesel generator will remain operable while in this action statement.

During a design basis accident, a minimum of one containment cooling train (two of the four CACs) and one containment spray train, is required to maintain the containment peak pressure and temperature, below the design limits. Under the existing Technical Specification requirement, with one containment cooling train inoperable, the inoperable containment cooling train must be returned to operable status within seven days. The remaining operable containment spray and cooling units provide iodine removal capabilities and are capable of removing at least 100% of the heat removal needs after an accident. The seven-day completion time was developed taking into account the redundant heat removal capabilities afforded by combinations of the containment spray and cooling systems, and the low probability of a design basis accident occurring during this period. The proposed change to Technical Specification 3.7.6 would allow three CACs to remain operable during maintenance on a PHE, instead of the two that are maintained under the current Technical Specification requirement.

For the above reasons, the margin of safety has been preserved, and in some cases increased, by the proposed revision to the Technical Specifications.

Therefore, this proposed modification does not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland.

Date of amendments request: November 20, 1998.

Description of amendments request: On September 9, 1996, a final rule amending 10 CFR 50.55a was issued requiring owners to implement, by September 9, 2001, the requirements of the 1992 Addenda of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section XI, Subsections IWE and IWL, as modified and supplemented by 10 CFR 50.55a. Baltimore Gas and Electric Company (BGE) have developed a program plan to effect the implementation of Subsection IWE and IWL. BGE's submittal requests a license amendment in support of the program plan. One Technical Specification (TS) change requested is an administrative change that removes a TS originally developed from Regulatory Guide (RG) 1.35. Compliance with RG 1.35 is not sufficient to comply with 10 CFR 50.55a, as amended. The other TS changes request the removal from the TSs requirements that are a duplication of 10 CFR 50.55a.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Containment Building is a passive safety structure that prevents the release of radioactive materials to the environment in post-accident conditions. The proposed Technical Specification changes delete requirements of the Technical Specifications that have been made obsolete by the improvements of the Containment Building inspections required by the changes in the regulations. The improved inspections required by the American Society of Mechanical Engineers Code serve to maintain Containment response to accident conditions, by causing the identification and repair of defects in the Containment Buildings.

Relocating existing requirements, eliminating requirements that duplicate regulations, and making administrative improvements provide Technical Specifications that are easier to use. Because existing requirements are controlled by regulation, there is no reduction in commitment and adequate control is still maintained. Likewise, the elimination of requirements that duplicate regulations enhances the usability of the Technical Specifications without reducing commitments. Therefore, the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The Containment Building is a passive safety structure designed to contain radioactive materials released from the Reactor Coolant System. The performance of the Containment Building is not evaluated as the causal factor in any accident at Calvert Cliffs Nuclear Power Plant. The proposed Technical Specification changes delete requirements of the Technical Specifications that have been made obsolete by the improvements of the Containment Building inspections required by the changes in the regulations. Revising the Technical Specifications, to comply with current regulations and to eliminate duplication of requirements, does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The safety function of the Containment Building is to provide a boundary to the release of radioactive material to the environment during post-accident conditions. The changes to the Technical Specifications incorporate improved inspection techniques and criterial to ensure optimum Containment integrity and, therefore, optimum containment response in the event of an accident resulting in a release of radioactive material from the Reactor Coolant System.

Optimizing containment integrity will result in maintaining the margin of safety allowed by the Containment Buildings. Therefore, the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: S. Singh Bajwa, Director.

CBS Corporation acting through its Westinghouse Electric Company Division (licensee), Westinghouse Test Reactor, Waltz Mill Site, Westmoreland, Pennsylvania, Docket No. 50–22, License No. TR–2.

Date of amendment request: September 28, 1998, supplemented on November 17, 1998.

Description of amendment request: CBS Corporation acting through its Westinghouse Electric Company Division is the licensee for the Westinghouse Test Reactor (WTR) at Waltz Mill, Pennsylvania. The licensee is authorized to only possess the reactor and a decommissioning plan has been approved. The licensee is planning to sell most of its nuclear related facilities to other entities, but will retain the WTR. One of the arrangements made with the purchasers of the other facilities is that the Westinghouse name will be conveyed with these facilities, and because of this arrangement, the licensee requests that the license associated with the Westinghouse Test Reactor be changed to simply CBS Corporation, to eliminate any reference to the name Westinghouse.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards considerations. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). A proposed amendment to a license of a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff agrees with the licensee's no significant hazards consideration determination submitted on November 17, 1998, for the following reason.

This corporate name change does not involve any change in the management, organization, location, facilities equipment, or procedures related to the licensed activities under the WTR

license. The employees responsible for the licensed WTR facility will still be responsible, either directly through the CBS Corporation or through contractual arrangements for which CBS Corporation is ultimately responsible, notwithstanding the new name of the licensee.

Based on a review of the licensee's analysis, and on the staff's analysis detailed above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for license: Lisa A. Campagna, Assistant General Counsel, Law Department, CBS Corporation, P.O. Box 355, Pittsburgh, Pennsylvania 15230.

NRC Project Director: Seymour H. Weiss.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois.

Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois.

Date of amendment request: October 30, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to reduce the spent fuel pool (SFP) inadvertent draindown level to account for the effects of potential failures of the SFP cooling and skimmer loops.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change to the TS does not involve an increase in the probability of an accident previously evaluated. The initial conditions of the limiting dewatering incidents involve initiating circumstances/failures such as accidental gate openings, gate seal failures, or an open transfer tube.

Specifying a revised inadvertent drain limit which meets the SRP [Standard Review Plan, NUREG–0800] acceptance criteria is unrelated to the probability of occurrence of the precursors or initiating events. These initiators are not affected by the SFP cooling or skimmer loop piping/component failure scenarios. There is no change being made to the approved design, nor is there any operational change being made which would increase the probability of occurrence.

This change to the TS does not involve an increase in the consequences of an accident previously evaluated. As documented in NUREG–0876, Byron SER, Section 9.1.3, page 9–5, the anti-siphon protection design of the SFP cooling and clean-up piping was reviewed and found to be acceptable stating that ''all connections to the spent-fuel pool are either near the normal water level or are provided with antisiphon holes to preclude possible siphon draining of the pool water.'' This review is applicable to Braidwood as documented in NUREG–1002, Braidwood SER. The anti-siphon attributes employed in the SFP skimmer loops at Braidwood, (under consideration at Byron), are similar in design as well as their submergence levels previously evaluated for the SFP cooling loops. The proposed change revises the SFP inadvertent drain limit from approximately 423 feet to 410 feet to bound the failure effects of both the SFP cooling and skimmer loops, while considering any maloperation or failure scenario. The revised value meets the SRP acceptance criteria of maintaining at least 10 feet above the active fuel ensuring that adequate radiation shielding is maintained as previously analyzed. There is no physical or operational change being made which would alter the sequence of events, plant response, or conclusions of the affected analysis. There is no change in the type or amount of any effluents released, and no change in either the Onsite or Offsite dose consequences as a result of this change.

Therefore, based on this evaluation, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change specifically identifies the SFP level sufficient to ensure that the SRP acceptance criteria for inadvertent draining are met while accounting for the failure effects of both the SFP cooling and skimmer loops. Any inadvertent SFP draining due to potential failures of the SFP skimmer loops is similar in nature to the inadvertent SFP draining effects previously considered due to failures of the SFP cooling loops. No new equipment is being installed, and no installed equipment is being operated in a new or different manner with this change. There is no change in plant operation that affects previously evaluated failure modes. This change does not represent a new failure mode or accident from what has been previously evaluated.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The current TS value does not address inadvertent SFP draining due to potential failures of the SFP skimmer loops or cooling suction lines as was done for the SFP cooling discharge lines. This change specifically identifies the SFP level sufficient to ensure that the SRP acceptance criteria for inadvertent draining are met while accounting for the failure effects of both the SFP cooling and skimmer loops in determining the proposed TS value. The most limiting postulated SFP dewatering incidents involve SFP drainage to either a dry transfer canal, a dry transfer canal and cask fill area, or a dry transfer canal and cask fill area which additionally communicates through an open transfer tube to an empty refuel cavity. The initial conditions of the dewatering incident analysis and resultant water levels over the spent fuel are not affected by this SFP skimmer/cooling loop issue because these incident initiators are not effected by the SFP cooling or skimmer loop failures, thus preserving the previously analyzed and approved margin for these dewatering incidents.

For the less-limiting SFP skimmer/cooling loop failure issue, the proposed TS change inadvertent drain limit meets the SRP minimum requirement of at least 10 feet above the top of the active fuel ensuring that adequate radiation shielding is maintained. This change would allow for the conservative acceptance criteria for the current UFSAR [Updated Final Safety Analysis Report] design analysis to continue to be met.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois.

Date of amendment request: November 9, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification 3/4.3.2, ''Isolation Actuation Instrumentation'' to add/revise various isolation setpoints for leak detection instrumentation. These changes are necessary due to modifications to the Reactor Water Cleanup (RWCU) System to restore ''hot'' suction to the RWCU pumps and due to a re-evaluation of the high energy line break analysis. In addition, the amendment would eliminate isolation actuation trip functions for the Residual Heat Removal (RHR) system steam

condensing mode and shutdown cooling mode.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

(a) There is no effect on accident initiators so there is no change in probability of an accident. A line break in the subject areas, would consist of an instantaneous circumferential break downstream of the outermost isolation valve of one of these systems. The leak detection isolation is only a precursor of a break, and thus does not affect the probability of a break.

(b) There is minimal effect on the consequences of analyzed accidents due to changing the leak detection ambient temperature or Delta T setpoint and allowable values to detect 25 gpm equivalent leakage. The addition of more ambient temperature and ΔT leak detection monitoring, along with the addition of the high flow break detection will actually decrease the consequences of the associated accidents. The worst case accident outside the primary containment boundary is a main steam line break which bounds the dose consequences of all line breaks and therefore bounds any size of leak.

The deletion of the RHR steam condensing mode isolation actuation instrumentation trip functions from the LaSalle Technical Specifications does not increase the probability or consequences of an accident previously evaluated, because this mode of operation of the RHR system has been deleted from the LaSalle design basis and the lines that were previously high energy lines are isolated during unit operation, including Operational Condition 1 (Run mode), Operational Condition 2 (Startup mode), and Operational Condition 3 (Hot Shutdown).

The deletion of the RHR shutdown cooling mode leak detection T and Delta T isolation actuation instrumentation trip functions from the LaSalle Technical Specifications does not increase the probability or consequences of an accident previously evaluated, because the leak detection is only a precursor of a break, and thus does not affect the probability of a break. Also, there are two other methods of detecting abnormal leakage and isolating the system in Technical Specification trip functions A.6.a, Reactor Vessel Water Level—Low, Level 3 and A.6.c, RHR Pump Suction Flow—High. In addition, other means to detect leakage from the RHR system, such as sump monitoring and area radiation monitoring, are also available. In accordance with Technical Specification Administrative Requirement 6.2.F.1, LaSalle has a leakage reduction program to reduce leakage from those portions of systems outside primary containment that contain radioactive fluids. RHR, including piping and components associated with the shutdown cooling mode, is part of this program, which includes periodic visual inspection of the system for leakage. The sump monitoring, radiation monitoring and periodic inspections for system leakage makes the probability of a leak of 5 gpm going undetected for more than a day very low.

Also, due to the low reactor pressures (less than 135 psig) at which RHR shutdown cooling mode is able to operate, reactor coolant makeup and outflow is very low compared to normal plant operation. A change in flow balance due to a leak is thus more readily detectable with reactor coolant water level changes and makeup flow rate, and thus precludes a significant leak going undetected before break detection instrumentation would cause automatic isolation.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The purpose of the leak detection system, as it applies to the RWCU and RHR system areas, is to provide the capability for leak detection and automatic isolation of the system as necessary in the event of leakage in these areas. This change maintains this capability with at least two different methods of detection of abnormal leakage for protection from the flooding concerns of a significant leak or line break when the RHR system is operating in the shutdown cooling mode, so that redundant systems will not be affected.

This change also maintains or adds primary containment isolation logic for the leak detection isolation based on temperature monitoring in RWCU areas and break detection based on RWCU pump suction flow—high. The additional instrumentation and the associated isolation logic is the same or similar to existing instrumentation and logic for containment actuation instrumentation, so no new failure modes are created in this way.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in the margin of safety because:

The change to the automatic isolation setpoint for high Delta T leak detection in the heat exchanger rooms is based on current configuration calculated/analyzed response to a small leak compared to a circumferential break. The increased leakage rate in the RWCU heat exchanger rooms that is necessary to actuate isolation on ambient temperature during winter conditions, does not adversely affect the margin of safety. This increased leakage rate is below the critical crack leakage rate as represented in UFSAR [Updated Final Safety Analysis Report] Figure 5.2–11. Additionally, differential temperature leak detection is conservative under these same conditions, and will actuate isolation at a leakage rate less than the established limit. The leak detection isolation logic is unchanged and thus remains single failure proof.

The addition of automatic primary containment isolation on ambient temperature and Delta T-High for the Reactor Water Cleanup System (RWCU) Pump, Pump Valve, Holdup Pipe, and Filter/Demineralizer (F/D) Valve Rooms and the addition of the RWCU Pump Suction Flow High line break isolation add to the margin of safety with respect to leak detection and line breaks in the RWCU system, because the system isolation diversity is increased and the amount of system piping monitored for leakage is increased.

The setpoints for the ambient temperature and Delta T leak detection isolations being changed or added and the RWCU pump suction flow—high are set sufficiently high enough so as not to increase the possibility of spurious actuation. In the event that a spurious actuation does occur, little safety significance is presented since the RWCU system performs no safety function. The setpoints and allowable values for the proposed changes also assure sufficient margin to the analytical values and are high enough to prevent spurious actuations based on calculations consistent with Regulatory Guide 1.105.

The deletion of the RHR steam condensing mode isolation actuation instrumentation does not effect the margin of safety, because this mode is no longer utilized by LaSalle in Operational Conditions 1, 2, or 3 (Run mode, Startup mode, or Hot Shutdown).

The elimination of the temperature based trip functions for the RHR shutdown cooling mode area is based on the determination that temperature is not the appropriate parameter for leak detection as it does not provide meaningful indication and will not provide setpoints that would be sufficiently above the normal range of ambient conditions to avoid spurious isolations.

There are two other methods of detecting abnormal leakage and isolating the system in Technical Specification trip function A.6, which are A.6.a, Reactor Vessel Water Level—Low, Level 3 and A.6.c, RHR Pump Suction Flow—High. In addition, other means to detect leakage from the RHR system, such as sump monitoring and area radiation monitoring, are also available. Also, in accordance with Technical Specification Administrative Requirement 6.2.F.1, LaSalle has a leakage reduction program to reduce leakage from those portions of systems outside primary containment that contain radioactive fluids. RHR, including piping and components associated with the shutdown cooling mode, is part of this program, which includes periodic visual inspection of the system for leakage.

The previous evaluation of diversity of isolation parameters, as presented in Table 5.2–8 of the UFSAR remains unchanged. Adequate diversity of isolation parameters is maintained because there are at least two different methods available to detect and allow isolation of the system for a line break, as necessary.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff

proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Stuart A. Richards.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York.

Date of amendment request: October 9, 1998.

Description of amendment request: The proposed amendment would revise Section 6.0, administrative controls, of the Technical Specifications (TSs). Specifically, TS Sections 6.5.2.1.j, 6.7.1.c, and 6.8.1.a would be revised to correct typographical errors. In addition, TS Section 6.5.2.2 would be revised to change the membership of the Nuclear Facility Safety Committee (NFSC). This change would provide Consolidated Edison (Con Ed) with the flexibility to obtain industry experts outside of Con Ed to perform the duties of Chairman, or Vice Chairman, and members of the NFSC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is administrative in nature. It involves a change in 1) the Nuclear Facilities Safety Committee (NFSC) Chairman or Vice Chairman to allow the services of an individual other than a senior official of the Company, and 2) allowing NFSC membership by other than Con Edison employees. In either case, concurrence by the Senior Vice President, Nuclear Operations is required.

These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operating of the facility. The Limiting Safety Systems Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes to the subject Technical Specification would not increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any accident previously evaluated has not been created.

As stated above, the proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility, and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently, no new failure modes are introduced as a result of the proposed changes. Therefore, the proposed changes will not initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or physical design the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: S. Singh Bajwa, Director.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan.

Date of amendment request: November 9, 1998.

Description of amendment request: The proposed amendment would delete the Chemical and Volume Control System (CVCS) operability requirements currently in technical specifications (TS) 3.2 and 3.17.6, and the associated surveillance testing requirements currently in TS 4.2 and 4.17. The requirements have been added to the Palisades Operating Requirements Manual (ORM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes delete certain TS requirements which do not meet the criteria of 10 CFR 50.36(c)(2)(ii), but identical requirements have been added to a document (the ORM) controlled under 10 CFR 50.59.

10 CFR 50.59 specifically prohibits changes to the facility as described in the safety analysis report, and to procedures described in the safety analysis report ''if the probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the safety analysis report may be increased''. Since the conditions which limit changes performed under 50.59 are more restrictive than the conditions which define changes considered to involve a significant hazards consideration, moving of a requirement from the TS to a document which is controlled under 50.59 cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes delete certain TS requirements which do not meet the criteria of 10 CFR 50.36(c)(2)(ii), but identical requirements have been added to a document (the ORM) controlled under 10 CFR 50.59.

10 CFR 50.59 specifically prohibits changes to the facility as described in the safety analysis report, and to procedures described in the safety analysis report ''if a possibility for an accident or malfunction of a different type than any evaluated previously in the safety analysis report may be created''. Since the conditions which limit changes performed under 50.59 are more restrictive than the conditions which define changes considered to involve a significant hazards consideration, relocation of a requirement from the TS to a document which is controlled under 50.59 cannot create the possibility of a new or different kind of accident from any previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes delete certain TS requirements which do not meet the criteria of 10 CFR 50.36(c)(2)(ii), but identical requirements have been added to a document (the ORM) controlled under 10 CFR 50.59.

10 CFR 50.59 specifically prohibits changes to the facility as described in the safety analysis report, and to procedures described in the safety analysis report if the margin of safety is reduced. Since the conditions which limit changes performed under 50.59 are more restrictive than the conditions which define changes considered to involve a significant hazards consideration, relocation of a requirement from the TS to a document which is controlled under 50.59 cannot involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Cynthia A. Carpenter.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina.

Date of amendment request: July 22 and October 22, 1998.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to reflect the licensee's planned use of fuel supplied by Westinghouse. The Westinghouse fuel has different design characteristics from the fuel currently in use. Accordingly, the following changes would need to be made to the TS: Figure 2.1.1–1, ''Reactor Core Safety Limits—Four Loops in Operation''; various core operating parameters specified by Surveillance Requirements 3.2.1.2, 3.2.1.3, and 3.2.2.2; Section 4.2.1, ''Fuel Assemblies''; and Section 5.6.5, ''Core Operating Limits Report (COLR).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this LAR [license amendment request] would not involve a significant increase in the probability or consequences of an accident previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the Core Operating Limits Report (COLR) does not exempt this factor from regulatory restrictions. COLR parameters are generated by NRC approved methods with the intent of ensuring that previously evaluated accidents remain bounding. The COLR is submitted to the NRC upon implementation of each fuel cycle or when the document is otherwise revised. No accident probabilities or consequences will be impacted by this LAR.

Second Standard

Implementation of this LAR would not create the possibility of a new or different kind of accident from any previously evaluated. The revised Reactor Core Safety Limits Figure further restricts acceptable operation. Moving an uncertainty factor from the Improved Technical Specifications to the COLR does not exempt this factor from regulatory restrictions. Since the parameter in question is not being deleted, the possibility of a new or different kind of accident from any previously evaluated does not exist.

Third Standard

Implementation of this LAR would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. Use of the ZIRLO™ cladding material has been reviewed and approved in Reference 1 (as listed in Chapter 2.1 of Topical Report DPC–NE–2009/DPC–NE–2009P, Duke Power Company Westinghouse Fuel Transition Report). ZIRLO™ cladding has been extensively used in Westinghouse nuclear reactors. The changes proposed in this LAR are necessary to ensure that the performance of the fission product barriers (cladding) will not be impacted following the replacement of one fuel design for another. No safety margin will be significantly impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Attorney for licensee: Mr. Albert Carr, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Project Director: Herbert N. Berkow.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana.

Date of amendment request: November 20, 1998.

Description of amendment request: The licensee has proposed an amendment to Facility Operating License No. NPF–47, Appendix A—Technical Specifications (TS) Section 3.1.6, ''Control Rod Pattern.'' The proposed change will be implemented through the establishment of a new specification added to Section 3.10, ''Special Operations.'' The proposed specification will be TS Section 3.10.9, ''Control Rod Pattern—Cycle 8.'' The new TS 3.10.9 is required due to a current plant-specific configuration where 5 control rods have been inserted into the reactor core for neutron flux suppression surrounding 2 fuel assemblies which have been identified as having possible fuel cladding defects. The new requirement is intended to be effective for the remainder of the current fuel cycle (Cycle 8), and is in force when rod withdrawal operations begin from a condition of 100% rod density to 20% rated thermal power (RTP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The request does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Accidents analyzed in the SAR have been examined for any impact caused by this exception to the [Banked Position Withdrawal Sequence] BPWS operation. The limiting event is the [Control Rod Drive Accident] CRDA as described in SAR Sections 4.3.2 and 15.4.9. The limit on energy addition to the fuel is 280 cal/gm as identified in the SRP section 15.4.9. Bank Position Withdrawal Sequence is established to reduce maximum incremental control rod worths and thus minimize consequences resulting from an accident. The reactor will be operated as before using BPWS. Having the current rod configuration with 5 rods to minimize impact on the two fuel cladding imperfections, in lieu of eight rods inoperable separated by two cells, will not affect initiators of a Control Rod Drop Accident. In addition, this existing rod configuration has been analyzed and the resulting consequences continue to be bounded by the licensing evaluations. The insertion of the identified control rods will not affect the assumed reactivity insertion time of any event. The location of the control rods has been reviewed by GE using the NRC approved methodology. Operation within these limits will ensure that the consequences of a transient or accident remain within the acceptable limits of the evaluation. Specifically, rod worths for the proposed configuration are bounded by the rod worths allowed for these configurations per TS; thus, the proposed configuration is more conservative than that allowed per TS. The results confirm all assumed limits are maintained. The proposed change ensures that the consequences of abnormal operation and accidents are acceptable.

The additional Technical Specification will control the configuration of the plant to that supported by the evaluation. If this evaluated configuration is not supported, the plant will be required to be placed in a configuration where the Control Rod Drop Accident is not applicable, as the current specification requires. The plant is therefore maintained within limits as currently allowed. With these limits the consequences of an event are not increased.

The probability of an accident is not affected by the proposed Technical Specification changes since the operation of systems or equipment that could initiate an accident are not affected. Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

(2) The request does not create the possibility of occurrence of a new or different

kind of accident from any accident previously evaluated.

The proposed changes do not involve any alteration of plant hardware or significant change in plant operation. Assuming the 5 suppression rods are bypassed in lieu of eight rods separated by two cells does not affect event initiators or event consequences. No plant modifications are required which would affect plant operation. Operation with the control rod pattern in the proposed configuration will ensure the results of a CRDA will remain within the assumptions of the current safety analysis. The system will continue to ensure that the limits of control rod worth remain within the assumptions of the CRDA. The revised Technical Specifications will continue to assure that plant operation is consistent with the assumptions, initial conditions, and assumed power distribution and, therefore, will not create a new type of accident.

The proposed Technical Specifications will maintain the plant in a configuration supported by evaluation. The response to a CRDA will be within current accepted limits and therefore no event of a different kind has been created. The proposed Technical Specification changes do not introduce any new modes of plant operation nor involve new system interactions. Therefore, operation with the 5 suppression rods inserted does not create the possibility of an occurrence of a new or different kind of accident from any accident previously evaluated.

(3) The request does not involve a significant reduction in a margin of safety.

The proposed Technical Specification and the rod pattern control system will continue to ensure the limits of control rod worth remain within the assumptions which support the CRDA analysis of 280 cal/gm maximum energy heat addition to the fuel. This imposed limit of 280 cal/gm provides a margin of safety from the experimental value of approximately 330 cal/gm at which the fully molten state for UO_2 occurs. The existing rod configuration with 5 suppression rods inserted to minimize impact on the two fuel cladding imperfections has been analyzed using NRC approved methodology. Cycle specific evaluation has confirmed that the consequences resulting from a CRDA continues to be bounded by the licensing analysis for this event. Since there are no changes in the acceptance criteria, the proposed changes will not create a reduction in the margin of safety. These limits establish the necessary restrictions on power operation and thereby ensure that the core is operated within the assumptions and initial conditions of the transient and accident analyses.

As demonstrated in the evaluation, operation within these limits will ensure that the margin of safety will be maintained to the same level described in the Technical Specifications Bases and the USAR and the consequences of the postulated transient or accidents are not increased. This limit of 280 cal/gm is not exceeded during any transient or postulated accident. Therefore, the proposed Technical Specifications to allow startup and continued operation in the low power region with these control rods inserted do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Project Director: John N. Hannon.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana.

Date of amendment request: July 2, 1998.

Description of amendment request: The proposed change will modify the ACTION Requirements for Technical Specification (TS) 3/4.3.2 for the Emergency Feedwater Actuation Signal (EFAS). A change to the TS Bases Section 3/4.3.2 has been included to support this change. The objective of this change is to add a restriction on the period of time a channel of EFAS instrumentation can remain in the tripped condition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The proposed revision to the TS changes the allowed outage time that a channel of EFAS SGDPI [Steam Generator Differential Pressure Instrumentation] can be in the tripped condition from a maximum of approximately 18 months when one channel is inoperable and 92 days when two channels are inoperable to 48 hours. If a channel were in the tripped condition and a single failure occurred (failure of one other channel of EFAS SGDPI), an inadvertent EFAS signal would be generated. During a Design Basis MSLB [Main Steam Line Break] or FLB [Feedwater Line Break] Accident, this single failure would send EFW [Emergency Feedwater] to the faulted steam generator. The Waterford 3 safety analysis assumes that the excess Reactor Coolant System (RCS) cooldown and return to power associated with the MSLB will be terminated when the faulted steam generator empties. If additional EFW were added, the RCS cooldown would be extended and the return to power may increase.

Reducing the time that a channel of EFAS SGDPI can be placed in the tripped condition will reduce the probability of this scenario occurring during a Design Basis Accident. Since the allowed outage time for a channel of EFAS SGDPI is being limited to 48 hours, this is considered an off-normal operation and a single failure is not required to be postulated during a Design Basis Accident in the accident analysis. Reducing the time the channel can be placed in the tripped condition and thus, the exposure time to this scenario, would not be an accident initiator. The proposed change of being more conservative relative to allow[ed] outage time in the tripped condition will not affect the assumptions, design parameters, or results of any accident previously evaluated.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the design or configuration of the plant. The proposed change provides a more conservative allowed outage time for the channel to be in the tripped condition. There has been no physical change to plant systems, structures or components nor will the proposed change reduce the ability of any of the safety-related equipment required to mitigate Anticipated Operational Occurrences or accidents. The configuration required by the proposed specification is permitted by the existing specification.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change provides a more conservative allowed outage time for the channel to be in the tripped condition. By reducing the allowed outage time, the probability is reduced that a single failure (failure of one channel of EFAS SGDPI with one channel in the tripped condition) would occur that would send EFW to the faulted steam generator. Therefore, the only change to the margin of safety would be an increase. Since the allowed outage time for a channel of EFAS SGDPI is being limited to 48 hours, this is considered an off-normal operation and a single failure is not required to be postulated during a Design Basis Accident in the accident analysis. The proposed changes do not affect the limiting conditions for operation or their bases.

Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street NW., Washington, DC 20005–3502.

NRC Project Director: John N. Hannon.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of amendment request: December 31, 1997, as supplemented November 25, 1998.

Description of amendment request: The proposed amendment will revise the St. Lucie Unit 2 Technical Specifications to permit an increase in the allowed Spent Fuel Pool (SFP) storage capacity.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Analyses to support the proposed fuel pool capacity increase have been developed using conservative methodology. The analysis of the potential accidents summarized below has shown that there is no significant increase in the consequences of any accident previously analyzed. A review of relevant plant operations has also demonstrated that there is no significant increase in the probability of occurrence of any accident previously analyzed. This conclusion is also discussed below.

Previously evaluated accidents that were examined for this proposed license amendment include: Fuel Handling Accident, Spent Fuel Cask Drop Accident, and Loss of all Fuel Pool Cooling.

There will be no change in the mode of plant operation or in the availability of plant systems as a result of this proposed change; the systems interfacing with the spent fuel pool have previously encountered borated pool water and are designed to interact with irradiated spent fuel and remove the residual heat load generated by isotopic decay. The proposed amendment does not require a change in the maintenance interval or maintenance scope for the fuel pool cooling system or for the spent fuel cask crane. The frequency of cask handling operations and the maximum weight carried by the crane is not increased as a result of the proposed license amendment. Thus, there will be no increase in the probability of a loss of fuel pool cooling or in the probability of a failure of the cask crane as a result of the proposed amendment.

There will not be a significant increase in the frequency of handling discharged assemblies in the fuel pool as a result of this change; any handling of fuel in the spent fuel pool will continue to be performed in borated water. If the license amendment is approved, there will be a one-time repositioning of certain discharged assemblies stored in the fuel pool to comply with the revised positioning requirements, but the increased pool storage capacity will permit the deferral of spent fuel handling associated with cask loading operations. Fuel manipulation during the repositioning activity will be performed in the same manner as for fuel placed in the spent fuel pool during refueling outages. There will be no changes in the manner of handling fuel discharged from the core as a result of refueling; administrative controls will continue to be used to specify fuel assembly placement requirements. The relative positions of Region I and Region II storage locations will remain the same within the fuel pool. Therefore, the probability of a fuel handling accident has not been significantly increased.

The consequences of a fuel handling accident have been evaluated. The radioactive release consequences of a dropped fuel assembly are not affected by the proposed increase in fuel pool storage capacity. They remain bounded by the results of calculations performed to justify the existing St. Lucie Unit 2 fuel storage racks and burnup limits. At the limiting fuel assembly burnup, radioactive releases from a dropped assembly would be only a small fraction of NRC guidelines. The input parameters employed in analyzing this event are consistent with the current values of fuel enrichment, discharge burnup and uranium content used at St. Lucie Unit 2 and with future use of the ''value-added'' fuel pellet design. Thus, the consequences of the fuel assembly drop accident would not be significantly increased from those previously evaluated.

The capability of the fuel pool cooling system to handle the increased number of discharged assemblies has been examined. The impact of a total loss of spent fuel pool cooling flow on available equipment recovery time and on fuel cladding integrity has also been evaluated. For the limiting full core discharge, sufficient time remains available to restore cooling flow or to provide an alternate makeup source before boiloff results in a fuel pool water level less than that needed to maintain acceptable radiation dose levels. Analysis has shown that in the event of a total loss of fuel pool cooling fuel cladding integrity is maintained. Therefore, the consequences of a loss of fuel pool cooling event, including the effect of the proposed increase in fuel pool storage capacity, have not been significantly increased from previously analyzed results for this type of accident.

The analysis of record pertaining to the radiological consequences of the hypothetical drop of a loaded spent fuel cask just outside the Fuel Handling Building was examined to determine the impact of the increased fuel storage capacity on this accident's results. The results of the previously performed analysis were determined to bound the conditions described by the proposed license amendment, thus the consequences of the cask drop accident would not be significantly increased as a result of this change.

It is concluded that the proposed amendment to increase the storage capacity of the St. Lucie Unit 2 spent fuel pool will not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

In this license amendment FPL [Florida Power & Light Co.] proposes to credit the negative reactivity associated with a portion of the soluble boron present in the spent fuel pool. Soluble boron has always been present in the St. Lucie Unit 2 spent fuel pool; as such the possibility of an inadvertent fuel pool dilution has always existed. However, the spent fuel pool dilution analysis demonstrates that a dilution of the Unit 2 spent fuel pool which could increase the pool k_{eff} to greater than 0.95 is not a credible event. Neither implementation of credit for the reactivity of fuel pool soluble boron nor the proposed increase in the fuel pool storage capacity will create the possibility of a new or different type of accident at St. Lucie Unit 2.

An examination of the limiting fuel assembly misload has determined that this would not represent a new or different type of accident. None of the other accidents examined as a part of this license submittal represent a new or different type of accident; each of these situations has been previously analyzed and determined to produce acceptable results.

The proposed license amendment will not result in any other changes in the mode of spent fuel pool operation at St. Lucie Unit 2 or in the method of handling irradiated nuclear fuel. The spatial relationship between the fuel storage racks and the cask crane range of motion is not affected by the proposed change.

As a result of the evaluation and supporting analyses, FPL has determined that the proposed fuel pool capacity increase does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

FPL has determined, based on the nature of the proposed license amendment that the issue of margin of safety, when applied to this fuel pool capacity increase, should address the following areas:

1. Fuel Pool reactivity considerations
2. Fuel Pool boron dilution considerations
3. Thermal-Hydraulic considerations
4. Structural loading and seismic considerations

The Technical Specification changes proposed by this license amendment, the proposed spent fuel pool storage

configuration and the existing Technical Specification limits on fuel pool soluble boron concentration provide sufficient safety margin to ensure that the array of fuel assemblies stored in the spent fuel pool will always remain subcritical. The revised spent fuel storage configuration is based on a Unit 2 specific criticality analysis performed using methodology consistent with that approved by the NRC. Additionally, the soluble boron concentration required by current Technical Specifications ensures that the fuel pool k_{eff} will be always be maintained substantially less than 0.95.

The Unit 2 criticality analysis established that the k_{eff} of the spent fuel pool storage racks will be less than 1.0 with no soluble boron in the fuel pool water, including the effect of all uncertainties and tolerances. Credit for the soluble boron actually present is used to offset uncertainties, tolerances, off-normal conditions and to provide margin such that the spent fuel pool k_{eff} is maintained less than or equal to 0.95. FPL has also demonstrated that a decrease in the fuel pool boron concentration such that k_{eff} exceeds 0.95 is not a credible event.

Current Technical Specifications require that the fuel pool boron concentration be maintained greater than or equal to 1720 ppm. This boron value is substantially in excess of the 520 ppm required by the uncertainty and reactivity equivalencing analyses discussed in this evaluation and the 1266 ppm value required to maintain k_{eff} less than or equal to 0.95 in the presence of the most adverse mispositioned fuel assembly.

The St. Lucie Unit 2 fuel pool boron concentration will continue to be maintained significantly in excess of 1266 ppm; the proposed license amendment will not result in changes in the mode of operation of the refueling water tank (RWT) or in its use for makeup to the fuel pool. Thus, operation of the spent fuel pool following the proposed change, combined with the existing fuel pool boron concentration Technical Specification limit of 1720 ppm, will continue to ensure that k_{eff} of the fuel pool will be substantially less than 0.95.

Even if this not-credible dilution event was to occur, no radiation would be released; the only consequence would be a reduction of shutdown margin in the fuel pool. The volume of unborated water required to dilute the fuel pool to a k_{eff} of 0.95 is so large (in excess of 358,900 gallons to dilute the fuel pool to 520 ppm boron) that only a limited number of water sources could be considered potential dilution sources. The likelihood that this level of water use could remain undetected by plant personnel is extremely remote.

In meeting the acceptance criteria for fuel pool reactivity, the proposed amendment to increase the storage capacity of the existing fuel pool racks does not involve a significant reduction in the margin of safety for nuclear criticality.

Calculations of the spent fuel pool heat load with an increased fuel pool inventory were performed using ANSI/ANS–5.1–1979 methodology. This method was demonstrated to produce conservative results through benchmarking to actual St. Lucie Unit 2 fuel pool conditions and by comparison of its results to those generated by a calculation using Auxiliary Systems Branch Technical Position 9–2 methodology. Conservative methods were also used to demonstrate fuel cladding integrity is maintained in the absence of cooling system forced flow. The results of these calculations demonstrate that, for the limiting case, the existing fuel pool cooling system can maintain fuel pool conditions within acceptable limits with the increased inventory of discharged assemblies.

Therefore, the proposed change does not result in a significant reduction in the margin of safety with respect to thermal-hydraulic or spent fuel cooling considerations.

The primary safety function of the spent fuel pool and the fuel storage racks is to maintain discharged fuel assemblies in a safe configuration for all environments and abnormal loadings, such as an earthquake, a loss of pool cooling or a drop of a spent fuel assembly during routine spent fuel handling. The proposed increase in spent fuel inventory on the fuel pool and the existing storage racks have been evaluated and show that relevant criteria for fuel rack stresses and floor loadings have been met and that there has been no significant reduction in the margin of safety for these criteria.

The NRC staff has reviewed the licensee's analysis and the changes proposed in the November 25, 1998 supplement to the original submittal and based on this review, it appears that the three standards of 50.92(c) continue to be satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant Units 3 and 4, Dade County, Florida.

Date of amendment request: October 27, 1998.

Description of amendment request: The licensee proposed to change Technical Specification (TS) 6.3, Facility Staff Qualifications, in order to incorporate qualifications for the Multi-Discipline Supervisor. The current TS requires that plant staff meet the requirements of the American National Standards Institute (ANSI) N18.1–1971, which requires non-licensed supervisors to have a high school diploma or equivalent and a minimum of 4 years experience in the craft or discipline they supervise. The proposed change requires the Multi-Discipline Supervisor to have, (1) a high school diploma or equivalent, (2) a minimum of 4 years of related technical experience, which shall include 3 years of power plant experience of which one year is at a nuclear power plant, and (3) completed the Multi-Discipline Supervisor training program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes are administrative in nature addressing personnel qualification issues. The Multi-Discipline Supervisor (MDS) position will be filled with personnel who are experienced in one or more technical disciplines (maintenance, operations, engineering, or other related technical discipline). Fundamental working knowledge of tasks being performed will be acquired through the MDS initial training program. The training concentrates on developing the skills and knowledge of an MDS to safely oversee tasks for multi-discipline work teams. Therefore, four years experience in any related technical discipline or disciplines combined with the MDS training program provide adequate technical knowledge for proper job oversight. These proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated because they do not affect assumptions contained in plant safety analyses, the physical design and/or operation of the plant, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed are administrative in nature and do not affect assumptions contained in plant safety analyses, the physical design and/or modes of plant operation defined in the facility operating license, or Technical Specifications that preserve safety analysis assumptions. These changes address qualification requirements for the MDS position. Since the proposed changes do not change the qualifications for those individuals responsible for the actual licensed operation of the facility, operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident

previously evaluated. No new failure mode is introduced due to the administrative changes since the proposed changes do not involve the addition or modification of equipment nor do they alter the design or operation of affected plant systems, structures, or components.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The operating limits and functional capabilities of the affected systems, structures, and components are unchanged by the proposed amendments. The proposed changes to add the MDS position have management and administrative controls associated with the required qualification requirements. The Turkey Point Technical Specifications will ensure that any individual filling the MDS position has the requisite education, experience, and training. As a result, operation of the facility in accordance with the proposed changes would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Project Director: Frederick J. Hebdon.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Date of amendment request: November 5, 1998.

Description of amendment request: The proposed Technical Specification change will modify the safety limits and surveillances of the LPRM and APRM systems and related Bases pages to ensure the APRM channels respond within the necessary range and accuracy and to verify channel operability. In addition, an unrelated change to the Bases of Specification 2.3 is included to clarify some ambiguous language.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed technical specification changes to the limits and surveillance requirements of the LPRM and APRM systems are provided to ensure the APRM channels respond within the necessary range and accuracy and to verify channel operability. If one or more monitored parameters exceeded their specified limits, the RPS initiates a reactor scram signal to preserve the integrity of the fuel cladding and the Reactor Coolant System and minimize the energy that must be absorbed following a loss of coolant accident. Therefore, the probability of occurrence or the consequences of an accident previously evaluated in the [safety analysis report] SAR will not increase as a result of these changes.

2. The proposed technical specification changes to the limits and surveillance requirements of the LPRM and APRM systems are provided to ensure the APRM channels respond within the necessary range and accuracy and to verify channel operability. The proposed changes are designed to ensure the APRM system responds in a manner that ensures the safety limits, limiting safety system settings, limiting conditions for operations, as well as design parameters for the APRM system and individual components are continuously met. Therefore, the proposed activity does not create the possibility for an accident or malfunction of a different type than any previously identified in the SAR.

3. The proposed change does not involve a significant reduction in the margin of safety. When the APRMs exceed their specified limits, the RPS initiates a reactor scram signal to preserve the integrity of the fuel cladding and the Reactor Coolant System and minimize the energy that must be absorbed following a loss of coolant accident. The proposed changes are designed to assure the APRM system responds in a manner that ensures the safety limits, limiting safety system settings, limiting conditions for operations, as well as design parameters for the APRM system and individual components are continuously met. Therefore, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania.

Date of amendment request: November 25, 1998.

Description of amendment request: The proposed amendment will change the surveillance specification for Once Through Steam Generator (OTSG) inservice inspections for TMI–1 Cycle 13 refueling outage examinations which would be applicable for the next operating cycle only, Operating Cycle 13.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not represent a significant increase in the probability or consequences of an accident previously evaluated.

The proposed flaw disposition strategy, based on measurable eddy current parameters of axial and circumferential extent for Inside Diameter (ID) Initiated Inter-Granular Attack (IGA), will continue to provide high confidence that unacceptable flaws that do not have the required structural integrity to withstand a postulated MSLB [main steam line break] are removed from service. The axial and circumferential length limits for eddy current ID degradation indications meet the Draft Regulatory Guide 1. 121 * * * acceptance criteria for margin to failure for MSLB-applied differential pressure and axial tube loads. The capability for detection of flaws is unaffected; and the identification of tubes that should be repaired or removed from service is maintained. The operation of the OTSGs or related structures, systems, or components is otherwise unaffected. Therefore, neither the probability nor consequences of [an] SGTR [steam generator tube rupture] is significantly increased either during normal operation or due to the limiting loads of [an] MSLB accident.

Neither the change in voltage normalization for the eddy current examinations, nor the administrative change in clarification of the reporting requirements, as described above, could significantly affect the probability of occurrence or consequences of any accident previously evaluated. These changes are administrative only.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because there are no hardware changes involved nor changes to any operating practices. These changes involve only the OTSG tube inservice inspection surveillance requirements, which could only affect the potential for OTSG primary-to-secondary leakage. The proposed changes continue to impose flaw length limits for ID IGA to assure tube structural and leakage integrity, as confirmed by 12R (and post 12R) tube pull sample examinations and pressure testing.

In addition, neither the change in voltage normalization for the eddy current examinations nor the administrative change in the description of the reporting requirements, as described above, could possibly create the possibility of an accident

of a new or different type from any previously evaluated. These changes are included only to modify the plant's eddy current normalization to the industry standard, and clarify the reporting period for submittal of the OTSG inspection results to the NRC [Nuclear Regulatory Commission]. Therefore, these changes do not create the potential for any other kind of accident different from those that have been evaluated.

C. These proposed changes do not involve a significant reduction in a margin of safety because the margins of safety defined in Draft Regulatory Guide 1. 121 * * * are retained. The probability of detecting degradation is unchanged since the bobbin coil eddy current methods will continue to be the primary means of initial detection and the probability of leakage from any indications left in service remains acceptably small. The strategy for dispositioning ID initiated IGA will continue to provide a high level of confidence that tubes exceeding the allowable limits for tube integrity are repaired or removed from service.

In addition, neither the change in voltage normalization for the eddy current examinations nor the administrative change in the description of the reporting requirements, as described above, could significantly affect a margin of safety. These changes are administrative in nature and are included only to align TMI–1's voltage normalization to the industry standard, and clarify the reporting period, respectively.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Cecil O. Thomas.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: November 10, 1998.

Description of amendment request: The proposed changes would modify Technical Specifications 3.3.1.1, ''Reactor Protective Instrumentation,'' and 3.3.2.1, ''Engineered Safety Feature Actuation System Instrumentation'' to restrict the time a reactor protection or engineered safety feature actuation channel can be in the bypass position to 48 hours, from an indefinite period of time. Most of these proposed changes were originally submitted in a letter dated May 14, 1998. The licensee withdrew its original request and submitted a new request in its November 10, 1998, letter.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO [Northeast Nuclear Energy Company] has reviewed the proposed changes and has concluded that they do not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to restrict the time [* * *] reactor protection or engineered safety feature actuation channels can be in the bypass position to 48 hours, from an indefinite period of time, has no effect on the design of the Reactor Protection System (RPS) or the Engineered Safety Feature Actuation System (ESFAS) and does not affect how these systems operate. In addition, this will minimize the susceptibility of these systems to the remote possibility of fault propagation between channels. However, this proposed change will require an inoperable pressurizer high pressure reactor protection channel to be placed in the tripped condition within 48 hours. With a pressurizer pressure channel in the tripped condition, the high failure of a second pressurizer pressure channel would initiate a reactor trip and open both pressurizer power operated relief valves (PORVs). Opening the pressurizer PORVs would result in an undesired loss of primary coolant. Thus, this change will increase the probability of occurrence of a previously evaluated accident. However, this would not place the plant in an unanalyzed condition since FSAR [Final Safety Analysis Report] Section 14.6.1 analyzes the inadvertent opening of both PORVs, the release of reactor coolant can be terminated by closure of the PORV block valves from the control room, and the Emergency Operating Procedures provide guidance on how to address this situation. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to increase the time a second RPS or ESFAS channel can be removed from service (from 2 hours to 48 hours), provided one of the inoperable channels is placed in the tripped condition, has no effect on the design of the RPS or ESFAS and does not affect how these systems operate. These systems will still function as designed to mitigate design basis accidents. However, this change will also impact the probability of occurrence of a previously evaluated accident since it will allow a second pressurizer high pressure reactor protection channel to be placed in the tripped condition for 48 hours instead of the current 2 hour time limit. The impact of this change is bounded by the proposed change to require an inoperable pressurizer high pressure reactor protection channel to be placed in the tripped condition after 48 hours as previously discussed. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to apply a more restrictive action statement to the loss of turbine load reactor trip function has no effect on the design of this trip function and does not affect how this trip function operates. Also, this trip function is not assumed to operate to mitigate any design basis accident. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to require a channel calibration every 18 months for the loss of turbine load reactor trip function and for the wide range logarithmic neutron flux monitors has no effect on the design of either the loss of turbine load reactor trip function or the wide range logarithmic neutron flux monitors. Also, neither of these are assumed to operate to mitigate any design basis accident. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to exclude the neutron detectors from the channel calibration requirement has no effect on the design of the neutron detectors and has no significant effect on how these detectors operate. The detectors are passive devices with minimal drift. In addition, slow changes in the sensitivity of the linear power range flux detectors is compensated for by performing the daily calorimetric calibration and the monthly calibration using the incore detectors. These detectors will still function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to add the license amendment numbers to Technical Specification Page 3/4 3–9 will not result in a technical change to the Millstone Unit No. 2 Technical Specifications. The RPS will continue to function as before. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to correct the surveillance requirement referenced in an action statement has no effect on the design of the ESFAS and does not affect how this system operates. The ESFAS will still function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to add a reference to the reactor coolant pump low speed reactor trip function to a note that states this trip

may be bypassed <5% power, and that the bypass must be automatically removed [greater than or equal to] 5% will not affect this reactor trip function. This bypass capability currently exists in the design of the Millstone Unit No. 2 RPS, and is the same bypass feature referenced for the reactor coolant flow low reactor trip function. Both of these reactor trip functions provide protection for a reduction in RCS [reactor coolant system] flow. The addition of this note will not result in any technical change to the Millstone Unit No. 2 RPS. The RPS will continue to function as before. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The proposed change to correct the power level high trip setpoint on Technical Specification Page 2–4 will not result in any change to the actual plant setpoint for this RPS trip function. As a result of this proposed change, the setpoint listed on Page 2–4 will agree with the setpoint previously approved by the NRC, and currently used by the RPS. The change has no effect on the design of the RPS and does not affect how this system operates. The RPS will still function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

The information added to the Bases of the affected Technical Specifications to provide a discussion of how the RPS and ESFAS are affected by the proposed changes, the effect the action statements have on the operation of the RPS and ESFAS, and to discuss the impact of surveillance testing on RPS operability will have no effect on equipment operation. The RPS and ESFAS will continue to function as designed to mitigate design basis accidents. Therefore, this change does not significantly increase the probability or consequences of an accident previously evaluated.

Thus, this License Amendment Request does not impact the probability of an accident previously evaluated nor does it involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. They do not alter the way any structure, system, or component functions and do not alter the manner in which the plant is operated. The proposed changes do not introduce any new failure modes. They will not alter assumptions made in the safety analysis and licensing basis. The RPS and the ESFAS will still function as designed to mitigate design basis accidents.

Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes will not reduce the margin of safety since they have no impact on any safety analysis assumption. The proposed changes do not decrease the scope of equipment currently required to be operable or subject to surveillance testing, nor do the proposed changes affect any instrument setpoints or equipment safety functions.

The effectiveness of Technical Specifications will be maintained since the changes will not alter the operation of any RPS or ESFAS function. In addition, most of the changes are consistent with the Calvert Cliffs RPS and ESFAS Technical Specifications model provided in Enclosure 3 of the NRC correspondence dated April 16, 1981 [R. A. Clark letter to W. G. Council, Evaluation of the Reactor Protection System Inoperable Channel Condition at Millstone Nuclear Power Station, Unit No. 2, dated April 16, 1981] and with the new, improved Standard Technical Specifications (STS) for Combustion Engineering plants (NUREG–1432).

Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.

Date of amendment request: November 25, 1997, as supplemented September 25 and November 11, 1998. The September 25, 1998, supplement incorrectly references the original request as October 31, 1997, rather than November 25, 1997.

Description of amendment request: The proposed amendment would revise the Technical Specifications for the condensate storage tank (CST) low level suction transfer setpoint for the high pressure coolant injection (HPCI) and reactor core isolation cooling (RCIC) systems to allow removing one CST from service for maintenance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed setpoint change and temporary level switch cross connection will not affect the way the suction transfer equipment functions, introduce new failure modes, or significantly increase the probability of failure of this equipment.

A slight increase in the probability of failure of the CST suction low level automatic transfer function may result, however, during plant operation with one CST in service and the CST low level transfer switches temporarily cross connected. This temporary modification preserves the redundancy of the automatic level transfer logic and allows HPCI and RCIC to remain aligned to the condensate storage system.

When the switches are cross connected, sections of piping and instrument tubing will be shared by both level switches. The probability that freezing or plugging of a common section of piping or tubing will disable both switches will be slightly higher than during two CST operation with the level switch piping in its normal configuration.

The level switches would be cross connected at infrequent intervals to permit prudent and timely CST preventive maintenance and at the same time continue to provide HPCI and RCIC with a source of reactor makeup quality water. In the unlikely event of a spurious actuation of either system, only high quality water would be injected into the reactor vessel.

Overall, the possibility of freezing or plugging of piping and tubing associated with the automatic transfer level switches has been shown to be very small, with or without the temporary level switch cross connection in place. During periods of operation with one CST, we believe the small additional opportunity for level instrument failure due to freezing or plugging is more than compensated for by the benefits of maintaining a high quality source of water to the HPCI and RCIC pumps.

The proposed level switch cross connection will not affect the way the suction transfer equipment functions. The cross connection tubing will be evaluated for seismic loads equivalent to the existing instrument piping. Rupture of the tubing will not prevent the function of the level switches from being accomplished and no other equipment important to safety is impacted by these changes.

Technical Specification and other specified margins of safety are effectively increased by the proposed changes. The HPCI/RCIC low CST level suction transfer level is being adjusted upward in the conservative direction.

The changes do not present the opportunity for a new release path for radioactive material.

These changes have no impact on the protection of the health and safety of the public.

(2) The proposed amendment will not create the possibility of a new or different

kind of accident from any accident previously analyzed.

No system, structure, or component (SSC) described in the USAR [Updated Safety Analysis Report] as important to safety is affected by these changes except for the low level CST HPCI/RCIC suction transfer function. Postulated malfunctions related to the proposed changes to the low level switches are bounded by the failure of the HPCI system, which has been previously evaluated in the USAR. The RCIC system is not relied upon to mitigate any USAR design basis accident.

No new types of credible events could be identified which could be created by the proposed setpoint change and level switch cross connection. No new failure modes are associated with the proposed changes [sic].

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

No margin of safety is reduced. Technical Specification and other specified margins of safety are effectively increased by the proposed activities. The HPCI/RCIC low CST level suction transfer setpoint is being adjusted upward in the conservative direction. Cross connecting the level switches associated with this transfer will preserve the redundancy built into the logic during extended outages of one CST. A small additional reduction in the reliability of the automatic transfer logic due to possible freezing or plugging of common instrument piping results when the level switches are temporarily cross connected during infrequent periods of operation with one CST in service. This small reduction in reliability of the automatic transfer function is fully compensated for by the ability to perform necessary and prudent preventive maintenance on the CSTs while at the same time supplying the HPCI and RCIC systems with water from the preferred high quality source.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota.

Date of amendment requests: November 25, 1998.

Description of amendment requests: The proposed amendments would modify the technical specifications (TS) (TS 3.2 and Table 3.5–2B) to allow limited inoperability of boric acid storage tank (BAST) level channels and transfer logic channels to provide for required testing and maintenance of the associated components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment[s] will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect any system that is a contributor to initiating events for previously evaluated design basis accidents. Therefore, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated. The proposed Actions 34, 35 and 36 will allow limited continued plant operation with portions of BAST to RWST [refueling water storage tank] transfer instrumentation inoperable. However, because the proposed actions place time limits on inoperability comparable to those already approved for use in the Prairie Island Technical Specifications the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated. The remaining proposed changes to Table TS.3.5–2B and to Specification 3.2B are administrative in nature. The changes to Table 3.5–2B incorporate design information on the BAST to RWST transfer instrumentation which clarifies the operability requirements for the instrumentation. The changes to Specification 3.2.B add a reference to Table TS.3.5–2B. Therefore, because of the administrative nature of the changes, they do not involve a significant increase in the consequences of an accident previously evaluated.

2. The proposed amendment[s] will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not alter the design or function of any plant component and do not install any new or different equipment. The proposed changes do not alter the operation of any plant component in a manner which could lead to a new or different kind of accident. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment[s] will not involve a significant reduction in the margin of safety.

The proposed Actions 34, 35 and 36 will allow limited continued plant operation with portions of the BAST to RWST transfer instrumentation inoperable. However, because the proposed actions place time limits on inoperability comparable to those already approved for use in the Prairie Island Technical Specifications the proposed changes do not involve a significant reduction in the margin of safety. The remaining proposed changes to Table TS.3.5–2B and to Specification 3.2.B are administrative in nature. The changes to Table 3.5–2B incorporate design information on the BAST to RWST transfer instrumentation which clarifies the operability requirements for the instrumentation. The changes to Specification 3.2.B add a reference to Table TS.3.5–2B. Therefore, because of the administrative nature of the changes, they do not involve a significant reduction in the margin of safety.

NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California.

Date of amendment request: September 3, 1998.

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to change TS 3.4.9.1, ''Reactor Coolant System—Pressure/Temperature Limits,'' Figure 3.4–2, ''Reactor Coolant System Heatup Limitations—Applicable Up to 12 EFPY,'' and Figure 3.4–3, ''Reactor Coolant System Cooldown Limitations—Applicable Up to 12 EFPY,'' to extend the applicability up to 16 effective full power years (EFPY). The affected TS Bases would also be appropriately revised.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Figures 3.4–2 and 3.4–3 of Technical Specification (TS) 3.4.9.1 and the associated Bases adjust the reactor

coolant system (RCS) heatup and cooldown pressure/temperature (P/T) limits to permit operation through 16 effective full power years (EFPY). The 16 EFPY P/T limits are more restrictive than the current limits; this accounts for an expected incremental increase in reactor vessel embrittlement, and assures the reactors will continue to be operated within acceptable stresses and at temperatures for which the reactor vessel metal exhibits ductile properties. The P/T limits developed for 16 EFPY were determined in accordance with 10 CFR 50, Appendix G, and maintain the same margins of safety as the current limits. The proposed changes will not impact the probability of overpressurization or brittle fracture of the vessel, and therefore will not impact the consequences of an accident.

The present low temperature overpressure protection (LTOP) pressure and enable temperature setpoints were reviewed and found to be acceptable and conservative for use through 16 EFPY, based on use of ASME Code Case N–514, which provides acceptable margins to the prevention of vessel overpressurization and brittle fracture. Therefore, there is no change to the consequences of accidents previously analyzed. Since no changes are proposed in the actual LTOP setpoints, nor any physical alteration of the LTOP system, nor a change to the method by which the LTOP system performs its function, there would be no change to the probability of an accident previously evaluated. The proposed change to the Bases incorporates use of ASME Code Case N–514, which will benefit DCPP by not resulting in a reduced RCS P/T window and reduced power-operated relief valve (PORV) pressure setpoint for LTOP. This maintains the current level of operator flexibility during heatup and cooldown, and prevents an increase in the probability of an accident associated with an inadvertent PORV actuation.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to TS 3.4.9.1, ''Reactor Coolant System—Pressure/Temperature Limits,'' do not involve any physical alteration to any plant system or change the method by which any safety-related system performs its function. The changes to TS 3.4.9.1 account for the effects of an incremental increase in reactor vessel embrittlement and are requested in order to restrict future reactor operation to within acceptable stress levels and temperature regimes in accordance with 10 CFR 50, Appendix G, requirements. These changes are needed to maintain the current P/T limit margins of safety as defined by 10 CFR 50, Appendix G, and ASME XI, Appendix G, for operation through 16 EFPY. The possibility of a new kind of accident such as catastrophic failure of the reactor vessel is prevented by maintaining acceptable margins of safety.

The present LTOP pressure setpoint was reviewed and found to be acceptable and conservative for the extension of the P/T curves to 16 EFPY.

Additionally, the proposed changes will not affect the ability of the LTOP system to provide pressure relief at low temperatures, thereby maintaining the LTOP design basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to TS 3.4.9.1 adjust the RCS heatup and cooldown P/T limits to permit operation through 16 EFPY. The P/T limits have been determined in accordance with 10 CFR 50, Appendix G, and include the safety margins with regard to brittle fracture required by the ASME Section XI, Appendix G, which maintain the same margins of safety as the current limits.

The LTOP setpoints were reevaluated using the requirements of ASME Code Case N–514. This code case was developed to provide the necessary margins of safety for the prevention of reactor vessel overpressurization and brittle fracture. The LTOP evaluation results conclude the current LTOP setpoints are conservative for operation through 16 EFPY. In addition, avoiding an unnecessary reduction in the LTOP, the PORV pressure setpoint prevents an increase in the likelihood of an inadvertent PORV actuation.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: October 29, 1998.

Description of amendment request: The proposed change will relocate Technical Specification 3/4.7.9 requirements for Snubbers and the associated Bases to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates requirements and surveillances for Technical Specification 3/4.7.9 that do not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The affected components are not assumed to be initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirements and surveillances for these affected systems and components will be relocated from the Technical Specifications to the Technical Requirements Manual, which is incorporated in the STP UFSAR and will be maintained pursuant to 10 CFR 50.59. In addition, the Snubber operability is addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. The associated changes to the Index are administrative. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change relocates requirements and surveillances applicable to snubbers which does not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. The associated changes to the Index are administrative. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change relocates requirements and surveillances for snubbers, that do not meet the 10 CFR 50.36(c)(2)(ii) criteria for inclusion in Technical Specifications. The change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structure, system, component, or variable remain the same as the existing Technical Specifications. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety. The associated changes to the Index are administrative and have no potential effect on the margin of safety.

The proposed change is also consistent with the Westinghouse Plants Standard Technical Specification, NUREG–1431 approved by the NRC Staff, revising the Technical Specifications to reflect the approved content ensures no significant reduction in the margin of safety. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: October 29, 1998.

Description of amendment request: The proposed change will relocate Specification 3/4.3.4, ''Turbine Overspeed Protection,'' to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates the requirements of specification 3/4.3.4, ''Turbine Overspeed Protection,'' that do not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The specification is not related to any assumed initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirement to perform the testing is not altered by the proposed change. The requirements of the limiting condition for operation and surveillance testing will be relocated from the Technical Specifications to the Technical Requirements Manual, which is incorporated in the STP UFSAR and will be maintained pursuant to 10 CFR 50.59. In addition, the surveillance testing details are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change relocates the requirements of specification 3/4.3.4, ''Turbine Overspeed Protection,'' that do not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(2)(ii). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change relocates the requirements of specification 3/4.3.4, ''Turbine Overspeed Protection,'' that do not meet the 10 CFR 50.36 criteria for inclusion in Technical Specifications. The change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition, the relocated requirements applicable to the turbine overspeed protection remain the same as the existing Technical Specifications requirements. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety.

The proposed change is also consistent with the Westinghouse Plants Standard Technical Specification, NUREG–1431 approved by the NRC Staff. Revising the Technical Specifications to reflect the approved content, ensures no significant reduction in the margin of safety. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: October 29, 1998.

Description of amendment request: The proposed change will relocate descriptive details of Surveillance Requirement 4.8.1.1.2.g, regarding maintenance of the diesel generator fuel oil storage tanks (DGFOSTs), to the Technical Requirements Manual.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change relocates descriptive details of surveillance requirement 4.8.1.1.2.g that do not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(3). The affected descriptive testing details are not related to any assumed initiators of analyzed events and are not assumed to mitigate accident or transient events. The requirement to perform the testing is not altered by the proposed change. The descriptive details of the surveillance testing will be relocated from the Technical Specifications to the Technical Requirements Manual, which is incorporated in the STP UFSAR and will be maintained pursuant to 10 CFR 50.59. In addition, the surveillance testing details are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change relocates descriptive details of surveillance testing applicable to the DGFOSTs, which do not meet the criteria for inclusion in Technical Specifications as identified in 10 CFR 50.36(c)(3). The change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The change will not impose different requirements, and adequate control of information will be maintained. This change will not alter assumptions made in the safety analysis and licensing basis. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change relocates descriptive details of the surveillance testing applicable to the DGFOSTs, that do not meet the 10 CFR 50.36 criteria for inclusion in Technical Specifications. The change will not reduce a margin of safety since it has no impact on any safety analysis assumptions. In addition,

the relocated surveillance testing details for the DGFOSTs remain the same as the existing Technical Specifications. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety.

The proposed change is also consistent with the Westinghouse Plants (Improved) Standard Technical Specification, NUREG–1431, approved by the NRC Staff. Revising the Technical Specifications to reflect the approved NUREG–1431 content ensures no significant reduction in the margin of safety. Therefore, the change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5869.

NRC Project Director: John N. Hannon.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application request: October 31, 1997, as supplemented by letter dated September 29, 1998. This notice supersedes the staff's proposed no significant hazards consideration determination evaluation for the requested changes that was published on January 14, 1998 (63 FR 2283).

Description of amendment request: The proposed amendment application would change Tables 3.3–3, 3.3–4, and 4.3–2 of the technical specifications (TS) to revise the engineered safety feature actuation system (ESFAS) Functional Unit 6.f, Loss of Offsite Power-Start Turbine-Driven Pump. Table 3.3–2 would be revised to create separate functional units for the analog and digital portions of the ESFAS function associated with starting the turbine-driven auxiliary feedwater pump (TDAFP) upon a loss of offsite power. Table 3.3–4 would be revised to create separate functional units for the analog and digital portions of the ESFAS function associated with starting the TDAFP upon a loss of offsite power. Table 4.3–2 would be revised to create separate functional units for the analog and digital portions of the ESFAS function associated with starting the TDAFP upon a loss of offsite power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The recognition that different operability and surveillance requirements apply to analog vs. digital circuitry does not impact any previously analyzed accidents. The proposed change will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed change does not alter the current method or procedures for meeting the surveillance requirements in Table 4.3–2. The proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety-related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The separation of analog and digital portions of Functional Unit 6.f will not impact the normal method of plant operation.

The operability requirements, ACTION Statement, and surveillance requirements for the analog portion, new Functional Unit 6.f.1), are identical to those of Functional Unit 8.a. The requirements for the digital portion, new Functional Unit 6.f.2), are consistent with the current Technical Specifications, other than the new ACTION Statement 39 provisions that eliminate the transient imposed on the plant from a 3.0.3 shutdown and the performance of a refueling interval TADOT [Trip Actuating Device Operational Test]. There is no safety benefit associated with shutting the plant down under LCO 3.0.3, if both logic trains were inoperable, when considering the fact that the pump is allowed to be inoperable for 72 hours. This unnecessary shutdown would be detrimental to plant safety. The ''new'' TADOT requirement is a reflection of current plant testing practice. These changes do not change any ESFAS design standards and are appropriate for digital functions such as this. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri.

Date of application request: July 30, 1998.

Description of amendment request: The proposed amendment application would change Table 4.3–2 of the technical specifications (TS) by adding a table notation to clarify that verification of the time delays associated with engineered safety feature actuation system (ESFAS) Functional Units 8.a and 8.b, ''Loss of Power,'' is only performed as part of the channel calibration.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The protection systems will continue to function in a manner consistent with the plant design basis. The proposed change will not affect any of the analysis assumptions for any of the accidents previously evaluated. Neither the Trip Setpoints and Allowable Values in Technical Specification Table 3.3–4 nor the response times listed in FSAR [Final Safety

Analysis Report] Table 16.3–2 are affected. The proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety-related equipment to perform its intended function. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes associated with this license amendment nor are there any changes in the method by which any safety-related plant system performs its safety function. The normal manner of plant operation is unchanged. Verification of the time delays need not be performed on a monthly basis when response time testing is performed on an alternating 18 month basis per the provisions of Technical Specifications 4.3.1.2 and 4.3.2.2 and the verification of LOCA [loss-of-coolant accident] and shutdown sequencer timing and analog channel time constant calibrations are performed on a refueling frequency. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, DNBR [Departure from Nucleate Boiling Ratio] limits, F_Q, Nuclear Enthalpy Rise Hot Channel Factor, LOCA PCT [Peak Clad Temperature], peak local power density, or any other margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Missouri-Columbia, Elmer Ellis Library, Columbia, Missouri 65201–5149.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339. North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia.

Date of amendment request: November 18, 1998.

Description of amendment request: The proposed amendments would make changes to the North Anna Power Station (NAPS), Unit 1 and 2, Technical Specifications (TS) Surveillance Requirement (SR) 4.7.13.1, ''Groundwater Surveillance Requirements'' and related Table 3.7–6, ''Allowable Groundwater Levels—Service Water Reservoir.'' The change in the SR requests that the measuring device numbers assigned to piezometers be eliminated from the TS SR in order to avoid redundancy, and eliminate confusion as well as the need to initiate TS changes whenever new piezometers are added, older devices are replaced or abandoned in-place. The proposed change in groundwater threshold levels will raise the allowable groundwater levels to those consistent with the allowable levels in the ''Stability of Service Water Reservoir (SWR) Slope Under Increased Phreatic Surface'' calculations.

Basis for proposed no significant hazards consideration determination: as required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed TS Change Request will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, since: (a) removing non-safety related SWR piezometer device numbers from the TS and raising TS allowable groundwater surface threshold elevation levels in the southeast section of the SWR will have no effect on the way the safety-related Service Water System was designed to operate, (b) Periodic Test Procedures will continue to identify all open-tube piezometers and require that they be monitored in order to obtain as much information as possible regarding changing groundwater levels, (c) sufficient redundancy will continue to exist since at least two (2) open-tube (standpipe-type) piezometers, not subject to mechanical failure, have been installed in each of the three (3) SWR zones to meet the TS Surveillance Requirement that ''at least one measurement per zone be available'' and (d) recent calculations have confirmed that raising the allowable water level in the southeast section of the SWR will not affect the stability of the SWR dike as indicated in the original design basis calculation.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, since: (a) the frequency of piezometer monitoring and the intent of monitoring groundwater surface threshold elevations in order to maintain stability of the SWR slope have not changed, (b) no physical modification to the plant or new mode of plant operation is involved, (c) changes are consistent with the assumptions made in the Safety Analyses and original design basis calculation and (d) failure of the SWR dike and ensuing loss of service water was the most serious accident postulated and considered credible. Operation of the SWR is not being changed. Therefore, a new or different kind of accident is [not] created by the change in groundwater level. In addition, since both the SWR and Lake Anna reservoir provide redundant sources of service water, failure of the SWR is not considered as a credible accident.

3. Involve a significant reduction in a margin safety, since: (a) increasing the allowable phreatic surface in the SE section of the SWR dike will not lower the factor of safety with respect to the stability of the SWR as defined by the original design basis calculation, (b) the margin to failure of the SWR dike has been proven by calculation to have not been reduced as defined by the original design basis calculation and (c) subject changes will not impact the performance of structures, systems or components relied upon for accident mitigation or any safety analysis assumptions, therefore the margin of safety is not changed by the proposed [change] in groundwater level at the SWR.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for Licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the

Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of 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 rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of application for amendment: February 27, 1997, as supplemented August 24, 1998.

Brief description of amendment: This amendment changes Technical Specification (TS) 3/4.4.5, ''Steam Generators,'' by adding sleeve installation as an alternative to tube plugging for repairing degraded steam generators.

Date of issuance: November 23, 1998.

Effective date: November 23, 1998.

Amendment No.: 85.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17225).

The August 24, 1998, supplemental letter provided clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois.

Date of application for amendment: August 14, 1998, as supplemented by letters dated October 13 and November 23, 1998.

Brief description of amendment: The amendment changes the Quad Cities Technical Specifications (TS) to reflect the use of Siemens Power Corporation ATRIUM–9B fuel. Specifically the amendment incorporates the following into the TS: (a) new methodologies that will enhance operational flexibility and reduce the likelihood of future plant derates, (b) administrative changes that eliminate the cycle specific implementation of ATRIUM–9B fuel and adopt Improved Standard Technical Specification language where appropriate, and (c) changes to the Minimum Critical Power Ratio.

Date of issuance: December 3, 1998.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 182.

Facility Operating License No. DPR–29: The amendment revised the TSs.

Public comments requested as to proposed no significant hazards consideration: Yes (63 FR 59588 dated November 4, 1998). This notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by December 4, 1998, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated December 3, 1998.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida.

Date of application for amendment: October 31, 1997, as supplemented December 13, 1997, February 27 and April 24, 1998.

Brief description of amendment: The amendment proposed to revise the Final Safety Analysis Report (FSAR) to reflect changes to the credited methodology for boron precipitation prevention, as approved by the NRC.

Date of issuance: November 30, 1998.

Effective date: November 30, 1998.

Amendment No.: 171.

Facility Operating License No. DPR–72: Amendment revised the Operating License to reflect the change to the FSAR.

Date of initial notice in **Federal Register**: November 12, 1997 (62 FR 60731). The supplemental letters contained clarifying information that did not change the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida.

Date of application for amendment: October 29, 1998.

Brief description of amendment: The amendment revised the terminology used in the St. Lucie Plant Technical Specifications (TS) relative to the implementation and automatic removal of certain protection system trip bypasses to ensure that the meaning of explicit terms used in the TS are consistent with the intent of the stated requirements.

Date of Issuance: November 24, 1998.

Effective Date: November 24, 1998.

Amendment No.: 98.

Facility Operating License No. NPF–16: Amendment revised the TS.

Date of initial notice in **Federal Register**: November 5, 1998 (63 FR 59809).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear

Generating Station, Ocean County, New Jersey.

Date of application for amendment: July 21, 1998.

Brief description of amendment: The amendment (1) revises Technical Specification (TS) 6.2.2.2(a) to provide flexibility to accommodate unexpected absence of on-duty shift crew members, (2) eliminates reference to the Manager, Plant Operations in Specification 6.2.2.2(j) as the position has been eliminated, (3) reduces the maximum time in which to forward audit reports to the responsible manager from 60 days to 30 days, (4) replaces the term ''Vice President'' with the term ''Corporate Officer'' in several places in Section 6, and (5) corrects several typographical errors.

Date of Issuance: November 30, 1998.

Effective date: November 30, 1998, to be implemented within 30 days

Amendment No: 203.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 26, 1998 (63 FR 45525).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 30, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan.

Date of application for amendments: October 8, 1998.

Brief description of amendments: The amendments would revise the Technical Specification Section 3.4.1.3, ''Reactor Coolant System—Shutdown,'' and its associated bases to provide separate requirements for the Reactor Coolant system in MODE 4, MODE 5 with the reactor coolant loops filled, and MODE 5 with the reactor coolant loops not filled.

Date of issuance: November 27, 1998.

Effective date: November 27, 1998, with full implementation within 30 days.

Amendment Nos.: 224 and 208.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 27, 1998 (63 FR 57322).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 27, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York.

Date of application for amendment: June 19, 1998, as supplemented November 6, 1998.

Brief description of amendment: This amendment changes Technical Specification 3.2.2 and the associated Bases to update pressure-temperature operating curves and tables for continued plant operation up to 28 effective full-power years.

Date of issuance: November 25, 1998.

Effective date: As of the date of issuance to be implemented before core operation exceeds 18 effective full-power years.

Amendment No.: 164.

Facility Operating License No. DPR–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40557)

The November 6, 1998, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York.

Date of application for amendment: November 25, 1998, as supplemented November 27, 1998.

Brief description of amendment: This change adds a note to certain specific containment isolation valves listed in Table 4.4–1. The note permits the licensee to operate Indian Point Unit 3 for the remainder of the current cycle (Cycle 10) without pneumatic leakage rate testing of these isolation valves. These valves have been leakage rate tested in the past using water pressurized with nitrogen gas. Without this emergency amendment, there would have had to delay its resumption of plant operation at power until the Technical Specifications required test was performed.

Date of issuance: November 27, 1998.

Effective date: As of the date of issuance to be implemented immediately.

Amendment No.: 184.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration, are contained in a Safety Evaluation dated November 27, 1998.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Mr. David E. Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa, Director.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York.

Date of application for amendment: August 3, 1998, as supplemented October 20, 1998.

Brief description of amendment: The amendment provides for application of the existing minimum critical power ratio safety limit to Cycle 14 operation.

Date of issuance: November 25, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 246.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48264).

The October 20, 1998, supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Southern California Edison Company, et al., Docket No. 50–362, San Onofre Nuclear Generating Station, Unit No. 3, San Diego County, California.

Date of application for amendment: September 22, 1998.

Brief description of amendment: The proposed amendment would modify the Technical Specifications (TS) to change the parameter used to establish and remove the bypasses for high reactor power trips. The parameter would be changed from the current ''THERMAL POWER'' to logarithmic power.

Date of issuance: November 23, 1998.

Effective date: November 23, 1998.

Amendment Nos.: 136.

Facility Operating License No. NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 21, 1998 (63 FR 56259).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama.

Date of application for amendments: June 12 and August 14, 1998 (TS–390).

Brief description of amendments: Changes the technical specifications (TS) to accommodate surveillance intervals to be compatible with a 24-month fuel cycle.

Date of issuance: November 30, 1998.

Effective date: November 30, 1998.

Amendment Nos.: 235, 255, 215.

Facility Operating License Nos. DPR–33, DPR–52 and DPR–68: Amendments revised the TS.

Date of initial notice in **Federal Register**: September 9, 1998 (63 FR 48269).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 30, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: August 21, 1996 (TS 96–03).

Brief description of amendments: The amendments revise the SQN Technical Specification (TS) 3.7.1.3 to extend the limiting condition for operation of the condensate storage tanks to Mode 4 when steam generator is relied upon for heat removal.

Date of issuance: November 19, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 238 and 228.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TSs.

Date of initial notice in **Federal Register**: October 9, 1996 (61 FR 52967).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee.

Date of application for amendments: April 30, 1998 (TS 98–01).

Brief description of amendments: The amendments revise the SQN Technical Specification Surveillance Requirement 4.4.3.2.1.b by changing the mode requirement to allow power-operated relief valve stroke testing in Modes 3, 4, and 5 with a steam bubble in the pressurizer rather than only in Mode 4.

Date of issuance: November 19, 1998.

Effective date: As of the date of issuance to be implemented no later than 45 days after issuance.

Amendment Nos.: 239 and 229.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register**: July 15, 1998 (63 FR 38204).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee.

Date of application for amendment: May 6, as supplemented June 5, 1998.

Brief description of amendment: The requested changes would allow an increase in the limit, up to 5.0 percent, for the U–235 enrichment of new (unirradiated) fuel stored in the new fuel storage racks and limit the fuel storage locations to assure that k-effective values are met.

Date of issuance: December 1, 1998.

Effective date: December 1, 1998.

Amendment No.: 15.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: August 12, 1998 (63 FR 43214).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1998.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440 Perry Nuclear Power. Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: September 3, 1998.

Brief description of amendment: This amendment revised Technical Specification 3.8.3, ''Diesel Fuel Oil, Lube Oil, and Starting Air,'' by increasing the Division 3 Diesel Generator fuel oil level requirements to account for (1) a rounding error in the calculation, and (2) the unusable volume due to vortex formation at the eductor suction nozzle located in the fuel oil storage tank.

Date of issuance: November 23, 1998.

Effective date: November 23, 1998.

Amendment No.: 94.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 7, 1998 (63 FR 53960).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.

Date of application for amendment: August 28, 1997.

Brief description of amendment: This amendment revised Pressure-

Temperature (P/T) Limits contained in Technical Specification 3.4.11 as a result of the Reactor Vessel Material Surveillance Program Requirements contained in Appendix H of 10 CFR Part 50.

Date of issuance: December 2, 1998.

Effective date: December 2, 1998.

Amendment No.: 95.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61846).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin.

Date of application for amendment: April 15, 1998 as supplemented by letters dated August 13, 1998, September 28, 1998, and November 24, 1998.

Brief description of amendment: The amendment incorporates changes to TS 2.1, ''Safety Limits'' and TS 3.10, ''Control Rod and Power Distribution Limits.'' These changes revise the power distribution peaking factor limits and limits operating parameters related to the Minimum Departure from Nucleate Boiling Ratio (MDNBR) in support of cycle 23 fuel and reload changes. A change associated with the fuel and reload changes, is the removal, from the current licensing basis, of the fuel pool turbine missile hazards analysis

Date of issuance: December 2, 1998.

Effective date: December 2, 1998.

Amendment No.: 142.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: June 5, 1998 (63FR25120).

The supplemental submittals did not affect the initial determination of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Dated at Rockville, Maryland, this 9th day of December 1998.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–33206 Filed 12–15–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Boise Cascade Corporation, Common Stock, $2.50 Par Value; Associated Common Stock Purchase Rights); File No. 1–5057

December 10, 1998.

Boise Cascade Corporate (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities (''Securities'') from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The reasons cited in the application for withdrawing the Securities from listing and registration include the following:

The Securities of the Company are currently listed on the New York Stock Exchange (''NYSE''), Chicago Stock Exchange (''CHX''), and PCX. The Company's Securities first traded on the PCX in 1965. Currently, the number of shares traded through the PCX is minimal, and has been declining over the last several years.

As part of an overall business review, the Company's management and Board of Directors considered the manner in which its stock is traded in the marketplace. The Company found the majority (well over 90%) of its Securities are traded on the NYSE. After considering many factors, the Company's management and Board of Directors determined that no significant business reasons exist for the Company to continue listing its Securities on the PCX. The Company intends to maintain its listing on the NYSE.

In compliance with the Exchange's rules, the Company sent the PCX a letter requesting voluntary delisting. The letter set out the basis for the Company's decision to delist, and provided a certified copy of the Board resolution authorizing this action.

On November 3, 1998, the Equity Listings Committee of the PCX approved the Company's request to be removed from listing and registration on the Exchange.

This application relates solely to the withdrawal from listing of the Company's Securities from the PCX and shall have no effect upon the continued listing of the Securities on the NYSE or the CHX.

Any interested person may, on or before January 4, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–33301 Filed 12–15–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

''FEDERAL REGISTER'' CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: To Be Published.

CHANGE IN THE MEETING: Date Change/ Time Change.

The closed meeting scheduled for Thursday, December 17, 1998, at 11:00 a.m., has been changed to Wednesday, December 16, 1998, at 2:00 p.m.

Commissioner Unger, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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 (202) 942–7070.

Dated: December 14, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–33414 Filed 12–14–98; 12:46 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40767; File No. SR–OPRA–98–2]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Amendment to OPRA Plan Revising the Allocation of Expenses Among the Participant Exchanges

December 9, 1998.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 (''Exchange Act''), notice is hereby given that on November 25, 1998, the Options Price Reporting Authority (''OPRA''),[1] submitted to the Securities and Exchange Commission (''SEC'' or ''commission'') an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information (''Plan''). The amendment revises the internal allocation of operating expenses among OPRA's separate accounting centers. OPRA has designated this proposal as concerned solely with the administration of the Plan, permitting the proposal to become effective upon filing pursuant to Rule 11Aa3–2(c)(3)(ii) under the Exchange Act.[2] The Commission is publishing this notice to solicit comments from interested persons on the proposed amendment.

I. Description and Purpose of the Amendment

The purpose of the amendment is to revise the internal allocation of OPRA's operating expenses among OPRA's separate accounting centers to make the allocation to a given accounting center depend upon the percentage of OPRA's total message traffic represented by that accounting center. This will replace the current allocation formula under which operating expenses are allocated among accounting centers based on the proportion of OPRA's output line capacity, measured in kilobytes per second, that is available to each accounting center. Both under the current Plan and the proposal, the allocation formula applies only to those accounting centers for which there are separate access fees, which at present includes only the Basic (equity and index) and foreign currency option (''FCO'') accounting centers. The allocation of operating expenses between accounting centers for which there are bundled access fees (*i.e.*, between the equity and index components of the Basic accounting center) will be unaffected by this proposal. Such expenses will continue to be allocated in the same manner as revenues, based on the relative number of each accounting center's cleared trades at The Options Clearing Corporation.

The proposed change reflects OPRA's recent modification of its communications network to utilize Internet-protocol (IP) technology. As a result, it is no longer meaningful to determine allocation of expenses based on line output capacity to OPRA's accounting centers. Also, in light of changes in the relative volume of trading in FCO options, an allocation of expenses among accounting centers based on any measure of processor capacity is no longer considered to be appropriate. The proposed amendment will affect only the internal administration of OPRA with respect to the allocation of operating expenses among the Participant Exchanges, and it will have no effect on fees or charges paid to OPRA by vendors and subscribers.

II. Solicitation of Comments

Pursuant to Rule 11Aa3–2(c)(3),[3] the amendment is effective upon filing with the Commission. The Commission may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3–2(c)(2),[4] if it appears to the Commission that such action is necessary or appropriate in the public interest; for the protection of investors and the maintenance of fair and orderly markets; to remove impediments to, and perfect the mechanisms of, a National Market System; or otherwise in furtherance of the purposes of the Exchange Act.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed plan amendment 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, and all written statements with respect to the proposed plan amendment that are filed with the Commission, and all written communications relating to the proposed plan amendment between the Commission and any person, other than those 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. Copies of the filing will also be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–98–2 and should be submitted by January 6, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33238 Filed 12–15–98; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 2947]

Public Meeting on Government Activities on the Negotiation of a Protocol on Biosafety

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES), Department of State.

ACTION: Notice of public meeting regarding Government Activities on the negotiation of a Protocol on Biosafety.

SUMMARY: This public meeting will provide an overview of the major issues to be addressed in the final negotiating session of the Protocol on Biosafety under the Convention on Biological Diversity (CBD). Negotiations on a protocol to govern the transboundary movement of living modified organisms (LMOs) are scheduled to be completed

[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. Securities Exchange Act Release No. 17638 (Mar. 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 the (''AMEX''); the Chicago Board Options Exchange (''CBOE'')' the New York Stock Exchange (''NYSE''); the Pacific Exchange (''PCX''); and the Philadelphia Stock Exchange (''PHLX'').

[2] 17 CFR 240.11Aa3–2(c)(3)(ii).

[3] 17 CFR 240.11Aa3–2.

[4] 17 CFR 240.11Aa3–2(c)(2).

[5] 17 CFR 200.30–3(a)(29).

February 14–19, 1999 in Cartagena, Colombia. A special session of the CBD Conference of the Parties (COP) is scheduled February 22–23 to approve the agreement as a protocol to the CBD. The United States is a world leader in biotechnology research and production. The United States is working to ensure that a biosafety regime established by the protocol is environmentally responsible, scientifically based and analytically sound, and will not unduly affect research and trade in beneficial biotechnology products. This meeting will take place from 10 a.m. to 12 noon on January 8, 1999 in room 1107, Department of State, 2201 C Street Northwest, Washington, DC. Attendees should use the entrance at C Street and should provide Ms. Jean Bell (202–647–2418) with their date of birth and social security number by January 6. Attendees should bring picture identification. Participants who wish to make statements and those who cannot attend are invited to fax comments to John Tuminaro at 202 736–7351.

FOR FURTHER INFORMATION CONTACT: For further information, contact Mr. John Tuminaro, United States Department of State, OES/ETC, Room 4333, 2201 C Street NW, Washington, DC 20520. Phone 202–647–2418; fax 202–736–7351. Further information regarding the negotiations, including the draft protocol text, can be obtained from the Convention on Biological Diversity website www.biodiv.org.

SUPPLEMENTARY INFORMATION: The United States, through an interagency working group chaired by the Department of State, is engaged in negotiations under the auspices of the Convention on Biological Diversity (CBD) that will result in an international protocol governing the transboundary movement of living modified organisms, and potentially products derived from them, that are developed using modern biotechnology. Negotiations on the protocol are scheduled to conclude with a sixth meeting in Cartagena, Colombia February 14–19, 1999. A special session of the Conference of the Parties (COP) to the CBD will be held in Cartagena February 22–23 to approve the agreement as a protocol to the CBD.

Although not a party to the CBD, the United States has been permitted to participate in the protocol negotiations under the mandate of the Ad Hoc Working Group set up by the CBD COP to undertake the negotiations of the biosafety agreement. Veit Koester of Denmark chairs the Ad Hoc Working Group.

At the core of protocol will be an advance informed agreement procedure (AIA). The AIA would include notice and consent requirements that must be fulfilled before genetically modified organisms can be exported from one country to another. Our experience has demonstrated to us that the risks to biological diversity presented by genetically modified organisms are limited and are not significantly different in kind from those posed by traditionally developed organisms. With this approach, the U.S. has worked consistently bilaterally and multilaterally to ensure that the regime established by the protocol will be environmentally responsible, scientifically based and analytically sound, and will not unduly affect research and trade in beneficial biotechnology products. Although the original mandate of the negotiations was limited to the transboundary movement of living modified organisms, a number of governments have expressed a desire to expand this scope to include trade in products derived from living modified organisms.

The Ad Hoc Working Group has met five times. The first two meetings involved broad descriptions of positions. The third meeting worked to produce a consolidated text of all options proposed on every issue. The fourth and fifth meetings resulted in a streamlined text and the reduction of options on the major issues. The sixth and final meeting is expected to result in a completed protocol. The Department of State has discussed the Biosafety Protocol with interested members of the public prior to and throughout the negotiation process.

Dated: December 4, 1998.

Stephanie J. Caswell,

Acting Director, Office of Ecology and Terrestrial Conservation, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 98–33239 Filed 12–15–98; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–98–25]

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 31, 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, D.C. 20591.

Comments may also be sent electronically to the following interest address: 9–NPRM–CMTS@faa.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, D.C. 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, D.C., on December 10, 1998.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29306.

Petitioner: Gulfstream Aerospace Corporation.

Sections of the FAR Affected: 14 CFR 61.57 (a) and (b).

Description of Relief Sought/ Disposition: To allow Gulfstream pilots employed as crewmembers to use Gulfstream GII, GIII, GIV, or GV aircraft or a level B, C, or D simulator to meet the recent takeoff and landing flight experience requirement.

Docket No.: 28927.
Petitioner: Arctic Air Alaska, Inc.
Sections of the FAR Affected: 14 CFR 135.203.
Description of Relief Sought/ Disposition: To permit Arctic Air Alaska, Inc. to conduct survey flights in remote areas at an altitude of less than 500 feet above ground level.

Docket No.: 29259.
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 119.67(c)(1).
Description of Relief Sought/ Disposition: To permit Mr. Mark James Moran to serve as the director of maintenance at Continental without holding a mechanic certificate with airframe and powerplant ratings.

Docket No.: 29331.
Petitioner: Corporate Wings.
Sections of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/ Disposition: To permit Corporate Wings pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

Docket No.: 29282.
Petitioner: The Boeing Company.
Sections of the FAR Affected: 14 CFR 25.785(d), 25,807(c)(1), 25.857(e), and 25.1447(c)(1).
Description of Relief Sought/ Disposition: To allow carriage of up to four supernumeraries forward of a rigid cargo barrier (or two supernumeraries forward of a 9g crash net), on Boeing MDC Model MD–10 freighter airplanes with Class E cargo compartments.

Docket No.: 29409.
Petitioner: Bombardier Inc.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought/ Disposition: To permit type certification of the DHC–8 Series 400 in performing hydraulic system tests, using the alternate method in NPRM 96–6, proposal 12.

Docket No.: 29348.
Petitioner: Boeing Commercial Airplane Group.
Sections of the FAR Affected: 14 CFR 25.1435(b)(1).
Description of Relief Sought/ Disposition: To permit partial exemption from the requirements for the hydraulic power system on the Boeing Model 767–400ER airplane, a derivative of the Model 767–200, by a combination of testing to 3400 +0/−100 psig and applicable similarity to the 767–200, which was tested to 4500 psig.

Disposition of Petitions

Docket No.: 29175.
Petitioner: Associated Air Center.
Sections of the FAR Affected: 14 CFR 25.813(e).
Description of Relief Sought/ Disposition: To permit installation of interior doors between passenger compartments, on a Boeing 737–300 airplane.
Denial, December 2, 1998, Exemption No. 6846

[FR Doc. 98–33296 Filed 12–15–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee (PMC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Program Management Committee (PMC) meeting to be held January 7, 1999, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Macintosh and Air Transport Association Conference Rooms, Washington DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review and Approve Summary of September 28, 1998, meeting: (3) Consider/Approve: a. Final Draft, RTCA Report on the Role of the Global Navigation Satellite System (GNSS) in Supporting Airport Surface Operations, RTCA Paper No. 219–98/ PMC–029, prepared by SC–159; (4) Action Item Review: *Special Committees*: a. Action Item 98–17 for SC–165, Aeronautical Mobile Satellite Service; b. Action Item 98–18 for SC–192, National Airspace Review; c. Action Item 98–19 for SC–189, Air Traffic Services Safety & Interoperability Requirements. *Program Management Committee*: d. Action Item 98–15, Discuss Position Papers for defining economic benefit in RTCA Documents; e. Action Item 98–20, Development of a plan for the coordination of user input in the FAA's ATS Requirements Process; f. Action Item 98–21, Coordination with the RTCA Policy Board on an activity to address turbulence mitigation; (5) Discussion: a. Proposed product list and publication methodology from SC–190, Application Guidelines for DO–178B. b. Proposed termination of SC–169 and a new Special Committee for Flight Information Services Communications functions; (6) Other Business; (7) Date and Place of Next Meeting. Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or *http://www.rtca.org* (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 10, 1998.

Janice L. Peters,

Designated Official.

[FR Doc. 98–33226 Filed 12–15–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use a Passenger Facility Charge (PFC) at Modesto City-County Airport—Harry Sham Field, Modesto, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at Modesto City-County Airport—Harry Sham Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 15, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261, or San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Howard L. Cook, Airport Manager of the Modesto City-County Airport—Harry Sham Field, at the following address: 617 Airport Way, Modesto, CA 95354. Air carriers and foreign air carriers may submit copies of written comments previously provided to the city of Modesto under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT:

Marlys Vandervelde, Airports Program Analyst, San Francisco Airports District Office, 831 Mitten Road, Room 210, Burlingame, CA 94010–1303, Telephone: (650) 876–2806. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Modesto City-County Airport—Harry Sham Field under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On November 24, 1998, the FAA determined that the application to impose and use a PFC submitted by the city of Modesto was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 27, 1999.

The following is a brief overview of the impose and use application No. 99–05–C–00–MOD:

Level of proposed PFC: $3.00.

Proposed charge effective date: May 1, 1999.

Proposed charge expiration date: January 1, 2003.

Total estimated PFC revenue: $223,750.

Brief description of the proposed projects: Aircraft Rescue and Firefighting (ARFF) Improvements, General Aviation Entrance Road, Phase I—Design and Phase II—Construction, Relocate Airfield Regulators and Construction of a New Building to House Airfield Regulations and Resurface Taxiway A and B, Phase I—Design Engineering and Phase II Construction.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Division located at: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Lawndale, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Modesto.

Issued in Hawthorne, California, on November 24, 1998.

Ellsworth L. Chan,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 98–33298 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1998, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Clarion Hotel, 9191 Wickham Road, Romulus, Michigan.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the twenty-second in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on December 17, 1998. The meeting was announced on November 17, 1998 (63 FR 63958). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Fuel System Integrity Testing;

Federalization of Family of Dummies—A Status Report;

Status of Special Crash Investigations of Depowered Air Bags;

International Harmonized Research Activities: (1) Overview of Steering Committee, (2) Status of Side Impact Working Group, and (3) Status of Biomechanics Working Group.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published November 17, 1998.

As announced on November 17, 1998, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD-01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: December 11, 1998

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 98–33285 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4864]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1998 Honda VT600 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1998 Honda VT600 motorcycles are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1998 Honda VT600 motorcycles that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 15, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 10 am to 5 pm.)

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) has petitioned NHTSA to decide whether non-U.S. certified 1991–1998 Honda VT600 motorcycles are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1991–1998 Honda VT600 motorcycles that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1998 Honda VT600 motorcycles to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1998 Honda VT600 motorcycles, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1998 Honda VT600 motorcycles are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 106 *Brake Hoses,* 111 *Rearview Mirrors,* 116 *Brake Fluid,* 119 *New Pneumatic Tires for Vehicles other than Passenger Cars,* and 122 *Motorcycle Brake Systems.*

Petitioner additionally contends that the vehicles are capable of being readily altered to meet the following standard, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Installation of U.S.-model head lamp assemblies.

Standard No. 120 *Tire Selection and Rims for Vehicles other than Passenger Cars:* Installation of a tire information label.

Standard No. 123 *Motorcycle Controls and Displays:* Installation of a U.S.-model speedometer/odometer calibrated in miles per hour.

The petitioner also states that a vehicle identification number plate will be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 10, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–33224 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4862]

Decision that Nonconforming 1987–1989 Saab 900 S Passenger Cars are Eligible for Importation

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

ACTION: Notice of decision by NHTSA that nonconforming 1987–1989 Saab 900 S passenger cars are eligible for importation.

SUMMARY: This notice announces the decision by NHTSA that 1987-1989 Saab 900 S passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to vehicles originally manufactured for importation into and sale in the United States and certified by their manufacturer as complying with the safety standards (the U.S. certified version of the 1987–1989 Saab 900 S), and they are capable of being readily altered to conform to the standards.

DATE: This decision is effective December 16, 1998.

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period,

NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (''Champagne'') (Registered Importer 90–009) petitioned NHTSA to decide whether 1987–1989 Saab 900 S passenger cars are eligible for importation into the United States. NHTSA published notice of the petition under Docket No. NHTSA–98–4083 on July 24, 1998 (63 FR 39928) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition.

One comment was received in response to the notice of the petition, from Saab Cars USA, Inc. (''Saab''), the United States representative of the vehicles' manufacturer. In this comment, Saab stated that the petition contained inaccuracies with regard to the compliance of non-U.S. certified 1987–1989 Saab 900 S with certain of the Federal motor vehicle safety standards. In particular, Saab noted that a center high mounted stop lamp would have to be installed on the vehicles to comply with Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* Additionally, Saab stated that the driver's side rearview mirror would have to be replaced with a planar U.S.-model component to comply with Standard No. 111, *Rearview Mirrors.* Saab also stated that the manufacturer locks the transmission shift mechanism as opposed to the steering to achieve compliance with Standard No. 114, *Theft Protection.* Saab further disputed the petitioner's claim that there would be any need for modifications to achieve compliance with Standard No. 118 *Power Window Systems,* as all Saabs produced worldwide are wired so that the window transport is inoperative when the ignition is switched off. With respect to Standard No. 208, *Occupant Crash Protection,* Saab contended that certain non-U.S. certified 1987–1989 Saab 900 S hatchbacks were equipped with motorized shoulder belts that could not be easily retrofitted on non-U.S. certified versions of those vehicles. Saab noted, however, that this equipment was installed on only a portion of its 1987–1989 Saab 900 S hatchback production, and not on other configurations of the vehicle.

NHTSA accorded Champagne an opportunity to respond to Saab's comment. In its response, Champagne stated that a center high mounted stop lamp will be installed on non-U.S. certified 1987–1989 Saab 900 S passenger cars to comply with Standard No. 108. Additionally, Champagne stated that it will install a U.S.-model driver's side rearview mirror to comply with Standard No. 111. Champagne additionally conceded that Saab locks the transmission shift mechanism to achieve compliance with Standard No. 114, and that the vehicles meet this standard as produced from the factory. Additionally, Champagne acknowledged there is no need to modify non-U,S. certified 1987–1989 Saab 900 S passenger cars to achieve compliance with Standard No. 118 because all such vehicles comply with that standard as produced from the factory. With respect to Standard No. 208, Champagne contends that the vehicles it intends to import meet that standard as equipped from the factory. Champagne agrees that reinforcing beams necessary to comply with Standard No. 214 are already installed in non-U.S. certified 1987–1989 Saab 900 S passenger cars. Additionally, Champagne acknowledges that there is no need to install a rollover valve to achieve compliance with Standard No. 301. Finally, Champagne acknowledges that non-U.S. certified 1987–1989 Saab 900 S passenger cars are in compliance with the theft Prevention Standard in 49 CFR Part 541 because they are marked with the required VIN numbers prior to importation.

NHTSA believes that Champagne's response adequately addresses the issues that Saab has raised regarding the petition. NHTSA further notes that Saab has not contended that non-U.S. certified 1987–1989 Saab 900 S passenger cars are incapable of being readily altered to comply with applicable motor vehicle safety standards, and that the modifications described by Champagne, which have been performed with relative ease on thousands of motor vehicles imported over the years, would not preclude non-U.S. certified 1987–1989 Saab 900 S passenger cars from being found capable of being so altered. NHTSA has accordingly decided to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final decision must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP–270 is the vehicle eligibility number assigned to vehicles admissible under this notice of final decision.

Final Decision

Accordingly, on the basis of the foregoing, NHTSA hereby decides that non-U.S. certified 1987–1989 Saab 900 S passenger cars are substantially similar to 1987–1989 Saab 900 S passenger cars originally manufactured for importation into and sale in the United States and certified under 49 U.S.C. 30115, and are capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 10, 1998.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 98–33225 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3412; Notice 2]

DeTomaso Modena S.p.A., Mootness of Application for Temporary Exemption From Three Federal Motor Vehicle Safety Standards

This notice moots the application by DeTomaso Modena S.p.A. of Modena, Italy, (''DeTomaso'') for a temporary exemption from portions of three Federal motor vehicle safety standards. The basis of the application was that compliance would cause substantial economic hardship to a manufacturer that has tried to comply with the standards in good faith.

The agency published notice of its receipt of the application on February 6, 1998, and provided an opportunity for comment (63 FR 6255). No comments were received on the application.

Before the agency had made a decision, it was informed by DeTomaso on April 25, 1998 that the company is withdrawing its application, due to an unanticipated increase in demand for the Guara car, the vehicle covered by the application. DeTomaso indicated that it does not have the capacity to meet the renewed demand for the Guara and supply the American market as well.

Accordingly, the application is now moot. (49 U.S.C. 30113; delegations of authority at 49 CFR 1.50, and 501.8)

Issued on December 8, 1998.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 98–33286 Filed 12–15–98; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33683]

Ogeechee Railway Company—Lease Exemption—Line of Central of Georgia Railroad Company

The Ogeechee Railway Company (Ogeechee), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Central of Georgia Railroad Company (CGA), a subsidiary of Norfolk Southern Railroad Company, and operate approximately 42.6 miles of rail line. The rail line to be leased includes: a previously abandoned line of railroad between former milepost GF–152.0 near Vadalia, Toombs County, GA, and former milepost GF–171.0 near Kirby, Emanuel County, GA; and CGA's active line-of-railroad between milepost GF–171.0 near Kirby, GA, and the southern line of CGA's line of railroad between Millen and Tennille, GA, at milepost GF–194.6 near Midville, Burke County, GA.[1]

The earliest the transaction could be consummated was November 23, 1998, (7 days after the notice of exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33683, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John M. Robinson, Esq., 9616 Old Spring Road, Kensington, MD 20895, and John Moon, Esq., Law Department, Norfolk Southern Railroad Company, 3 Commercial Plaza, Norfolk, VA 23510–2191.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 9, 1998.

[1] Ogeechee certifies that its annual revenues will not exceed those that would qualify it as a Class III carrier and its revenues are not projected to exceed $5 million.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–33349 Filed 12–15–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Commission to Study Capital Budgeting (Advisory Commission to the President of the United States)

ACTION: Notice of canceled meeting.

SUMMARY: The meeting scheduled for Friday, December 18, 1998, of the Commission to Study Capital Budgeting is canceled.

FOR FURTHER INFORMATION CONTACT: E. William Dinkelacker, Ph.D., Designated Federal Official, Room 4456 Main Treasury, Washington, DC 20220, Voice: (202) 622–1285, Fax: (202) 622–1294, E-Mail: william.dinkelacker@treas.sprint.com.

Angel E. Ray,

Committee Management Officer.

[FR Doc. 98–33355 Filed 12–14–98; 9:35 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Submission for OMB review; Comment request.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. The OCC may not conduct or sponsor, and a respondent is not required to respond to an information collection that has been extended, revised, or implemented unless it displays a currently valid OMB control number. Currently, the OCC is soliciting comments concerning extension of an information collection titled (MA)-Loans in Areas Having Special Flood Hazards (12 CFR part 22). The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: Comments are due by January 15, 1999.

ADDRESSES: Your comments regarding this information collection are welcome. You should submit your comments to the OMB Reviewer and to the OCC's Communications Division, Attention: 1557–0202, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219. Also, you can send your comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

The OMB Reviewer is Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

You can inspect and photocopy the comments at the OCC's Public Reference Room, between 9 a.m. and 5 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information, a copy of the collection, or a copy of OCC's submission to OMB by contacting Jessie Gates or Camille Dixon, (202)874–5090, Legislative and Regulatory Activities Division (1557–0202), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

The OCC received no comments in response to its first Paperwork Reduction Act renewal notice regarding this information collection which was published in the **Federal Register** (63 FR 32695) on June 15, 1998.

Title: (MA)-Loans in Areas Having Special Flood Hazards (12 CFR part 22).

OMB Number: 1557–0202.

Form Number: None.

Abstract: This information collection covers an existing regulation and involves no change to the regulation or the information collection. The OCC requests only that OMB renew its approval of the information collection in the current regulation. The regulation requires national banks to make disclosures and keep records regarding whether a property securing a loan is located in a special flood hazard area.

This information collection is required by section 303(a) and title V of the Riegle Community Development and Regulatory Improvement Act, Pub. L. 103–325, title V, 108 Stat. 2160, the National Flood Insurance Reform Act of 1994 amendments to the National Flood Insurance Act of 1968 (12 U.S.C. 4104a and 4104b) and the Flood Disaster Protection Act of 1973 (12 U.S.C. 4012a and 4106(b)), and by OCC regulations

implementing those statutes located at 12 CFR 22.6, 22.7, 22.9, and 22.10.

The information collections are as follows:

12 CFR 22.6 requires a national bank to use and maintain a copy of the Standard Flood Hazard Determination Form developed by FEMA.

12 CFR 22.7 requires a national bank or its loan servicer, if a borrower has not obtained adequate flood insurance, to notify the borrower to obtain adequate flood insurance or the bank or servicer will purchase flood insurance on the borrower's behalf.

12 CFR 22.9 requires a national bank making a loan secured by a building or a mobile home to advise the borrower and the loan servicer that the property is, or is not, located in a special flood hazard area, if flood insurance is available under the National Flood Insurance Program, and if Federal disaster relief may be available in the event of flooding. The bank must maintain a record of the borrower's and loan servicer's receipts of these notices.

12 CFR 22.10 requires a national bank making a loan secured by a building or a mobile home located in a special flood hazard area to notify FEMA of the identity of the servicer, and of any change in servicers.

These information collections ensure bank compliance with applicable Federal law, further bank safety and soundness, provide protections for banks and the public, and further public policy interests.

Type of Review: Renewal of OMB approval without change.

Affected Public: Businesses or other for-profit.

Number of Respondents: 2,600.

Total Annual Responses: 262,600.

Frequency of Response: On occasion.

Total Annual Burden Hours: 67,600.

Comments

All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: December 8, 1998.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 98–33240 Filed 12–15–98; 8:45 am]

BILLING CODE 4810–33–P

UNITED STATES INFORMATION AGENCY

Proposed Collection; Comment Request

AGENCY: United States Information Agency.

ACTION: Proposed Collection; Comment Request.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), federal agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency will make such a submission. The information collection activity involved with this program is conducted pursuant to the mandate given to the United States Information Agency (USIA) under the terms and conditions of E.O. 10450 and 12968. USIA is requesting approval for a three-year extension of an information collection entitled ''Overseas Activities Data'', under OMB control number 3116–0014 which expires March 31, 1999. Estimated burden hours per response is thirty (.50) minutes.

DATES: Comments are due on or before February 16, 1999.

Copies: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the USIA Clearance Officer. Comments should be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for USIA, and also to the USIA Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, Ms. Jeannette Giovetti, United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547, telephone (202) 619–4408; and OMB review: Ms. Victoria Wassmer, Office of Information And Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 1002, NEOB, Washington, DC 20503, Telephone (202) 395–3176.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information is estimated to average thirty 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. As part of its continuing effort to reduce the paperwork burden, USIA invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility; (b) the accuracy of the Agency's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to the United States Information Agency, M/AOL, 301 Fourth Street, SW, Washington, DC 20547; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10202, NEOB, Washington, DC 20503.

Title: Overseas Activities Data.

Form Number: IAP–10.

Abstract: The form serves as a supplement to SF–86, ''Security Investigation Data for Sensitive Positions'' and is used to obtain names of persons currently in the United States, who have personal knowledge of the overseas activities of applicants for employment in the domestic or foreign service. The information is for security purposes only.

Proposed Frequency of Responses:

Number of Respondents: 200.

Recordkeeping Hours: 50.

Total Annual Burden: 100.

Dated: December 10, 1998.

Rose Royal,

Federal Register Liaison.

[FR Doc. 98–33276 Filed 12–15–98; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on December 16 in Room 600, 301 4th Street, SW, Washington, DC, from 10 a.m. to 11 a.m.

At 10 a.m. the Commission will meet with Ms. Melinda L. Kimble, Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs to Discuss the COP–IV Climate Change Convention as a case study of the role of NGOs and diplomats at international conferences.

FOR FURTHER INFORMATION CONTACT: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: December 10, 1998.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 98–33277 Filed 12–15–98; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Wednesday
December 16, 1998

Part II

Environmental Protection Agency

40 CFR Part 62

Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[AD–FRL–6201–4]

Federal Plan Requirements for Municipal Solid Waste Landfills That Commenced Construction Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 12, 1996, pursuant to section 111 of the Clean Air Act (Act), EPA promulgated emission guidelines applicable to existing municipal solid waste (MSW) landfills. Section 111(d) of the Act and 40 Code of Federal Regulations (CFR) part 62, subpart B require States with existing MSW landfills subject to the emission guidelines to submit to EPA State plans to implement and enforce the emission guidelines. Indian tribes may submit, but are not required to submit, Tribal plans to implement and enforce the emission guidelines in Indian country. The State plans were due on December 12, 1996. States without existing MSW landfills or without existing landfills that require control must submit a negative declaration letter. Indian tribes without existing MSW landfills or without existing MSW landfills that require control may submit, but are not required to submit, a negative declaration letter. Following receipt of the State plan, EPA has up to 4 months to approve or disapprove the plan. If a State with existing MSW landfills does not submit an approvable plan within 9 months after promulgation of the guidelines (i.e., December 12, 1996), the Act requires EPA to develop, implement, and enforce a Federal plan for MSW landfills in that State.

In this action EPA proposes a MSW landfills Federal plan to implement emission guideline requirements for existing MSW landfills located in States and Indian country where State plans or Tribal plans are not currently in effect. For most of these States and possibly for some Indian Tribes, the Federal plan that is promulgated will be an interim action since at the time a State or Tribal plan becomes effective, the Federal plan will no longer apply to MSW landfills covered by the plan. This proposed MSW landfills Federal plan includes the same required elements specified in 40 CFR part 60, subparts B, Cc, and WWW for a State plan: identification of legal authority and mechanisms for implementation; inventory of affected facilities; emissions inventory; emission limits; compliance schedules; a process for EPA or State review of design plans for site-specific gas collection and control systems; testing, monitoring, reporting and record keeping requirements; public hearing requirements; and progress reporting requirements. Also discussed in this preamble is MSW landfills Federal plan implementation and delegation of authority. Industry sectors likely to be affected include Air and Water Resource and Solid Waste Management, and Refuse Systems—Solid Waste Landfills (North American Industrial Classification System Codes 92411 and 562212).

DATES: *Comments.* Comments on this proposal must be received on or before February 16, 1999.

Public Hearing. A public hearing will be held in each EPA region in which a MSW landfill is located that would be covered by the proposed landfills Federal plan, if individuals request to speak. Requests to speak must be received by December 28, 1998. If requests to speak are received, one or more public hearings will be held. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541–1192 after January 5, 1999.

ADDRESSES: *Comments.* Comments on this proposal should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention docket number A–98–03, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Comments and data may be filed electronically by following the instructions in section I of **SUPPLEMENTARY INFORMATION** of this preamble.

Public Hearing. Persons requesting to speak should notify Ms. Mary Ann Warner, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–1192. A message regarding the date and location of the public hearing(s) may be accessed by calling (919) 541–1192.

Docket. Docket numbers A–98–03 and A–88–09 contain the supporting information for this proposed rule and EPA's promulgation of standards of performance for new MSW landfills and emission guidelines for existing MSW landfills, respectively. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (Mail Code 6102), 401 M Street, SW, Washington, D.C. 20460, or by calling (202) 260–7548. The fax number for the Center is (202) 260–4000 and the e-mail address is ''A-and-R-Docket@epamail.epa.gov''. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information regarding this proposal, contact Ms. Mary Ann Warner at (919) 541–1192, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For technical information, contact Ms. Michele Laur at (919) 541–5256, Waste & Chemical Processes Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information regarding the implementation of this Federal plan, contact the appropriate Regional Office (table 2) as shown in section I of **SUPPLEMENTARY INFORMATION.** In addition to being available in the docket, an electronic copy of today's document that includes the regulatory text is available through the EPA Technology Transfer Network Website (TTN Web) recent actions page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/ramain.html). The TTN Web provides information and technology exchange in various areas of air pollution control. If more information on the TTN Web is needed, call the TTN Web Help Line at (919) 541–5384.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this proposed action are all existing MSW landfills unless the landfill is subject to an EPA-approved section 111(d) State or Tribal plan that is currently effective. Existing landfills are those that commenced construction, modification, or reconstruction prior to May 30, 1991 and have not been modified or reconstructed since May 30, 1991 and have accepted waste since November 8, 1987 or have additional capacity for future waste deposition. Regulated categories and entities include:

Category	Examples of regulated entities
Industry and Local and Tribal Government agencies NAICS Code 92411 (Air and Water Resource and Solid Waste Management) NAICS Code 562212 (Refuse Systems—Solid Waste Landfills).	Municipal solid waste landfills that commenced construction, modification, or reconstruction before May 30, 1991.

The foregoing table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the MSW landfills Federal plan. For specific applicability criteria, see §§ 62.14350 and 62.14352 of subpart GGG.

Based on a July 24, 1998 MSW landfills inventory (A–98–03, II–B–2), EPA projects that the MSW landfills Federal plan could initially affect up to 3,459 MSW landfills in approximately 36 States, protectorates, and municipalities. However, EPA expects many State plans to become effective by the time the Federal plan is promulgated; therefore, the number of landfills affected by this Federal plan will continue to decrease as State and Tribal plans are approved and become effective.

Electronic submittal of comments. Comments and data may be submitted electronically via electronic mail (E-mail) or on disk. Electronic comments on this proposed rule may be filed via E-mail at most Federal Depository Libraries. E-mail submittals should be sent to A-and-R-Docket@epamail.epa.gov. No confidential business information should be submitted through E-mail. Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. Electronic comments must avoid the use of special characters and any form of encryption. All comments and data for this proposal, whether in paper form or electronic form, must be identified by docket number A–98–03.

Outline. The following outline shows the organization of the **SUPPLEMENTARY INFORMATION** section of this preamble.

I. Background of Landfills Regulations and Affected Facilities

A. Background of MSW Landfills Regulations

On March 12, 1996 the EPA promulgated in the **Federal Register** emission guidelines for existing MSW landfills (40 CFR part 60, subpart Cc) under authority of section 111 of the Act (61 FR 9905). The guidelines apply to existing MSW landfills, i.e., those that commenced construction, modification, or reconstruction before May 30, 1991 and have not been modified or reconstructed since May 30, 1991 and have accepted waste since November 8, 1987 or have additional capacity for future waste deposition. On June 16, 1998, EPA published a notice to amend, correct errors, and clarify regulatory text for 40 CFR part 60, subpart Cc (63 FR 32743). These amendments did not affect the due date or the required content of State plans for existing MSW landfills.

To make the guidelines enforceable, States with existing MSW landfills subject to the guidelines were required to submit to EPA a State plan that implements and enforces the emission guidelines within 9 months of promulgation of the guidelines. In appropriate circumstances, case-by-case extensions can be granted (40 CFR 60.27(a)). State plans were due on December 12, 1996. In some cases, local agencies or protectorates of the United States will submit plans for landfills in their jurisdictions. As discussed in section I.E. of this preamble, Indian Tribes may, but are not required to, submit Tribal plans.

If a State does not have an approved State plan, section 111 of the Act and 40 CFR 60.27(c) and (d) require EPA to develop, implement, and enforce a Federal plan for existing MSW landfills located in that State. In addition, section 301(d)(2) authorizes the Administrator to treat an Indian Tribe in the same manner as a State for this MSW landfill requirement. (See section 49.3 of ''Indian Tribes: Air Quality Planning and Management,'' hereafter ''Tribal Authority Rule,'' 63 FR 7254, February 12, 1998.) For Indian tribes that do not have an approved MSW landfills Tribal plan, EPA must develop, implement and enforce a Federal plan for them.

Today's action, which will be codified as subpart GGG of 40 CFR part 62, proposes a MSW landfills Federal plan that includes the elements described in section II of this preamble.

B. MSW Landfills Federal Plan and Affected Facilities

When this proposed MSW landfills Federal plan becomes a final rule, the MSW landfills Federal plan will affect existing MSW landfills that commenced construction, reconstruction or modification prior to May 30, 1991 and have not been modified or reconstructed on or after that date. Affected landfills also have accepted waste since November 8, 1987 or have capacity for future waste deposition. The MSW landfills Federal plan will apply to existing MSW landfills located in: (1) Any State or portion of Indian country for which a State or Tribal plan has not become effective; (2) any State or portion of Indian country for which the State or Tribe submitted a negative

declaration; (3) any State or portion of Indian country with an effective State or Tribal plan that subsequently is vacated in whole or in part; or (4) any State or portion of Indian country with an effective plan that subsequently revises any component of the plan (e.g., the underlying legal authority or enforceable mechanism) such that the State or Tribal plan is no longer as stringent as the emission guidelines. A landfill that meets any of these criteria is covered by the Federal plan until the State or Tribal plan is approved and becomes effective. An approved State or Tribal plan is a plan that EPA has reviewed and approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. The State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval. The effective date of this Federal plan will be 30 days after the final Federal plan is published in the **Federal Register**.

The EPA may grant a State a time extension for submitting a State plan (40 CFR 60.27(a)). However, if States that receive time extensions do not have approved and effective plans by the effective date of this Federal plan, the Federal plan will cover existing MSW landfills in these States.

C. MSW Landfills Federal Plan and Negative Declaration Letters

A negative declaration is a letter to EPA to declare that either there are no existing MSW landfills in the State or portion of Indian country or there are no existing MSW landfills in the State or portion of Indian country that must install collection and control systems according to the requirements of the emission guidelines. States or Indian tribes that submit negative declarations are not expected to submit State or Tribal plans, but existing MSW landfills with a design capacity equal to or greater than 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) in the State or portion of Indian country are subject to the MSW landfills Federal plan. Existing MSW landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3 that are located in States or portion of Indian country that submitted a negative declaration letter are not required to submit an initial design capacity report, which is the only requirement for an MSW landfill of this size. The negative declaration letter must include the design capacity for the landfills with a design capacity less than 2.5 million Mg or 2.5 million m^3. In the event that an existing MSW landfill that must install a collection and control system according to the emission guidelines is subsequently identified where a negative declaration has been submitted, the Federal plan requirement to install a collection and control system would apply. Existing MSW landfills overlooked by a State or Indian tribe that submitted a negative declaration letter and existing landfills not included in a State or Tribal plan will be subject to the Federal plan until a State or Tribal plan that includes these sources is approved and effective. As discussed in section I.E. of this preamble, the Federal plan will apply throughout Indian country until an approved State or Tribal plan becomes effective. As discussed in section I.G. of this preamble, the Federal plan will, by its own terms, no longer apply to a MSW landfill appropriately covered by an approved State or Tribal plan that becomes effective after promulgation of the Federal plan. The specific applicability of this plan is described in §§ 62.14350 and 62.14352 of subpart GGG.

D. MSW Landfills Federal Plan and the New Source Performance Standards

An existing MSW landfill that increases its permitted volume design capacity through vertical or horizontal expansion (i.e., is modified) on or after May 30, 1991, is subject to the New Source Performance Standards (NSPS), 40 CFR part 60, subpart WWW (see 63 FR 32744). Existing MSW landfills that make operational changes without increasing the horizontal or vertical dimensions of the landfill will continue to be subject to the Federal or State plan that implements the emission guidelines, rather than the NSPS. Examples of such operational changes at a MSW landfill include changing the moisture content of the waste, increasing the physical compaction on the surface, changing the cover material or thickness of the daily cover, and changing baling or compaction practices. This interpretation is consistent with the amendments to the landfills emission guidelines and NSPS, which are consistent with the landfill litigation settlement agreement (63 FR 32743, June 16, 1998). A notice of the proposed settlement was published in the **Federal Register** on November 13, 1997 (63 FR 60898). In addition, a MSW landfill that has been reconstructed on or after May 30, 1991 would be subject to the NSPS, not the Federal or State plan that implements the emission guidelines. Reconstructions are unlikely for landfills; as specified in the NSPS General Provisions, reconstructions are ''the replacement of components of an existing facility [landfill] to such an extent that: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new facility [landfill].'' The EPA knows of no situation where this would occur at a landfill.

E. Implementing Authority

The EPA Regional Administrators are the delegated authority for implementing the MSW landfills Federal plan. All reports required by this Federal plan should be submitted to the appropriate Regional Administrator. Table 5 in section II.E lists the addresses of the EPA Regional Administrators and the States located in each region.

F. MSW Landfills Federal Plan and Indian Country

The MSW landfills Federal plan will apply throughout Indian country to ensure that there is not a regulatory gap for existing MSW landfills in Indian country. Indian tribes do, however, have the authority under the Act to develop Tribal plans in the same manner States develop State plans. On February 12, 1998, EPA promulgated regulations that outline provisions of the Act for which EPA is authorized to treat Tribes in the same manner as States (see 63 FR 7254, Tribal Authority Rule). Upon the effective date of the Tribal Authority Rule, March 16, 1998, EPA has the authority to approve Tribal programs, such as Tribal plans or programs to implement and enforce MSW landfill emission guidelines, under the Act. Section 301(d)(2) authorizes the Administrator to treat an Indian tribe in the same manner as a State for the Clean Air Act provisions identified in § 49.3 of part 49 of the CFR if the Indian tribe meets the following criteria:

(a) The applicant is an Indian tribe recognized by the Secretary of the Interior;

(b) The Indian tribe has a governing body carrying out substantial governmental duties and functions;

(c) The functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction; and

(d) The Indian tribe is reasonably expected to be capable, in the EPA Regional Administrator's judgement, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Clean Air Act and all applicable regulations (see § 49.6 of the Tribal Authority Rule, 63 FR 7272). In addition, if a Tribe meets these criteria, the EPA can delegate authority to implement the Federal plan to an Indian tribe the same way it can delegate authority to the State.

In addition to giving Indian tribes authority to develop Tribal plans, the Act also provides EPA with the authority to administer federal programs in Indian country. This interpretation of EPA's authority under the Act is based in part on the general purpose of the Act, which is national in scope. In addition, section 301(a) of the Act provides EPA broad authority to issue regulations that are necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act. Finally, section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose, where Tribal implementation of those provisions is not appropriate or administratively not feasible. The Agency's interpretation of its authority to directly implement Clean Air Act programs in Indian county is discussed in more detail in the proposed Federal Operating Permits Rule, 62 FR 13747 (March 21, 1997), and in the Tribal Authority Rule.

Many Tribes may have delayed development of air quality regulations and programs pending promulgation of the Tribal Authority Rule. As mentioned previously, Tribes may, but are not required to, submit a MSW landfills plan or negative declaration letter under section 111(d) of the Act. The EPA is not aware of any Tribes that have developed plans to implement the MSW emission guidelines or submitted negative declaration letters.

The impact of this Federal plan on Indian tribes is not expected to be significant. There are very few existing MSW landfills in Indian country large enough to require the installation of a collection and control system. For most existing MSW landfills in Indian country, the only requirement this Federal plan will impose is to submit a design capacity report. This requirement is discussed in section V of this preamble.

The Federal plan will apply throughout Indian country except where a State or Tribal plan has been explicitly approved by EPA to cover an area of Indian country. The EPA will administer the plan in Indian country without requiring any jurisdictional showing on the part of the Tribe. To assure there are no gaps in coverage, EPA will treat disputed areas, i.e., areas for which EPA believes the Indian country status may be in question, as Indian country. The EPA will continue to implement the Federal plan in these areas until a Tribal plan covering an area of Indian country becomes effective, or the area is determined not to be Indian country and the source is subject to an effective State plan. This approach is consistent with the proposed Federal Operating Permits Rule cited above where the rationale is discussed in detail. The EPA requests comments on applying the landfills Federal plan in Indian country as described here.

The term *Indian country,* as used in this MSW landfills Federal plan, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. This definition is consistent with the proposed Federal Operating Permits Program rule (62 FR 13747, March 21, 1997).

G. MSW Landfills Federal Plan and Compliance Schedules

The emission guidelines require the owner or operator of a MSW landfill to submit a design capacity report within 90 days after the effective date of the State or Tribal plan (or within 90 days after the effective date of the promulgated Federal plan). An emission rate report showing nonmethane organic compounds (NMOC) emissions from the landfill is also required to be submitted within the same time period if the landfill has a design capacity of 2.5 million megagrams (Mg) and 2.5 million cubic meters (m^3) or more. The emission guidelines further require the owner or operator of a MSW landfill with a design capacity greater than or equal to 2.5 million Mg and 2.5 million m^3 to submit a collection and control system design plan within 1 year of first reporting NMOC emissions of 50 Mg per year or more. The collection and control system must be installed and operating within 30 months of first reporting NMOC emissions of 50 Mg per year or more. The compliance schedule in this Federal plan also sets the dates for awarding contracts and beginning construction, however, States, Tribes, and owners or operators have the option of setting these two dates which are not specifically defined in the emission guidelines. (See the discussion in section II.E of this preamble.)

H. MSW Landfills Excluded From Federal Plan Applicability

The MSW landfills Federal plan will not apply to landfills appropriately covered by an approved and effective State or Tribal plan or to landfills in a State that has submitted a negative declaration as long as the landfills in fact have a design capacity less than 2.5 million Mg or 2.5 million m^3. If a State or Tribal plan becomes effective before promulgation of the Federal plan, the promulgated MSW landfills Federal plan will not apply to landfills appropriately covered by that State or Tribal plan. Promulgation of this MSW landfills Federal plan does not preclude a State or Tribe from submitting a plan later. If a State or Tribe submits a plan after promulgation of the MSW landfills Federal plan, EPA will review and approve or disapprove the plan. Upon the effective date of the State or Tribal plan, the Federal plan will no longer apply. States are, therefore, encouraged to continue their efforts to develop and submit State plans to EPA for approval. Similarly, EPA encourages Tribes to develop and submit Tribal plans.

I. Status of State Plan Submittals

The following States have EPA approved and effective State plans: Colorado, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Ohio, Oregon, Utah and Wyoming. The MSW landfills covered in those State plans would not be affected by the MSW landfills Federal plan. (MSW landfills located in those States would become subject to the Federal plan in the event that the State plan is subsequently disapproved, in whole or in part.) Other States are making significant progress on their State plans and EPA expects many State plans to be submitted in the next few months. (The EPA is not aware of any Indian tribes that are developing Tribal plans.) Table 1 summarizes the status of States without approved and effective State plans and those which have submitted negative declarations as of July 24, 1998. The table is based on information from EPA Regional Offices (A–98–03, II–I–3). Copies of **Federal Register** notices of approvals, extensions, and negative declaration letters are located in docket A–98–03.

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN [1]

State
I. Negative declaration submitted to EPA and no State plan is expected. (See discussion in section I.G of this preamble.)
Region I:
New Hampshire
Rhode Island
Vermont
Region III:
District of Columbia
Philadelphia, PA
II. Time extensions granted for State plan submittals (62 FR 64830 and 63 FR 27959). The EPA anticipates that these plans will be submitted and existing landfills in these States would not be covered by the Federal plan. However, if the State plan is not approved and effective before the effective date of the Federal plan, the Federal plan will apply to landfills in such States:
Region II:
New York (7/5/98)
Region IV:
Hamilton County (Chattanooga) Tennessee (7/31/98)
Kentucky (2/15/98)
North Carolina (7/1/98)
South Carolina (1/15/98)
Tennessee, except Chattanooga and Nashville (12/31/97)
Region V:
Illinois (7/31/98)
Region VI:
Arkansas (7/31/98)
Oklahoma (7/31/98)
Texas (7/31/98)
Region X:
Alaska (12/31/97)
Idaho (12/31/97)
Washington (5/31/98)
III. State plan submitted and is being reviewed by EPA. The promulgated Federal plan will cover existing MSW landfills in these States until the State plan is approved and becomes effective:
Region II:
Puerto Rico
Region III:
Allegheny County, PA
Delaware
Pennsylvania
West Virginia
Region IV:
Alabama
Georgia
Nashville, Tennessee
Region V:
Indiana
Region VIII:
South Dakota
Region IX:
Arizona
California
Nevada
IV. State plan or negative declaration not submitted. The existing MSW landfills in these States will be subject to the promulgated Federal plan unless a State plan applicable to existing landfills is approved by EPA and becomes effective:

TABLE 1.—STATUS OF STATES WITHOUT AN APPROVED STATE PLAN [1]—Continued

State
Region I:
Connecticut
Maine
Massachusetts
Region II:
New Jersey
Virgin Islands
Region III:
Maryland
Virginia
Region IV:
Florida
Mississippi
Region V:
Michigan
Wisconsin
Region VI:
Albuquerque, New Mexico
Region IX:
American Samoa
Guam
Hawaii
Northern Mariana Islands

[1] Status as of July 24, 1998.

To clarify which MSW landfills will and will not be covered by the Federal plan, table 1 of subpart GGG lists States and Indian tribes that have approved effective plans as of July 24, 1998 that cover MSW landfills in the State or Indian country. MSW landfills not appropriately covered by an effective plan will be covered by the Federal plan. For example, if a landfill is located in a State that is listed in table 1 of subpart GGG and the State plan does not apply to the landfill, then the landfill would be subject to the Federal plan. As stated above, EPA expects additional State plans to become effective prior to promulgation of this Federal plan. The promulgated Federal plan will list in table 1 of subpart GGG, States for which an approved and effective State plan applies. The EPA will periodically amend table 1 of subpart GGG to identify States with approved and effective State plans. These amendments will be published in the **Federal Register** and codified in the CFR. The inclusion or the failure to include a State in table 1 of subpart GGG is not controlling in determining whether a MSW landfill is subject to the MSW landfill Federal plan. Any MSW landfill not covered by an approved and currently effective State or Tribal plan, or any MSW landfill with a design capacity equal to or greater than 2.5 million Mg or 2.5 million m^3 located in a State that submitted a negative declaration will be subject to the MSW landfill Federal plan.

The EPA will keep an up-to-date list of State plan submittals and approvals on the EPA TIN Web at http:/www.epa.gov/ttn/oarpg. The list will help landfill owners or operators determine whether their landfill is affected by a State plan or the Federal plan.

J. Regional Office Contacts

For information regarding the implementation of the MSW landfills Federal plan, contact the appropriate EPA Regional Office as shown in table 2.

TABLE 2.—EPA REGIONAL CONTACTS FOR MUNICIPAL SOLID WASTE LANDFILLS

Regional contact	Phone No.	Fax No.
Region I (CT, MA, ME, NH, RI, VT)		
Jeanne Cosgrove, U.S. EPA/CAQ, John F. Kennedy Federal Bldg., Boston, MA 02203–0001	(617) 565–9451	(617) 565–4940
Region II (NJ, NY, PR, VI)		
Christine DeRosa, U.S. EPA/25th Floor 290 Broadway, New York, NY 10007–1866	(212) 637–4022	(212) 637–3901
Region III (DC, DE, MD, PA, VA, WV)		
James B. Topsale, U.S. EPA/Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029	(215) 814–2190	(215) 814–2114
Region IV (AL, FL, GA, KY, MS, NC, SC, TN)		
Scott Davis, U.S. EPA/APTMD 61 Forsyth Street, SW, Atlanta, GA 30303	(404) 562–9127	(404) 562–9095
Region V (IL, IN, MI, MN, OH, WI)		
Charles Hatten U.S. EPA, 77 W. Jackson Blvd., Chicago, IL 60604	(312) 886–6031	(312) 886–0617
Region VI (AR, LA, NM, OK, TX)		
Mick Cote, U.S. EPA, 1445 Ross Ave., Suite 1200, Dallas, TX 75202–2733	(214) 665–7219	(214) 665–7263
Region VII (IA, KS, MO, NE)		
Ward Burns, U.S. EPA/RME, 726 Minnesota Ave./ARTDAPCO, Kansas City, KS 66101–2728	(913) 551–7960	(913) 551–7065
Region VIII (CO, MT, ND, SD, UT, WY)		
Martin Hestmark, U.S. EPA/8ENF-T, 999 18th Street, Suite 500, Denver, CO 80202–2466	(303) 312–6776	(303) 312–6409
Region IX (AS, AZ, CA, GU, HI, NMI, NV)		
Patricia Bowlin, U.S. EPA/RM HAW/17211, 75 Hawthorne Street/AIR–4, San Francisco, CA 94105	(415) 744–1188	(415) 744–1076
Region X (AK, ID, OR, WA)		
Catherine Woo, U.S. EPA, 1200 Sixth Ave., Seattle, WA 98101	(206) 553–1814	(206) 553–0404

II. Required Elements of This Municipal Solid Waste Landfills Federal Plan

Section 111(d) of the Act, 42 U.S.C. 7411(d), requires States to develop and implement State plans for MSW landfills that implement and enforce the published emission guidelines. Subparts B and Cc of 40 CFR part 60 require States to submit State plans that include specified elements. Because the Federal plan is being proposed for areas where State plans are not yet in effect, the proposed Federal plan includes the same essential elements as required for State plans: (1) Identification of legal authority and mechanisms for implementation, (2) inventory of affected facilities, (3) emissions inventory, (4) emission limits, (5) compliance schedules, (6) a process for EPA or State review of design plans for site-specific gas collection and control systems, (7) testing, monitoring, reporting and record keeping requirements, (8) public hearing requirements, and (9) progress reporting requirements. Table 3 identifies each element and indicates where it is located or codified. In this section, each State plan element is described as it relates to the proposed MSW landfills Federal plan.

TABLE 3.—REQUIRED ELEMENTS AND LOCATION

Required element of the landfills Federal plan	Where located or codified
1. Identification of legal authority and mechanisms for implementation ..	Section 111(d)(2) of the Act and Sections II.A and III.A of this preamble.
2. Inventory of affected facilities	Docket A–98–03, item II–B–2.
3. Emission inventory	Docket A–98–03, item II–B–2.
4. Emission limits	40 CFR 62.14353 of subpart GGG.
5. Compliance schedules	40 CFR 62.14356 of subpart GGG.
6. Process for review of site-specific gas collection and control system design plans.	Section II.F of this preamble.
7. Testing, monitoring, reporting and record keeping requirements	40 CFR 62.14354 and 62.14355 of subpart GGG.
8. Public hearing requirements	Section II.H of this preamble.
9. Progress reports	Section II.H of this preamble.

A. Legal Authority and Mechanism for Implementation

As a required element, a State or Tribal plan must demonstrate that the State or Indian tribe has the legal authority to adopt and implement the emission requirements and compliance schedules in the plan. The State or Tribe also must identify the enforceable mechanism for implementing the emission guidelines (e.g., a State or Tribal rule or other enforcement mechanism).

The EPA's authority to develop a Federal plan is given in the Act. Section 301(a) of the Act authorizes EPA to prescribe regulations to carry out EPA functions under the Act. Section 111(d) of the Act authorizes the EPA to develop a Federal plan for States that do not submit approvable State plans.

The Act also provides EPA with the authority to administer federal programs in Indian country. This interpretation of EPA's authority under the Act is based in part on the general purpose of the Act, which is national in scope. Further, section 301(d)(1) specifically authorizes EPA to treat Indian tribes as States. Section 301(d)(2) directs EPA to promulgate regulations specifying those provisions of the Act for which it is appropriate to treat Indian tribes as States. Those regulations, known as the Tribal Authority Rule (TAR), were promulgated at 63 FR 7254 and became effective on March 16, 1998. In the TAR, EPA determined that it is appropriate to treat Indian tribes as States for purposes of developing and submitting a MSW landfill plan. (See section 49.3 of the TAR, 63 FR 7254.) Section 301(a) of the Act provides EPA broad authority to issue regulations that are necessary to carry out the functions of the Act. The EPA believes that Congress intended for EPA to have the authority to operate a federal program in instances when Tribes choose not to develop a program, do not adopt an approvable program, or fail to adequately implement an air program authorized under section 301(d) of the Act. Finally, section 301(d)(4) of the Act authorizes the Administrator to directly administer provisions of the Act to achieve the appropriate purpose, where Tribal implementation of those provisions is not appropriate or administratively not feasible. Thus, for Indian tribes that do not have an approved and effective MSW landfill Tribal plan, EPA must develop, implement and enforce a Federal plan for them. The Agency's interpretation of its authority to directly implement Clean Air Act programs in Indian country is discussed in more detail in the proposed Federal Operating Permits Rule, 62 FR 13747 (March 21, 1997), and in the Tribal Authority Rule.

By proposing this MSW landfills Federal plan, EPA is fulfilling its obligation under the Act to establish emission limits and other requirements for MSW landfills located in States for which an approvable plan has not been submitted. The EPA is also fulfilling its obligations regarding MSW landfills in Indian country for which an approvable Tribal plan has not been submitted. The EPA is proposing a Federal regulation under the legal authority of the Act as the mechanism to implement the emission guidelines in those States and Indian country. As discussed in section III of this document, implementation and enforcement of the Federal rule may, however, be delegated to Tribal, State and local agencies when requested by a State, Tribal or local agency, and when it is determined appropriate by EPA. Furthermore, EPA encourages and expects several more States to submit State plans in the future. Upon the effective date of a State or Tribal plan, the Federal plan would no longer apply to MSW landfills covered by that State or Tribal plan.

B. Inventory of Affected MSW Landfills

As a required element, a State or Tribal plan must include a complete source inventory of MSW landfills subject to the emission guidelines. Consistent with the requirement for State plans to include an inventory of MSW landfills, docket number A–98–03 contains a July 24, 1998 inventory of MSW landfills expected to be covered by the MSW landfills Federal plan. The inventory does not include a separate listing of landfills in Indian country because, at this time, EPA does not have an accurate inventory of landfills in Indian country or their emissions. This information will become available when Indian Tribes submit design capacity reports for their existing MSW landfills as required by this Federal plan. The inventory is contained in a

memorandum entitled ''Procedures Used in Preparing an Inventory of MSW Landfills and Emissions for the Emission Guidelines Federal Plan'' (A–98–03, II–B–2). The supporting references cited in the memo are also included in the docket. Docket item II–B–2 fulfills both the MSW landfills inventory requirement and the landfills emission inventory requirement, which will be discussed in the following section. The inventory is based on EPA Office of Solid Waste (OSW) surveys and recent information from Regional Offices. This is the best information EPA has to rely on; however, EPA recognizes that there is a very large number of existing landfills and this list may not be comprehensive. If there are additional landfills that meet the applicability criteria as described under the Regulated Entities section, but are not identified in the inventory, the Federal plan would apply to them. (See section I.B. of this preamble and § 62.14352 of subpart GGG for applicability criteria.) If better information is available, EPA requests that it be submitted during the comment period.

C. Inventory of Emissions

As a required element, a State or Tribal plan must include an inventory of NMOC emissions from MSW landfills subject to the emission guidelines. The EPA estimated the NMOC emissions from the inventory (A–98–03, II–B–2) of existing MSW landfills that are expected to be covered by the Federal plan as of July 24, 1998. Table 4 of this preamble summarizes the results of the inventory for those States that do not have an approved or effective State plan or have not been granted an extension for State plan submittal. The inventory also includes landfills in those States whose extension date is before July 24, 1998, but do not have an approved State plan after the extension date has passed. Pollutant emissions are expressed in megagrams NMOC per year (Mg/yr). The EPA estimated emissions from MSW landfills using calculation procedures listed in the ''Compilation of Air Pollutant Emission Factors,'' (AP–42). Refer to the memorandum in docket number A–98–03 for the complete emissions inventory, including detailed emissions from MSW landfills in each State, and details on the calculations used to determine those emissions.

TABLE 4.—SUMMARY OF ESTIMATED NMOC EMISSIONS FROM EXISTING MSW LANDFILLS EXPECTED TO BE COVERED BY THE FEDERAL PLAN

Region/State/Municipal	Annual emissions NMOC (megagrams/year)
Region I:	
Connecticut	1056
Maine	3410
Massachusetts	2960
Region II:	
New Jersey	2978
New York	13044
Puerto Rico	10565
Virgin Islands	5
Region III:	
Delaware	1336
Pennsylvania [a]	3771
Maryland	2765
Virginia	7136
West Virginia	1932
Region IV:	
Alabama	2772
Florida	7287
Georgia	4536
Kentucky	4566
Mississippi	2240
North Carolina	3624
South Carolina	1758
Tennessee [b]	5558
Nashville, TN	104
Region V:	
Indiana	1800
Michigan	2199
Wisconsin	14206
Region VI:	
Albuquerque, NM	5
Region VIII:	
South Dakota	2461
Region IX:	
American Samoa	39
Arizona	1556
California	9365
Guam	39
Hawaii	364
Nevada	2631
Northern Mariana Islands	0
Region X:	
Alaska	4323
Idaho	1267

TABLE 4.—SUMMARY OF ESTIMATED NMOC EMISSIONS FROM EXISTING MSW LANDFILLS EXPECTED TO BE COVERED BY THE FEDERAL PLAN—Continued

Region/State/Municipal	Annual emissions NMOC (megagrams/year)
Washington	4085

[a] Does not include Allegheny County or Philadelphia.
[b] Does not include Hamilton County (Chattanooga).

D. Emission Limits

As a required element, a State or Tribal plan must include emission limits. Section 60.24(c) of 40 CFR part 60 requires these emission limits to be ''no less stringent'' than those in the emission guidelines. On a case-by-case basis, a State may provide a less stringent standard if the State demonstrates to EPA that the criteria in § 60.24(f) are met and EPA approves the less stringent standard. In accordance with 40 CFR 60.27(e), the emission limits in the MSW landfills Federal plan are the same as 40 CFR part 60, subpart Cc.

The emission limits for NMOC can be achieved by installing a gas collection and control system meeting the requirements of 40 CFR 60.752(b)(2)(ii). This includes a collection system meeting specified general design criteria and a control system achieving the specified 98 percent reduction or 20 parts per million volume (ppmv) outlet concentration. An MSW landfill owner or operator may use any specific collection system design and control equipment to comply with the MSW landfills Federal plan, as long as the general criteria for the collection system and the numerical emission control limits for NMOC are met.

The proposed MSW landfill Federal plan is consistent with the June 16, 1998 (63 FR 32743) amendments to the MSW landfills emission guidelines (subpart Cc). The amendments clarify the March 12, 1996, subpart Cc rule.

E. Compliance Schedules and Increments of Progress

As a required element, a State or Tribal plan must include compliance schedules for installing collection and control systems to comply with the emission guidelines. Because this MSW landfills Federal plan is being implemented in lieu of State plans, its compliance schedule includes the same increments of progress as required in a State or Tribal plan. The Federal plan increments of progress are consistent with the requirements in 40 CFR 60.24 of subpart B. These increments of progress are required for any compliance schedules that are longer than 12 months. The increments of progress in the Federal plan (and in any approved State or Tribal plan) are the primary mechanism for ensuring progress toward final compliance with the emission guidelines. Each increment of progress has a specified date for achievement.

If the compliance schedule in the State or Tribal plan is less stringent than the compliance schedule in this Federal plan, the compliance schedule in the promulgated Federal plan would continue to apply to a landfill after EPA approves a State plan covering the landfill. The exception to this provision would be if the State or Tribe has met the requirement of § 60.24(f) for a less stringent compliance schedule and has received approval by EPA for such a schedule. In any case, the Federal plan provides options for States, Tribes, and owners or operators to establish dates to award contracts and begin construction. These options are described below.

This proposed Federal plan includes the five increments of progress required by subpart B and provides three options to establish the increment dates. Under all three options, the five increment dates are defined and are enforceable. The Federal plan could function with only one option, but in order to provide maximum flexibility, this proposal includes three options. The EPA requests comments on each of the options and on the desirability of including these multiple options in the final Federal plan. Based on comments received, the final Federal plan will include one, two, or three options. All three options are discussed in more detail following the definitions for the increments of progress as listed below.

1. Increments of progress

The mandatory increments of progress are:

1. Submitting a final control plan (design plan);

2. Awarding contracts for control systems or orders for purchase of components;

3. Beginning on-site construction or installation of the air pollution control device(s);

4. Completing on-site construction or installation of the air pollution control device(s); and

5. Reaching final compliance.

The MSW landfill owner or operator is responsible for meeting each of these five increments of progress for the landfill no later than the applicable compliance date. The MSW landfill owner or operator must notify EPA as each increment of progress is achieved (or missed). The notification must identify the increment and the date the increment was met or missed. For an increment achieved after the specified deadline, in addition to providing notification that the increment was initially missed, the MSW landfill owner or operator must also provide a notification identifying the increment and the date the increment was ultimately achieved. The owner or operator must mail the notification to the appropriate EPA Regional Office, post-marked within 10 business days of the increment date defined in the Federal plan. (Table 5 lists the addresses of the Regional Administrators and the States in their region.) Descriptions of the increments of progress follow.

TABLE 5.—EPA REGIONAL ADMINISTRATORS

Regional contact	State or protectorate
EPA Region I, One Congress Street, John F. Kennedy Federal Bldg., Boston, MA 02203–0001.	CT, MA, ME, NH, RI, VT
EPA Region II, 290 Broadway, New York, NY 10007–1866	NJ, NY, PR, VI
EPA Region III, 1650 Arch Street, Philadelphia, PA 19106	DC, DE, MD, PA, VA, WV
EPA Region IV, 61 Forsyth Street, SW, Atlanta, GA 30303	AL, FL, GA, KY, MS, NC, SC, TN

TABLE 5.—EPA REGIONAL ADMINISTRATORS—Continued

Regional contact	State or protectorate
EPA Region V, 77 W. Jackson Blvd., Chicago, IL 60604–3507	IL, IN, MI, MN, OH, WI
EPA Region VI, Fountain Place, 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733.	AR, LA, NM, OK, TX
EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101	IA, KS, MO, NE
EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466	CO, MT, ND, SD, UT, WY
EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105	AS, AZ, CA, GU, HI, NMI, NV
EPA Region X, 1200 Sixth Avenue, Seattle, WA 98101	AK, ID, OR, WA

Submit a final control plan (design plan). To meet this increment, the MSW landfill owner or operator must submit a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe the collection and control system that meets the requirements of 40 CFR 60.752(b)(2)(ii). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 60.758 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in 40 CFR 60.759 or include a demonstration that shows that, based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill. These requirements are discussed in section V ''Summary of Federal Plan,'' and in the Federal plan regulation (40 CFR part 62, subpart GGG). The final control plan also must include the same information that will be used to solicit bids to install the collection and control system.

Award contract. Awarding contract means the MSW landfill owner or operator must enter into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The EPA anticipates that the MSW landfill owner or operator may award a number of contracts to install the collection and control system. However, to meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts sufficient to initiate on-site construction or installation of the collection and control system. The MSW landfill owner or operator must mail a copy of the signed contract(s) to EPA within 10 business days of entering into the contract(s).

Initiate on-site construction. Initiation of on-site construction or installation of the collection and control system means to begin any of the following:

- Installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan;
- Physical preparation necessary for the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or
- Alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

Complete on-site construction. To complete on-site construction means that all necessary collection system components and air pollution control devices identified in the final control plan are in place, on site, and ready for operation.

Final compliance. To be in final compliance means to connect and operate the collection and control system specified in the final control plan as designed. Within 180 days after the date the landfill is required to achieve final compliance, the initial performance test must be conducted.

2. Summary of Three Options for Determining Schedule Increment Dates

The proposed MSW landfills Federal plan includes three options for establishing the increment dates. The compliance schedule for facilities affected by this Federal plan could be established by option 1 (generic compliance schedule proposed by EPA), option 2 (facility-specific schedule consistent with the State or Tribal plan that has been submitted to EPA by the State or Tribe but not yet approved and/or effective), or option 3 (facility-specific schedule submitted to EPA by the owner or operator of the landfill or the State or Tribe). Under all three options, the five increment dates would be defined and are enforceable.

In cases where options 2 or 3 have not been exercised, the owner or operator of an affected facility would be subject to option 1 (generic schedule). However, if the State or Tribe, or the landfill owner or operator submits a schedule that EPA approves (options 2 or 3), the owner or operator will be subject to that alternative schedule. Under option 2, States or Tribes may submit increment schedules to EPA prior to the end of the comment period for this proposal February 16, 1999. The EPA will review the schedules and incorporate them into the Federal plan if they fulfill the requirements of 40 CFR 60.24. Under option 3, a landfill owner or operator, the State, or a Tribe may submit a schedule to EPA by the time the final control plan is due under the option 1 generic compliance schedule (i.e., within 1 year after the first annual emission rate report shows NMOC emission $\geq$ 50 Mg per year). Because the option 3 schedules would be submitted after promulgation of the Federal plan, EPA will review the schedules, determine if they are acceptable, and if appropriate, periodically amend the Federal plan to incorporate the schedules. Each of the options is discussed in detail below.

Option 1. Generic compliance schedule. Option 1 is the generic default alternative. For MSW landfills covered by the Federal plan for which States or Tribes have not submitted plans or compliance schedules, EPA is proposing a generic compliance schedule and increments of progress. Option 1 is necessary to establish a baseline where neither option 2 nor option 3 is exercised. The generic schedule applies to existing MSW landfills that are located in States or in Indian country and that are not subject to a site-specific compliance schedule that is either approved by EPA as part of a State or Tribal plan or incorporated into the promulgated MSW landfills Federal plan.

Consistent with the emission guidelines, the proposed Federal plan requires owners or operators of existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m^3 to install collection and control systems if their NMOC

emission rate is 50 Mg per year or more. Owners or operators of MSW landfills subject to the Federal plan will be required to submit a design capacity report within 90 days after the effective date of the Federal plan. If the design capacity is equal to or greater than 2.5 million Mg and 2.5 million m^3, the first annual NMOC emission rate report must also be submitted within 90 days after the effective date of the Federal plan. If the first emission rate report shows that NMOC emissions equal or exceed 50 Mg per year, the owner or operator must begin following the increments of progress to install the required collection and control system.

If the first NMOC emission rate report shows emissions less than 50 Mg per year, then the owner or operator must recalculate NMOC emissions annually and submit annual NMOC emission rate reports unless the MSW landfill is closed. (See 40 CFR 60.757(b)(1)(ii) for conditions under which 5-year reports rather than annual reports may be submitted.) If emissions increase to 50 Mg per year or more, the MSW landfill will be required to install a collection and control system. Therefore, the generic schedule for the increments of progress starts with the date of the first annual emission rate report that shows NMOC emissions equal or exceed 50 Mg per year.

For existing MSW landfills subject to the option 1 generic compliance schedule, EPA is proposing the following increments of progress:

1. Submit final control plan (design plan)—1 year after first annual emission rate report showing NMOC emissions ≥50 Mg per year.
2. Award contract—20 months after first annual emission rate report showing NMOC emissions ≥50 Mg per year.
3. Initiate on-site construction—24 months after first annual emission rate report showing NMOC emissions ≥50 Mg per year.
4. Complete on-site construction—30 months after first annual emission rate report showing NMOC emissions ≥50 Mg per year.
5. Final compliance—30 months after first annual emission rate report showing NMOC emissions ≥50 Mg per year. Note that the initial performance test to demonstrate compliance must be conducted within 180 days after the date the landfill is required to achieve final compliance.

The date for the first increment (final control plan) is established in the emission guidelines (subpart Cc). This same date is proposed for the Federal plan because State, Tribal, and Federal plan compliance schedules are required to be as stringent as the emission guidelines. The date for the fourth and fifth increments (complete on-site construction and final compliance) is also established by the emission guidelines.

The EPA selected the proposed dates for the middle two increments (awarding contract and initiating on-site construction) to allow a reasonable period of time for MSW landfills to complete these activities. These increments of progress are required by 40 CFR 60.24, but dates are not specified in the emission guidelines. The EPA reviewed schedules in State plans to ensure that this proposed schedule is generally consistent with State plan schedules. (The EPA's review of State plan schedules is documented in docket A–98–03, item II–A–1). The date for awarding contracts is 20 months after the first annual NMOC emission rate report showing NMOC emissions greater than or equal to 50 Mg per year, which is 8 months after the design plan is due. This 8-month time frame will allow adequate time for the regulatory agency to review and approve the design plan and for the MSW landfill owner or operator to solicit bids based on the design plan and award the contract(s).

The date for initiating on-site construction is 24 months after the first annual emission report showing NMOC emissions greater than or equal to 50 Mg per year is due (4 months after contract award). This 4-month period allows time for the contractor to mobilize and obtain materials necessary to begin construction. A later date would not be practical because the date for completing on-site construction and final compliance is 30 months after the first annual emission rate report showing NMOC emissions greater than or equal to 50 Mg per year. If construction is not initiated by 24 months after the first annual emission rate report showing NMOC emissions greater than or equal to 50 Mg per year, it is very unlikely that the construction could be completed by the final compliance date. Some MSW landfills may want to initiate on-site construction earlier to assure that they can meet the final compliance date. The fourth increment, completion of on-site construction, will need to be completed by the final compliance date (increment 5) in order for the landfill to achieve compliance.

Option 2. Site-specific compliance schedules submitted by States or Tribes. Under option 2, States or Tribes may submit to EPA increment dates as negotiated with landfill owners or operators before the end of the comment period for this proposal. Following EPA review and approval of these schedules, EPA will add them to the final Federal plan. The EPA is proposing to use the State's or Tribe's compliance schedule to assure that the Federal plan is consistent with State or Tribal plans that are approved after the Federal plan is promulgated. States or Tribes may have already negotiated a schedule with the affected MSW landfills, determined what control schedule is feasible given the current control level of the landfills and the site-specific considerations and constraints, held public hearings, and considered public comments; therefore, it is appropriate for the MSW landfills Federal plan schedule to be consistent with these schedules. Because this MSW landfills Federal plan is an interim action in many cases until State or Tribal plans are approved, it is appropriate for the MSW landfills Federal plan to be consistent with schedules submitted to EPA separately by the State or Tribe during the comment period. As of July 24, 1998, EPA had not received compliance schedules that will be included in the Federal plan.

Option 3. Site-specific compliance schedules submitted by landfill owners or operators or the State or Tribe. The third option for determining the compliance dates is for the landfill owner or operator, the State, or Tribe to submit a site-specific date for achieving increments 2 and 3 to EPA for approval. The dates for increment 1 (submitting a final control plan) and increments 4 and 5 (completing on-site construction and achieving final compliance) would be the same as option 1. These dates are established in the emission guidelines (subpart Cc) and are the same dates proposed for the generic compliance schedule, in keeping with the requirement that the Federal plan be as stringent as the emission guidelines. There is more flexibility for landfill owners or operators or States or Tribes to set alternative deadlines for increments 2 and 3 because no deadlines are specified in the emission guidelines.

The EPA recognizes that flexibility may be needed for increment 2 (award contract) and increment 3 (start construction) given facility-specific collection system considerations and constraints. Therefore, under option 3, EPA will accept facility-specific compliance schedules from MSW landfill owners or operators, the State, or Tribe.

The State, Tribe, or the MSW landfill owner or operator (after consulting with the State or Tribe) will submit alternative dates for increments 2 and 3

and a justification to EPA at the time the final control plan is due. If the MSW landfill owner or operator is submitting the alternative dates for these increments, the owner or operator should also send a copy to the appropriate State or Tribe. The EPA is allowing alternative dates for increments 2 and 3 to provide flexibility to States, Tribes, or MSW landfill owners or operators, however, these alternative dates must not jeopardize final compliance of a MSW landfills with the requirements of the landfill Federal plan. The EPA will review the schedule and coordinate with the owner or operator or the State or Tribe. If EPA approves the revised schedule, EPA will add the schedule to the site-specific compliance schedule table (reserved) in subpart GGG as a technical amendment.

Summary and Request for Comments. In summary, the proposed MSW landfills Federal plan includes three options for defining the five increment dates. The EPA is considering whether including anyone, some, or all of these options in the Federal plan maximizes flexibility and increases regulatory efficiency. The EPA specifically requests comments on each of the options discussed in this proposal, as well as comments on the desirability of including anyone, some, or all of the options in the final Federal plan.

F. Process for Review and Approval of Site-Specific Design Plans

The emission guidelines require State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems (see 40 CFR 60.33c(b)). As previously discussed, if the existing MSW landfill has (1) a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3, and (2) NMOC emissions equal to or exceeding 50 Mg/year, the landfill owner or operator must submit a site-specific design plan. For MSW landfills subject to the Federal plan, either the State, Tribe, or the EPA Regional Office will review the design plans. If the State or Tribe has been delegated authority to implement that aspect of the Federal plan, the State or Tribe will review the design plans. (See section III of this preamble for a discussion of Federal plan delegation.) If EPA has not delegated authority to the State or Tribe, the EPA Regional Office will review the design plans.

The EPA intends to review design plans as expeditiously as possible so that there is sufficient time after approval of the plans for the landfills to install controls prior to the compliance date. The EPA will initially review the design plans for completeness and the source will be notified if any items are missing. The EPA will then review the plans for acceptability, and, once that review is completed, EPA will notify the source and the State or Tribe in writing of the acceptability of the plan. If the plan is not acceptable, the source will be given an appropriate amount of time to make the necessary changes; however, the date by which a gas collection and control system must be completed and in compliance remains unchanged, i.e., 30 months after the emission rate report first shows NMOC emissions greater than or equal to 50 Mg/yr.

G. Testing, Monitoring, Recordkeeping, and Reporting

As a required element of a State plan, a State must include the testing procedures in 40 CFR 60.34c and the recordkeeping and reporting requirements listed in 40 CFR 60.35c. The proposed MSW landfills Federal plan requires the same provisions for test methods, monitoring, recordkeeping and reporting (see 40 CFR 62.14354 and 62.14355).

H. Record of Public Hearings

As a required element of a State plan, a State must include opportunity for public participation in developing, adopting, and implementing the State plan (40 CFR 60.23(c)). For this MSW landfills Federal plan, a public hearing will be held in each EPA region in which a landfill is located that would be covered by the proposed Federal plan, if individuals request to speak. (See the **DATES** section of this preamble.) The hearing record will appear in the docket. Written public comments also are solicited. (See the **ADDRESSES** section of this document.) The EPA will review and consider the oral and written comments in developing the final Federal plan.

I. Progress Reports

As a required element of a State plan, a State must submit annual reports on progress in the implementation of the emission guidelines to EPA. Emissions data would be reported to the Aerometric Emissions Information Retrieval System Facility Subsystem as specified in 40 CFR part 60, appendix D.

If a State or Tribe has been delegated authority to implement and enforce this Federal plan, the State or Tribe will submit annual progress reports to EPA, as required by 40 CFR 60.25(f). These reports must be combined with the State Implementation Plan report required by 40 CFR 51.321 in order to avoid duplicative reporting. Each progress report should include status on compliance, enforcement actions and increments of progress, identification of sources that have ceased operation or started operation, updated emission inventory information, and copies of technical reports on any performance testing and monitoring. For MSW landfills in States or in Indian Country where authority has not been delegated, EPA intends to prepare annual reports.

III. Implementation of Federal Plan and Delegation

The EPA has designed the landfills Federal plan to facilitate the transfer of authority from EPA to States, Tribes, and local agencies. For example, the EPA has encouraged States and Tribes with landfills that will be subject to the Federal plan to help determine compliance schedules that would apply to their landfills. These schedules may be included in the Federal plan and will provide a more seamless transition to a State or Tribal plan once a State or Tribal plan is submitted and approved.

A. Background of Authority

The EPA is required to adopt emission guidelines that are applicable to existing MSW landfills under section 111(d) of the Act. The emission guidelines are not enforceable, however, until EPA approves a State plan or adopts a Federal plan. In cases where a State or Tribe does not have an EPA approved plan, the EPA must adopt a Federal plan for MSW landfills in the State or in Indian country as an interim measure to implement the emission guidelines until the State or Tribal plan is approved. A few States may not submit a State plan and EPA is not aware of any Tribes that are developing Tribal plans.

Congress has determined that the primary responsibility for air pollution control rests with State and local agencies. *See* the Act 101(a)(3). Consistent with that overall determination, Congress established section 111 of the Act with the intent that the States and local agencies take the primary responsibility for ensuring that the emission limitations and other requirements in the emission guidelines are achieved. Congress explicitly required that EPA establish procedures under section 111(d) that are similar to those under section 110(c) for State Implementation Plans. The section 110(c) procedures are based on States having the primary responsibility. Congress has shown a consistent intent for the States and local agencies to have the primary responsibility, but also included the requirement for EPA to

promulgate a Federal plan for States that fail to submit approvable State plans in time. Accordingly, EPA has strongly encouraged the States to submit approvable State plans on time, and for those States that are unable to submit approvable State plans on time, EPA is strongly encouraging them to request delegation of the Federal plan so that they can have the primary responsibility in their State, consistent with Congress' overarching intent.

The EPA also believes that Indian tribes are the primary parties responsible for regulating air quality within Indian Country. See EPA's Indian Policy (''Policy for Administration of Environmental Programs on Indian Reservations,'' signed by William D. Ruckelshaus, Administrator of EPA dated November 4, 1984), which was reaffirmed by EPA Administrator Browner in 1994 (memorandum entitled, ''EPA Indian Policy'' signed by Carol M. Browner, Administrator of EPA on March 14, 1994).

The EPA believes, more specifically, that the State, Tribal and local agencies have the responsibility to design, adopt, and implement the control programs needed to meet the requirements of the MSW landfills Federal plan. The EPA also believes that these agencies have appropriate enforcement resources and other practical advantages to achieve the highest rates of actual compliance in the field. For these reasons, EPA seeks to employ all available mechanisms to expedite program transfer to State, Tribal and local agencies, where requests for delegations can be granted. For example, EPA has encouraged States to help determine compliance schedules for this MSW landfills Federal plan.

B. Delegation of the Federal Plan and Retained Authorities

If a State or Indian tribe intends to take delegation of the Federal plan, the State or Indian tribe must submit a letter to EPA stating their intent on behalf of the State or Tribe. In order to obtain delegation, an Indian tribe must also establish its eligibility to be treated in the same manner as a State (see section I.E of the preamble). The letter requesting delegation of authority to implement the Federal plan must, at a minimum, demonstrate that the State or Tribe has adequate resources and the legal and enforcement authority to administer and enforce the program. If the State or Tribe makes such a demonstration, EPA will approve the delegation of the Federal plan. A memorandum of agreement between the State or Tribe and the EPA would set forth the terms and conditions of the delegation including the effective date of the agreement and would be used to transfer authority. The EPA will publish an approval notice in the **Federal Register** and incorporate it into 40 CFR part 62. The EPA would, in conjunction with the State or Tribe, make additional efforts to ensure that affected sources are aware that the State or Tribe has assumed responsibility for implementation.

The EPA will keep an up-to-date list of State and Tribal plan submittals on the EPA TTN Web (http://www.epa.gov/ttn/oarpg). The list will also show whether the State or Tribe has taken delegation of the Federal plan. It is important to note, however, that while the EPA will endeavor to keep the listing updated, the list is not controlling regarding whether a State or Tribal plan has been approved or whether authority to implement and enforce the MSW landfills Federal plan has been delegated.

The EPA will implement the Federal plan unless authority to implement the Federal plan is delegated to a State or Indian tribe. If a State or Tribe fails to implement the delegated portion of the Federal plan, EPA will assume direct implementation.

In delegating implementation and enforcement authority to a State or Tribe under sections 101(a)(3) and 111 of the Act, the EPA Administrator will retain the authority to approve the following items and not transfer them to a State or Tribe:

- Alternative site-specific NMOC concentration $(c)_{NMOC}$ or site-specific methane generation rate constant (k) in calculating the annual NMOC emission rate,
- Alternative emission standard,
- Major alternatives [1] to test methods,
- Major alternatives [1] to monitoring, or
- Waivers of record keeping.

If landfill owners or operators would like to avail themselves of the items listed above and specified in this Federal plan, they should submit a request to the Regional Office Administrator with a copy to the State. It should be noted that the EPA does not relinquish enforcement authority even when a state or Tribe has received delegation.

[1] Major changes to test methods or to monitoring are modifications made to a federally enforceable test method or to a federal monitoring requirement. These changes would involve the use of unproven technology or procedures or an entirely new method (which is sometimes necessary when the required test method or monitoring requirement is unsuitable).

C. Mechanisms for Transferring Authority

There are two mechanisms for transferring implementation responsibility to States, Tribes, and local agencies: (1) If EPA approves a State or Tribal plan submitted to EPA after the Federal plan is promulgated, the State or Tribe would have authority to enforce and implement the State or Tribal plan upon EPA approval; and (2) if a State or Tribe does not submit or obtain approval of a State or Tribal plan, EPA can delegate the authority to the State, Tribal, or local agencies to perform certain implementation responsibilities for this Federal plan to the extent appropriate and if allowed by State or Tribal law.

1. A State or Tribal Plan Is Submitted After Landfills Are Subject to the Federal Plan

After a landfill in a State or in a portion of Indian country becomes subject to the Federal plan, the State, Tribal or local agency may still adopt and submit to EPA for approval a plan (i.e., a plan containing a State or Tribal rule or other enforceable mechanism, inventories, records of public hearings, and all other required elements of a State plan). The EPA will determine if the State or Tribal plan is as stringent as the emission guidelines. If EPA determines that the State or Tribal plan is as stringent as the emission guidelines, EPA will approve the State or Tribal plan. If, however, EPA determines that the State or Tribal plan is not as stringent as the guidelines, EPA will disapprove the plan. Note that 40 CFR 60.24(f) allows some flexibility on a case-by-case basis for a less stringent rule or compliance schedule if specific criteria are met, sufficient justification is provided by the State or Tribe, and EPA approves the plan. States and Tribes may make their plans more stringent than the emission guidelines.

Landfills covered in the State or Tribal plan would be subject to the Federal plan until the State or Tribal plan is approved and becomes effective. Upon the effective date of the State or Tribal plan, the Federal plan will no longer apply to landfills covered by the State or Tribal plan and the State, Tribal or local agency will implement and enforce the State or Tribal plan in lieu of the Federal plan. (The EPA will periodically amend the Federal plan to identify States or Tribes that have State or Tribal plans covering landfills in their jurisdiction, and therefore, are not subject to the Federal plan.) Making the State or Tribal plan effective in this manner expedites a State's or Tribe's

responsibility for implementing the emission guidelines as intended by Congress.

2. State Takes Delegation of the Federal Plan

The State, Tribal or local agency may request Federal implementation responsibilities even if there is no State or Tribal plan in effect. The EPA believes that it is advantageous and the best use of resources for State, Tribal or local agencies to agree to undertake, on the EPA's behalf, administrative and substantive roles in implementing the Federal plan, to the extent appropriate and where authorized by State or Tribal law. These roles could include as a minimum: development of process for review of site-specific gas collection and control system design plans, administration and oversight of compliance reporting and record keeping requirements, conduct of source inspections, and preparation of draft notices of violation. As stated previously, the EPA does not relinquish the authority to bring enforcement actions against sources violating Federal plan provisions.

IV. Title V Operating Permits

Title V of the Clean Air Act and EPA's implementing regulations set minimum standards for State and local air pollution control agencies to adopt and submit for EPA approval a regulatory program for issuing operating permits to specific sources. These sources include, but are not limited to the following: major sources under title I or section 112 of the Act; affected sources under title IV of the Act (acid rain sources); solid waste incineration units required to obtain a permit under section 129 of the Act; and sources subject to standards under section 111 or 112 of the Act that are not area sources exempted or deferred from permitting requirements under title V.

As clarified in the landfill amendments (63 FR 32743), all existing MSW landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m^3 must have a title V operating permit. Existing landfills with design capacities less than 2.5 million megagrams or 2.5 million m^3 are not required to have a title V operating permit, unless they are a major source or are subject to title V for some other reason (e.g., subject to a section 112 National Emission Standard for Hazardous Air Pollutants (NESHAP) or to another section 111 NSPS).

The owner or operator of an existing MSW landfill with a design capacity equal to or greater than 2.5 million Mg and 2.5 million m^3 is subject to this MSW landfills Federal plan, and as a result, must obtain a title V operating permit (40 CFR part 70 or part 71). Such sources, if not already subject to title V permitting for another reason or reasons (see sections 70.3 and 71.3), become subject to the requirement to obtain an operating permit ninety days after the effective date of this Federal plan, even if the design capacity report is submitted prior to that date. The requirement to apply for a title V permit is triggered ninety days after the effective date of the MSW landfills Federal plan as this is the date that MSW landfills are required to submit design capacity reports (if they have not already been submitted). For more information on title V permitting requirements, please see the preamble discussion entitled ''Clarification of Title V Permitting Requirements'' in the June 16, 1998 direct final rule (63 FR 32743, 32746) for NSPS and emission guidelines for MSW landfills.

Sources subject to the title V permitting program under part 70 or 71 are required to file title V applications within 12 months after becoming subject to the program. To be timely, the owner or operator of a MSW landfill, which is subject to title V as a result of this landfills Federal plan, must submit an application for an operating permit not later than one year and ninety days after the effective date of the MSW landfills Federal plan. If a source submits a timely and complete application within this time frame, the permitting authority may grant the source a permit application shield which, if maintained by the source, would allow the source to operate without a permit until its final title V permit is issued.

Existing MSW landfills which are not currently subject to title V because their design capacity is less than 2.5 million Mg or 2.5 million m^3 may trigger the requirement to apply for a title V permit in the future if the design capacity subsequently increases to equal or exceed 2.5 million Mg and 2.5 million m^3. The circumstances under which this could occur would be if the increase in design capacity is a change that is not a modification (e.g., an increase in the compaction of waste where the rate of compaction can be increased without a modification to the permit issued by the State, local or Tribal agency that is responsible for regulating the landfill). An amended design capacity report would need to be submitted within 90 days of the design capacity increase. (See 40 CFR 60.35c which incorporates the requirement in 40 CFR 60.757(a)(3).) Such sources would be required to file title V applications within 12 months of the date that the amended design capacity reports are required to be submitted. Existing MSW landfills that increase the permitted design capacity (via the permit issued by the State, local or Tribal agency that regulates the landfill) to 2.5 million Mg and 2.5 million m^3 or more through modification or reconstruction, will not be subject to the landfills Federal plan, but rather will become subject to the NSPS.

As noted above, a landfill could be subject to title V for another reason or reasons. MSW landfills, for example, may be subject to title V permitting as a result of being a major source under one or more of three major source definitions in title V: (1) section 112, (2) section 302, or (3) part D of title I of the Act. If a landfill is subject to title V for more than one reason, then the 12 month time frame for filing a title V application will be triggered by the criterion in section 70.3 or 71.3 which first caused the landfill to be subject to title V. As provided in section 503(c) of the Act, permitting authorities may establish earlier deadlines (earlier than the 12 months allowed) for submitting title V applications.

A MSW landfill that is closed and is no longer subject to title V as a result of this landfills Federal plan (see 40 CFR 62.14352(e)) may remain subject to title V permitting requirements for another reason or reasons as discussed above. In such circumstances, the landfill would be required to continue operating in compliance with a title V permit.

Title V operating permits issued to MSW landfills subject to this Federal plan must include all applicable requirements of this Federal plan (see 40 CFR 70.2 and 71.2). These permits must also contain all necessary terms and conditions to assure compliance with these applicable requirements. If a source is subject to both State and Federal plan requirements due to a State taking delegation of part of the Federal plan, then the landfill's permit must contain the applicable provisions from each plan. Given that a title V permit for a MSW landfill may contain both State and Federal provisions, it is especially important that each title V permit issued to a MSW landfill clearly state the basis for each requirement consistent with 40 CFR 70.6(a)(1)(i) and 71.6(a)(1)(i).

V. Summary of Federal Plan

The proposed MSW landfills Federal rule (40 CFR part 62, subpart GGG) which will implement this Federal plan includes applicability criteria, emission standards, design criteria, monitoring and performance testing requirements,

and recordkeeping and reporting requirements. These emission standards and requirements are the same as those in the emission guidelines (40 CFR part 60, subpart Cc), as amended in 1998. The requirements are summarized in this section.

A. Applicability

The MSW landfills Federal plan will apply to existing landfills that are not covered by an EPA approved and currently effective State or Tribal plan. The MSW landfills Federal plan will not initially apply to existing MSW landfills located in a State that has been granted an extension of time to submit a State plan, if the extension has not expired. The MSW landfills Federal plan will apply to any existing MSW landfill located in a State or portion of Indian country that has submitted a negative declaration if the landfill otherwise meets the applicability criteria of the Federal plan. An existing MSW landfill is a landfill that commenced construction, reconstruction, or modification prior to May 30, 1991 and has not been modified or reconstructed since May 30, 1991 and has accepted waste since November 8, 1987 or has capacity for future waste deposition. A MSW landfill that has been modified on or after May 30, 1991 or that has been reconstructed on or after that date is subject to the landfill NSPS rather than to this Federal plan for existing landfills. (A modification is an increase in permitted volumetric design capacity by either vertical or horizontal expansion.)

The MSW landfills Federal plan will require MSW landfills having design capacities below 2.5 million Mg or 2.5 million m^3 to submit a design capacity report. MSW landfills having design capacities greater than or equal to 2.5 million Mg and 2.5 million m^3 are subject to the requirement for a design capacity report as well as to additional provisions of the rule. In particular, the rule will require the periodic calculation of the annual NMOC emission rate at these landfills. Those landfills that emit 50 Mg/year or more of NMOC will be required to install collection and control systems.

The rule provides a tier system for calculating whether the NMOC emission rate is less than, equal to, or greater than 50 Mg/year, using a first order decomposition rate equation. The tier system does not need to be used to model the emission rate if an owner or operator has or intends to install controls that will achieve compliance.

B. Control Requirements

The proposed MSW landfills Federal plan will require the installation and operation of a well-designed and well-operated collection and control system. A collection system at a minimum would:

1. Be capable of handling the maximum expected gas generation rate;
2. Be able to collect gas effectively from all areas of the landfill that warrant control; and
3. Minimize off-site migration of subsurface gas. General design criteria are specified in the rule. Over time, new areas of the landfill will require control, so collection systems should be designed to allow expansion by the addition of further collection system components to collect gas, or separate collections systems will need to be installed as the new areas require control.

The collection system must route collected gas to a 98-percent efficient control device. If a flare is used, it must meet design and operating specifications. If an owner or operator uses an enclosed combustor, the device must achieve either 98-percent NMOC reduction or an outlet NMOC concentration of 20 ppmv or less. Alternatively, the collected gas may be treated for subsequent sale or use, provided that all emissions from any atmospheric vent from the treatment system are routed to a control device meeting either specification above. The use of energy recovery devices that meet the above requirements is encouraged.

The Federal plan will require that three conditions be met prior to capping or removal of the collection and control system:

1. The landfill must be permanently closed;
2. The collection and control system must have been in continuous operation for a minimum of 15 years; and
3. The annual uncontrolled NMOC emission rate of gas routed to the control device must be less than 50 Mg/year.

C. Monitoring and Compliance

The proposed MSW landfills Federal plan includes operational requirements for collection and control systems, and monthly and quarterly monitoring to determine that the system is operating correctly. These include quarterly monitoring of surface methane concentration and monthly monitoring of gas collection system operating parameters. An initial performance test is required for most control devices. Open flares can meet design and operating requirements in lieu of conducting performance tests to determine percent reduction or outlet concentration. Specified control device operating parameters are monitored after the initial performance test to assure that the control devices continue to be operated well.

D. Reporting and Recordkeeping

The proposed MSW landfills Federal plan includes reporting requirements that will require all existing MSW landfills except for those located in States that have submitted a negative declaration letter to submit an initial design capacity report. Initially, this is the only reporting requirement for MSW landfills with design capacities less than 2.5 million Mg or 2.5 million m^3. An existing MSW landfill which submits an initial design capacity report showing a design capacity less than 2.5 million Mg or 2.5 million m^3, but which subsequently increases its design capacity to be equal to or greater than 2.5 million Mg and 2.5 million m^3 through a change that is not a modification (e.g., an increase in the compaction of waste where the rate of compaction can be increased without a permit modification) must submit an amended design capacity report within 90 days. Such a landfill would then be subject to the same requirements described below for landfills with design capacities equal to or greater than 2.5 million Mg and 2.5 million m^3. Existing MSW landfills that increase the permitted design capacity (via the permit issued by the State, local or Tribal agency that regulates the landfill) to 2.5 million Mg and 2.5 million m^3 or more through modification or reconstruction, will no longer be subject to the landfill Federal plan, but rather will become subject to the NSPS.

In addition to submitting design capacity reports, MSW landfills with capacities equal to or greater than 2.5 million Mg and 2.5 million m^3 will also be required to submit annual NMOC emission rate reports until emissions equal or exceed 50 Mg/yr and a control system is installed or until the landfill closes. If a MSW landfill emits 50 Mg/yr NMOC or more, a collection and control system design plan must be submitted. After the collection and control system is installed, annual compliance reports are required. Finally, closure reports and control system removal reports are required. The proposed MSW landfills Federal plan includes corresponding record keeping requirements.

VI. Administrative Requirements

This section addresses the following administrative requirements: Docket,

Paperwork Reduction Act, Executive Orders 12866, 12875, 13045, and 13084, Unfunded Mandates Reform Act, Regulatory Flexibility Act, and National Technology Transfer and Advancement Act. Since today's proposed rule merely implements the emission guidelines promulgated on March 12, 1996 (codified at 40 part 60, subpart Cc) as they apply to MSW landfills and does not impose any new requirements, much of the following discussion of administrative requirements refer to the discussion of the administrative requirements contained in the preamble to the 1996 rule (61 FR 65404–65413, March 12, 1996).

A. Docket

As discussed above, a docket has been prepared for this action pursuant to the procedural requirements of section 307(d) of the Act, 42 U.S.C. 7607(d). Docket number A–88–09 contains the technical support for the March 12, 1996 emission guidelines. Additional technical support for this proposed rule is contained in docket A–98–03.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1893.01) and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M Street, SW; Washington, DC 20460 or by calling (202) 260–2740. A copy may also be accessed on the Internet at http://www.epa.gov/icr and in docket A–99–03, item II–F–1.

The information will be used by the Agency to ensure that the MSW landfill Federal plan requirements are implemented and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify MSW landfills that may not be in compliance with the MSW landfill Federal plan requirements. Based on reported information, EPA will decide which landfills should be inspected and what records or processes should be inspected. The records that owners and operators of MSW landfills maintain will indicate to EPA whether personnel are operating and maintaining control equipment properly.

Based on 1992 and 1996 Office of Solid Waste reports, a national survey of landfills, and recent information from States, this Federal plan is projected to affect approximately 3,459 MSW landfills in 36 States, protectorates, and municipalities. A number of State plans are expected to be approved within the year following Federal plan promulgation. When a State plan is approved, the Federal plan, by its own terms, will no longer apply to MSW landfills covered in that State plan. Thus, the rule may affect fewer MSW landfills and States during the second and third years following promulgation, and the average annual burden may be less than the numbers presented here.

The estimated average annual burden for industry for the first 3 years after the implementation of the Federal plan is 13,621 hours annually at a cost of $1,302,187 per year to meet the monitoring, record keeping, and reporting requirements. The estimated average annual burden, over the first 3 years, for the Agency is 5,958 hours at a cost of $245,562 (including travel expenses) per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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.

Please submit any 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 the use of automated collection techniques. Send comments on the ICR to the Director, Regulatory Information Division, Office of Policy, Planning and Evaluation, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Officer of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked ''Attention: Desk Officer for EPA.'' Refer to ICR No. 1893.01 in any correspondence. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after December 16, 1998, a comment to OMB is most likely to have its full effect if OMB receives it by January 15, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and, therefore, subject to OMB review and the requirements of the Executive Order. The EPA considered the 1996 guidelines and standards to be significant and the rules were reviewed by OMB in 1996 (see 61 FR 9913, March 12, 1996). The Federal plan proposed today will simply implement the 1996 guidelines and does not result in any additional control requirements or impose any additional costs above those previously considered during promulgation of the 1996 guidelines; therefore, this regulatory action is considered ''not significant'' under Executive Order 12866.

D. Executive Order 12875

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, or EPA consults with 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.''

Today's rule does not create a mandate on State, local or tribal governments. The Federal plan proposed today does not impose any additional costs or result in any additional control requirements above those previously considered during

promulgation of the 1996 guidelines. The EPA nonetheless has involved State and local governments in the development of this rule. During development of the MSW landfills Federal plan, EPA worked with the EPA Regional Offices to identify and address State issues. In addition, EPA requested compliance schedules from States that want a schedule in the Federal plan consistent with the State plan until the State plan becomes effective. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

E. Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risk that may disproportionately affect children.

F. Executive Order 13084

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 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.''

The MSW landfills Federal plan proposed today does not significantly or uniquely affect the communities of Indian tribal governments. There are very few existing landfills in Indian country large enough to require the installation of a collection and control system. For most existing landfills in Indian country, the only requirement this Federal plan will impose is to report the design capacity of landfills in Indian country. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a statement to accompany any rule where the estimated costs to State, local, or tribal governments, or to the private sector will be $100 million or more in any 1 year. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly impacted by the rule. An unfunded mandates statement was prepared and published in the March 12, 1996 promulgation notice for the 1996 guidelines and standards (*see* 61 FR 9913 to 9918).

The EPA has determined that the proposed MSW landfills Federal plan does not include any new Federal mandates or additional requirements above those previously considered during promulgation of the 1996 guidelines. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed rule.

H. Regulatory Flexibility Act

Section 605 of the Regulatory Flexibility Act requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are defined as small businesses, small organizations, and small governments. During the 1996 rulemaking, EPA estimated that small entities would not be affected by the promulgated guidelines and standards, and therefore, a regulatory flexibility analysis was not required (*see* 61 FR 9918). This proposed Federal plan would not establish any new requirements; therefore, pursuant to the provisions of 5 U.S.C. 605 (b), EPA certifies that this proposed MSW landfills Federal plan will not have a significant impact on a substantial number of small entities, and thus a regulatory flexibility analysis is not required.

I. National Technology Transfer and Advancement Act

Under section 12 of the National Technology Transfer and Advancement Act of 1995, the EPA must consider the use of ''voluntary consensus standards,'' if available and applicable, when implementing policies and programs, unless it would be ''inconsistent with applicable law or otherwise impractical.'' The intent of the National Technology Transfer and Advancement Act is to reduce the costs to the private and public sectors by requiring federal agencies to draw upon any existing, suitable technical standards used in commerce or industry.

A voluntary consensus standard is a technical standard developed or adopted by a legitimate standards-developing organization. The Act defines ''technical standards'' as ''performance-based or design-specifications and related management systems practices.'' A legitimate standards-developing organization must produce standards by consensus and observe principles of due process, openness, and balance of interests. Examples of organizations that are regarded as legitimate standards-developing organizations include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and Society of Automotive Engineers (SAE). NTTAA does not apply because the Federal plan implements an existing rule to which NTTAA did not apply. In addition, the emission guidelines, which the Federal plan is based on, do not impose technical standards.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: December 4, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter 1 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The Authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. Amend part 62 by adding subpart GGG consisting of §§ 62.14350 through 62.14356 as follows:

Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills Constructed Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

Sec.

Subpart GGG—Federal Plan Requirements for Municipal Solid Waste Landfills Constructed Prior to May 30, 1991 and Have Not Been Modified or Reconstructed Since May 30, 1991

§ 62.14350 Scope and delegation of authority.

(a) This subpart contains emission requirements and compliance schedules for the control of designated pollutants from certain municipal solid waste landfills in accordance with section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B. This municipal solid waste landfills Federal plan applies to each designated facility as defined in § 62.14352 of this subpart that is not covered by an EPA approved and currently effective State or Tribal plan.

(b) The following authorities shall be retained by the Administrator and not transferred to the State or Tribe upon delegation of authority to the State or Tribe to implement and enforce the Federal plan pursuant to sections 101(a)(3) and 111 of the Clean Air Act:

(1) Approval of alternative methods to determine site-specific NMOC concentration (C) NMOC or site-specific methane generation rate constant (k) in calculating the annual NMOC emission rate (as provided in 40 CFR 60.754(a)(5) of subpart WWW),

(2) Alternative emission standard,

(3) Major alternatives to test methods,

(4) Major alternatives to monitoring, or

(5) Waivers of recordkeeping.

§ 62.14351 Definitions.

Terms used but not defined in this subpart have the meaning given them in the Clean Air Act and 40 CFR part 60, subparts A, B, and WWW.

Achieve final compliance means to connect and operate the collection and control system as specified in the final control plan as designed. Within 180 days after the date the landfill is required to achieve final compliance, the initial performance test must be conducted.

Award contract means the MSW landfill owner or operator enters into legally binding agreements or contractual obligations that cannot be canceled or modified without substantial financial loss to the MSW landfill owner or operator. The MSW landfill owner or operator may award a number of contracts to install the collection and control system. To meet this increment of progress, the MSW landfill owner or operator must award a contract or contracts to initiate on-site construction or installation of the collection and control system.

Complete on-site construction means that all necessary collection system components and air pollution control devices identified in the final control plan are on site, in place, and ready for operation.

Design Capacity means the maximum amount of solid waste a landfill can accept, as indicated in terms of volume or mass in the most recent permit issued by the State, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass or from mass to volume to demonstrate its design capacity is less than 2.5 million megagrams or 2.5 million cubic meters, the calculation must include a site-specific density, which must be recalculated annually.

EPA approved State plan means a State plan that EPA has approved based on the requirements in 40 CFR part 60, subpart B to implement and enforce 40 CFR part 60, subpart Cc. An approved State plan becomes effective on the date specified in the notice published in the **Federal Register** announcing EPA's approval.

Federal Indian Reservation means for purposes of the Clean Air Act, all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

Final Control Plan (Collection and Control System Design Plan) means a plan that describes the collection and control system that will capture the gas generated within an MSW landfill. The collection and control system design plan must be prepared by a professional engineer and must describe the collection and control system that meets the requirements of 40 CFR 60.752(b)(2)(ii). The final control plan must contain engineering specifications and drawings of the collection and control system. The final control plan must include any alternatives to the operational standards, test methods, procedures, compliance measures, monitoring, record keeping or reporting provisions of 40 CFR 60.753 through 60.758 proposed by the owner or operator. The final control plan must either conform with the specifications for active collection systems in 40 CFR 60.759 or include a demonstration that shows that based on the size of the landfill and the amount of waste expected to be accepted, the system is sized properly to collect the gas, control emissions of NMOC to the required level and meet the operational standards for a landfill. The final control plan also must include the same information that will be used to solicit bids to install the collection and control system.

Indian Country means all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired protectorate thereof, and whether within or without the limits of a State; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Initiate on-site construction means to begin any of the following: installation of the collection and control system to be used to comply with the emission limits as outlined in the final control plan; physical preparation necessary for the installation of the collection and control system to be used to comply with the final emission limits as outlined in the final control plan; or alteration of an existing collection and control system to be used to comply with the final emission limits as outlined in the final control plan.

Modification means an increase in the permitted volume design capacity of the landfill by either horizontal or vertical expansion based on its permitted design capacity as of May 30, 1991. Modification does not occur until the owner or operator commences construction on the horizontal or vertical expansion.

Municipal solid waste landfill or *MSW landfill* means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads. A municipal solid waste

landfill may be publicly or privately owned.

Negative declaration letter means a letter from a State to EPA to declare that there are no existing MSW landfills in the State or there are no existing MSW landfills in the State that must install collection and control systems according to the requirements of 40 CFR part 60, subpart Cc. The negative declaration letter must include the design capacities of any existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

Protectorate means American Samoa, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, and the Virgin Islands.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) of the Clean Air Act and 40 CFR part 60, subpart B that implements and enforces 40 CFR part 60, subpart Cc. State plans includes plans developed by States, local agencies, and protectorates.

Tribal plan means a plan submitted by a Tribal Authority pursuant to 40 CFR parts 9, 35, 49, 50, and 81 that implements and enforces 40 CFR part 60, subpart Cc.

§ 62.14352 Designated facilities.

(a) The designated facility to which this subpart applies is each municipal solid waste landfill in all States, protectorates, and Indian Country that meets the conditions of paragraphs (a)(1) and (a)(2) of this section, except for landfills exempted by paragraph (b) of this section.

(1) The municipal solid waste landfill commenced construction, reconstruction, or modification before May 30, 1991 (landfills that commence construction, modification, or reconstruction on or after May 30, 1991 are subject to 40 CFR part 60, subpart WWW), and

(2) The municipal solid waste landfill has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste deposition.

(b) A municipal solid waste landfill regulated by an EPA approved and currently effective State or Tribal plan is not subject to the requirements of this subpart. States that have an approved and effective State plan are listed in table 1 of this subpart. Notwithstanding the exclusions in table 1 of this subpart, any MSW landfill located in a State or Indian country that does not have an EPA approved and currently effective State or Tribal plan is subject to the requirements of this subpart.

(c) Physical or operational changes made to an existing municipal solid waste landfill solely to comply with an emission guideline are not considered a modification or reconstruction and would not subject an existing municipal solid waste landfill to the requirements of 40 CFR part 60, subpart WWW.

(d) For purposes of obtaining an operating permit under title V of the Clean Air Act, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters is not subject to the requirement to obtain an operating permit for the landfill under part 70 or 71 of this chapter, unless the landfill is otherwise subject to either part 70 or 71. For purposes of submitting a timely application for an operating permit under part 70 or 71, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity greater than or equal to 2.5 million megagrams and 2.5 million cubic meters on the effective date of this subpart, and not otherwise subject to either part 70 or 71, becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter 90 days after the effective date of this subpart, even if the design capacity report is submitted earlier. In addition, the owner or operator of a municipal solid waste landfill subject to this subpart with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters on the effective date of this subpart and not otherwise subject to either part 70 or 71, but whose design capacity subsequently increases to equal or exceed 2.5 million megagrams and 2.5 million cubic meters by a change that is not a modification becomes subject to the requirements of § 70.5(a)(1)(i) or § 71.5(a)(1)(i) of this chapter 90 days after the amended design capacity report is due.

(e) When a municipal solid waste landfill subject to this subpart is closed, the owner or operator is no longer subject to the requirement to maintain an operating permit under part 70 or 71 of this chapter for the landfill if the landfill is not otherwise subject to the requirements of either part 70 or 71 and if either of the following conditions are met:

(1) The landfill was never subject to the requirement for a control system under § 62.14353 of this subpart; or

(2) The owner or operator meets the conditions for control system removal specified in 40 CFR 60.752(b)(2)(v).

§ 62.14353 Standards for municipal solid waste landfill emissions.

(a) The owner or operator of a designated facility having a design capacity less than 2.5 million megagrams or 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(a).

(b) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must comply with the requirements of 40 CFR 60.752(b).

§ 62.14354 Procedures, test methods, and monitoring.

(a) The owner or operator of a designated facility having a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters must calculate the landfill nonmethane organic compounds emission rate using the procedures listed in 40 CFR 60.754, as applicable, to determine whether the landfill nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(b) The owner or operator of a designated facility with a gas collection and control system used to comply with § 62.14353(b) must comply with the operational standards in 40 CFR 60.753; the test procedures in 40 CFR 60.754(b) and (d); the compliance provisions in 40 CFR 60.755; and the monitoring provisions in 40 CFR 60.756, unless alternative procedures have been approved.

§ 62.14355 Reporting and recordkeeping requirements.

(a) The owner or operator of a designated facility must comply with the recordkeeping and reporting provisions listed in 40 CFR 60.757 and 60.758, except as provided for under paragraphs (a)(1) and (a)(2) of this section.

(1) The initial design capacity report for a designated facility is due within 90 days of the effective date of this subpart. Existing MSW landfills with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters that are located in States that submitted a negative declaration letter are not required to submit an initial design capacity report.

(2) The initial nonmethane organic compounds emission rate report for a designated facility is due within 90 days of the effective date of this subpart.

(b) The owner or operator of a designated facility must submit notification to the EPA Regional Office within 10 business days of completing each increment of progress. Each

notification must indicate which increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart has been achieved. The notification must be signed by the owner or operator of the landfill.

(1) For the first increment of progress, the final control plan (collection and control system design plan) must be submitted in addition to the notification. A copy of the design plan must also be kept on site at the landfill.

(2) For the second increment of progress, a signed copy of the contract(s) awarded must be submitted in addition to the notification.

(c) The owner or operator of a designated facility who fails to meet any increment of progress specified in § 62.14356(a)(1) through (a)(5) of this subpart according to the applicable schedule in § 62.14356 of this subpart must submit notification that the owner or operator failed to meet the increment to the EPA Regional Office within 10 business days of the applicable date in § 62.14356.

(d) The owner or operator (or the State or Tribal air pollution control authority) that is submitting alternative dates for increments 2 and 3 according to § 62.14356(d) of this subpart must do so by the date specified for submitting the final control plan. The date for submitting the final control plan is specified in § 62.14356(c)(1) and (c)(2) of this subpart, as applicable. The owner or operator (or the State or Tribal air pollution control authority) must submit a justification if any of the alternative dates are later than the increment dates in table 3 of this subpart. The owner or operator must also submit the alternative dates to the State.

§ 62.14356 Compliance schedules and increments of progress.

(a) Increments of progress. The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section to install air pollution control devices to meet the emission standards specified in § 62.14353(b) of this subpart. (Refer to § 62.14351 for a definition of each increment of progress.)

(1) Submit control plan: Submit a final control plan (collection and control system design plan) according to the requirements of § 62.14353(b) of this subpart and 40 CFR 60.752(b)(2).

(2) Award contract(s): Award contract(s) to initiate on-site construction or initiate on-site installation of emission collection and/or control equipment.

(3) Initiate on-site construction: Initiate on-site construction or initiate on-site installation of emission collection and/or control equipment as described in the final control plan.

(4) Complete on-site construction: Complete on-site construction and installation of emission collection and/or control equipment.

(5) Achieve final compliance: Complete construction as designed in the final control plan and connect the landfill gas collection system and air pollution control equipment such that they are fully operating. The initial performance test must be conducted within 180 days after the date the facility is required to achieve final compliance.

(b) Compliance date. For each designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 Mg per year, planning, awarding of contracts, and installation of municipal solid waste landfill air emission collection and control equipment capable of meeting the standards in § 62.14353(b) must be accomplished within 30 months after the date the initial emission rate report (or the annual emission rate report) first shows the nonmethane organic compounds emission rate equals or exceeds 50 megagrams per year.

(c) Compliance schedules: The owner or operator of a designated facility that has a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and a nonmethane organic compound emission rate greater than or equal to 50 megagrams per year must achieve the increments of progress specified in paragraphs (a)(1) through (a)(5) of this section according to the schedule specified in paragraph (c)(1) or (c)(2) of this section, unless a site-specific schedule is approved by EPA.

(1) The owner or operator of a designated facility must achieve the increments of progress according to the schedule in table 2 of this subpart, except for those affected facilities specified in paragraph (c)(2) of this section.

(2) The owner or operator of the specified designated facility in table 3 of this subpart must achieve the increments of progress according to the schedule in table 3 of this subpart.

(d) For designated facilities that are subject to the schedule requirements of paragraph (c)(1) of this section, the owner or operator (or the State or Tribal air pollution control authority) may submit for approval alternative dates for achieving increments 2 and 3.

Tables to Subpart GGG

TABLE 1 of Subpart GGG—States That Have an Approved and Effective State Plan [a]

State plan	Effective date of state plan
Colorado	09/28/98
Iowa	06/22/98
Kansas	05/19/98
Louisiana	10/28/97
Minnesota	09/25/98
Missouri	06/23/98
Montana	09/08/98
Nebraska	06/23/98
New Mexico	02/10/98
North Dakota	02/13/98
Ohio	10/06/98
Oregon	08/25/98
Utah	03/16/98
Wyoming	07/31/98

[a] This table is provided as a matter of convenience and is not controlling in determining whether a MSW landfill is subject to the Federal plan. A MSW landfill is subject to this Federal plan if it commenced construction before May 30, 1991 and has not been modified or reconstructed on or after that date and is not covered by an approved and currently effective State or Tribal plan.

TABLE 2 OF SUBPART GGG.—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS [a]

Increment	Date
Increment 1—Submit final control plan	1 year after first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 2—Award Contracts	20 months after first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 3—Begin on-site construction	24 months after first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]
Increment 4—Complete on-site construction	30 months after first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]

TABLE 2 OF SUBPART GGG.—GENERIC COMPLIANCE SCHEDULE AND INCREMENTS OF PROGRESS [a]—Continued

Increment	Date
Increment 5—Final compliance	30 months after first annual emission rate report showing NMOC emissions ≥ 50 Mg/yr. [b]

[a] Table 2 of subpart GGG applies to landfills with design capacities ≥2.5 million megagrams and 2.5 million cubic meters that are subject to this subpart except those with site-specific compliance schedules shown in table 3 of subpart GGG.
[b] NMOC = nonmethane organic compounds; Mg/yr = megagrams per year.

Table 3 of Subpart GGG—Site-Specific Compliance Schedules and Increments of Progress

[Reserved]

[FR Doc. 98–32993 Filed 12–15–98; 8:45 am]
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Federal Register

Wednesday
December 16, 1998

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 571

Designation of Offenses Subject to Sex Offender Release Notification; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 571

[BOP–1090–I]

RIN 1120–AA85

Designation of Offenses Subject to Sex Offender Release Notification

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule designates various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c). The designations ensure that notifications can be made for military offenders, for District of Columbia Code offenders, and for these and other federal inmates with a sex offense in their criminal history. This order is necessary for the protection of the public.

DATES: December 16, 1998; comments must be received by February 16, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534, telephone (202) 307–3062.

SUPPLEMENTARY INFORMATION: Section 4042(c) of Title 18, United States Code, effective as of November 26, 1998, provides for notification of sex offender release and certain related functions to facilitate effective sex offender registration and tracking. Notifications must be made for persons convicted of the federal offenses noted in subsection (c)(4)(A) through (D). Subsection (c)(4)(E) provides that the Attorney General may also designate other offenses as sexual offenses for purposes of subsection (c). The Attorney General has delegated this authority to the Director of the Bureau of Prisons. This interim rule designates additional offenses which are to be considered sexual offenses for purposes of 18 U.S.C. 4042(c). These additional designations being listed in new 28 CFR 571.72 include state sexual offenses, District of Columbia Code sexual offenses, and certain Uniform Code of Military Justice offenses.

Paragraph (a) of § 571.72 designates offenses under the law of any jurisdiction in certain descriptive categories. For example, an inmate may be serving a federal sentence for a non-sexual offense but may also be serving a concurrent sentence for a state offense which is sexual in nature or may have a prior conviction for a state offense which is sexual in nature. Notifying state and local law enforcement and registration authorities about such an inmate's release from Bureau custody is consistent with the intent of the statute and meets the goal of enhanced public safety. Paragraph (b) designates certain offenses under the Uniform Code of Military Justice (UCMJ). The Bureau has custody of some military offenders. While separate statutory authority (section 115(a)(8)(C)(iv) of Title I of Pub. L. 105–119) exists for release notification by the Bureau for military offenders, designating UCMJ offenses in this regulation makes it clear that persons convicted of military offenses in the pertinent categories are persons described in 18 U.S.C. 4042(c)(4) for all purposes, including post-release change of address notice by federal probation officers for persons under their supervision pursuant to section 4042(c)(2). Paragraph (c) designates pertinent District of Columbia Code offenses. Including District of Columbia Code offenses is a practical consequence of the Bureau's role in assuming custody of District of Columbia Code offenders under the National Capital Revitalization and Self-Government Improvement Act of 1997.

The Bureau finds that good cause exists under 5 U.S.C. 553(b) and (d)(3) for adopting this rule as an interim rule without the prior notice and comment period ordinarily required by 5 U.S.C. 553. The Bureau is publishing these additional designations as an interim rule in order to provide for the protection of the public by ensuring that state and local authorities receive timely notification of the release of sex offenders. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute ''significant regulatory actions'' under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation 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.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons:

This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

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 $100,000,000 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 rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This 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.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 571

Prisoners.

Dennis R. Bidwell,

Acting Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 571 in 28 CFR, chapter V, subchapter D, is amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. A new subpart H, consisting of §§ 571.71 and 571.72, is added to read as follows:

Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(c)

Sec.
571.71 Purpose and scope.
571.72 Additional designated offenses.

Subpart H—Designation of Offenses for Purposes of 18 U.S.C. 4042(c)

§ 571.71 Purpose and scope.

The Director of the Bureau of Prisons is required to provide release and registration information (offender's name, criminal history, projected address, release conditions or restrictions) to state/local law enforcement and registration officials at least five calendar days prior to release of offenders who have been convicted of certain sexual offenses listed in 18 U.S.C. 4042(c)(4)(A) through (D). Under 18 U.S.C. 4042(c)(4)(E), the Attorney General is authorized to designate additional offenses as sexual offenses for the purpose of sex offender release notification and other related purposes. This authority has been delegated to the Director.

§ 571.72 Additional designated offenses.

The following offenses are designated as additional sexual offenses for purposes of 18 U.S.C. 4042(c):

(a) Any offense under the law of any jurisdiction that involved:

(1) Engaging in sexual contact with another person without obtaining permission to do so (forcible rape, sexual assault, or sexual battery);

(2) Possession, distribution, mailing, production, or receipt of child pornography or related paraphernalia;

(3) Any sexual contact with a minor or other person physically or mentally incapable of granting consent (indecent liberties with a minor, statutory rape, sexual abuse of the mentally ill, rape by administering a drug or substance);

(4) Any sexual act or contact not identified in paragraphs (a)(1) through (3) of this section that is aggressive or abusive in nature (rape by instrument, encouraging use of a minor for prostitution purposes, incest);

(5) An attempt to commit any of the actions described in paragraphs (a)(1) through (4) of this section.

(b) The following Defense Incident Based Reporting System (DIBRS) Code offenses under the Uniform Code of Military Justice:

(1) 120A (Rape);

(2) 120B1/2 (Carnal knowledge);

(3) 125A (Forcible sodomy);

(4) 125B1/2 (Sodomy of a minor);

(5) 133D (Conduct unbecoming an Officer [involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor]);

(6) 134–B6 (Prostitution involving a minor);

(7) 134–C1 (Indecent assault);

(8) 134–C4 (Assault with intent to commit rape);

(9) 134–C6 (Assault with intent to commit sodomy);

(10) 134–R1 (Indecent act with a minor);

(11) 134–R3 (Indecent language to a minor);

(12) 134–S1 (Kidnaping of a minor (by a person not a parent));

(13) 134–Z (Pornography involving a minor);

(14) 134–Z (Conduct prejudicial to good order and discipline (involving any sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor));

(15) 134–Y2 (Assimilative crime conviction (of a sexually violent offense or a criminal offense of a sexual nature against a minor or kidnaping of a minor)).

(16) 080–A (Attempt (to commit any offense listed in paragraphs (b)(1)—(15) of this section));

(17) 081–A (Conspiracy (to commit any offense listed in paragraphs (b)(1)—(15) of this section));

(18) 082–A (Solicitation (to commit any offense listed in paragraphs (b)(1)—(15) of this section)).

(c) The following District of Columbia Code offenses:

(1) § 22–501 (Assault) if it includes assault with the intent to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse;

(2) § 22–2012 (Sexual performances using minors—prohibited acts);

(3) § 22–2013 (Sexual performances using minors—penalties);

(4) § 22–2101 (Kidnaping) where the victim is a minor;

(5) § 22–2401 (Murder in the first degree) if it includes murder while committing or attempting to commit first degree sexual abuse;

(6) § 22–2704 (Abducting or enticing child from his or her home for purposes of prostitution; harboring such child);

(7) § 22–4102 (First degree sexual abuse);

(8) § 22–4103 (Second degree sexual abuse);

(9) § 22–4104 (Third degree sexual abuse);

(10) § 22–4105 (Fourth degree sexual abuse);

(11) § 22–4106 (Misdemeanor sexual abuse);

(12) § 22–4108 (First degree child sexual abuse);

(13) § 22–4109 (Second degree child sexual abuse);

(14) § 22–4110 (Enticing a child);

(15) § 22–4113 (First degree sexual abuse of a ward);

(16) § 22–4114 (Second degree sexual abuse of a ward);

(17) § 22–4115 (First degree sexual abuse of a patient or client);

(18) § 22–4116 (Second degree sexual abuse of a patient or client);

(19) § 22–4118 (Attempts to commit sexual offenses);

(20) § 22–4120 (Aggravating circumstances).

(21) § 22–103 (Attempts to commit crime) if it includes an attempt to commit any offense listed in paragraphs (c)(1)–(20) of this section.

[FR Doc. 98–33260 Filed 12–15–98; 8:45 am]
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Federal Register

Wednesday
December 16, 1998

Part IV

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH–FRL–6199–8]

RIN 2040–AB82

National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing maximum residual disinfectant level goals (MRDLGs) for chlorine, chloramines, and chlorine dioxide; maximum contaminant level goals (MCLGs) for four trihalomethanes (chloroform, bromodichloromethane, dibromochloromethane, and bromoform), two haloacetic acids (dichloroacetic acid and trichloroacetic acid), bromate, and chlorite; and National Primary Drinking Water Regulations (NPDWRs) for three disinfectants (chlorine, chloramines, and chlorine dioxide), two groups of organic disinfection byproducts (total trihalomethanes (TTHMs)—a sum of the four listed above, and haloacetic acids (HAA5)—a sum of the two listed above plus monochloroacetic acid and mono- and dibromoacetic acids), and two inorganic disinfection byproducts (chlorite and bromate). The NPDWRs consist of maximum residual disinfectant levels (MRDLs) or maximum contaminant levels (MCLs) or treatment techniques for these disinfectants and their byproducts. The NPDWRs also include monitoring, reporting, and public notification requirements for these compounds. This document includes the best available technologies (BATs) upon which the MRDLs and MCLs are based. The set of regulations promulgated today is also know as the Stage 1 Disinfection Byproducts Rule (DBPR). EPA believes the implementation of the Stage 1 DBPR will reduce the levels of disinfectants and disinfection byproducts in drinking water supplies. The Agency believes the rule will provide public health protection for an additional 20 million households that were not previously covered by drinking water rules for disinfection byproducts. In addition, the rule will for the first time provide public health protection from exposure to haloacetic acids, chlorite (a major chlorine dioxide byproduct) and bromate (a major ozone byproduct).

The Stage 1 DBPR applies to public water systems that are community water systems (CWSs) and nontransient noncommunity water systems (NTNCWs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs).

EFFECTIVE DATE: This regulation is effective February 16, 1999. Compliance dates for specific components of the rule are discussed in the Supplementary Information Section. The incorporation by reference of certain publications listed in today's rule is approved by the Director of the Federal Register as of February 16, 1999.

ADDRESSES: Public comments, the comment/response document, applicable **Federal Register** documents, other major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review at EPA's Drinking Water Docket: 401 M Street, SW., Washington, DC 20460 from 9 a.m. to 4 p.m., Eastern Standard Time, Monday through Friday, excluding legal holidays. For access to docket materials, please call 202/260–3027 to schedule an appointment and obtain the room number.

FOR FURTHER INFORMATION CONTACT: For general information contact, the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9:00 am to 5:30 pm Eastern Time. For technical inquiries, contact Tom Grubbs, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; telephone (202) 260–7270. For Regional contacts see **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION: This regulation is effective 60 days after publication of **Federal Register** document for purposes of the Administrative Procedures Act and the Congressional Review Act. Compliance dates for specific components of the rule are discussed below. Solely for judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Time December 30, 1998, as provided in 40 CFR 23.7.

Regulated entities. Entities regulated by the Stage 1 DBPR are community and nontransient noncommunity water systems that add a disinfectant during any part of the treatment process including a residual disinfectant. In addition, certain provisions apply to transient noncommunity systems that use chlorine dioxide. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Community and nontransient noncommunity water systems that treat their water with a chemical disinfectant for either primary of residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems.
State, Local, Tribal, or Federal Governments.	Same as above.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.130 of this rule. If you have questions regarding the applicability of this action to a particular entity, contact one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section or the Regional contacts below.

Regional Contacts

I. Kevin Reilly, Water Supply Section, JFK Federal Bldg., Room 203, Boston, MA 02203, (617) 565–3616

II. Michael Lowy, Water Supply Section, 290 Broadway 24th Floor, New York, NY 10007–1866, (212) 637–3830

III. Jason Gambatese, Drinking Water Section (3WM41), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5759

IV. David Parker, Water Supply Section, 345 Courtland Street, Atlanta, GA 30365, (404) 562–9460
V. Miguel Del Toral, Water Supply Section, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–5253
VI. Blake L. Atkins, Drinking Water Section, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–2297
VII. Ralph Flournoy, Drinking Water/ Ground Water Management Branch, 726 Minnesota Ave., Kansas City, KS 66101, (913) 551–7374
VIII. Bob Clement, Public Water Supply Section (8P2–W–MS), 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6653
IX. Bruce Macler, Water Supply Section, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1884
X. Wendy Marshall, Drinking Water Unit, 1200 Sixth Avenue (OW–136), Seattle, WA 98101, (206) 553–1890

Abbreviations Used in This Document

AWWA: American Water Works Association
AWWSCo: American Water Works Service Company
BAT: Best available technology
BDCM: Bromodichloromethane
CDC: Centers for Disease Control and Prevention
C.I.: Confidence Intervals
CMA: Chemicals Manufacturers Association
CPE: Comprehensive performance evaluation
CWS: Community water system
DBCM: Dibromochloromethane
DBP: Disinfection byproducts
D/DBP: Disinfectants and disinfection byproducts
DBPR: Disinfection Byproducts Rule
DBPRAM: Disinfection byproducts regulatory analysis model
DCA: Dichloroacetic acid
DOC: Dissolved organic carbon
DWSRF: Drinking Water State Revolving Fund
EC: Enhanced coagulation
EJ: Environmental justice
EPA: United States Environmental Protection Agency
ESWTR: Enhanced Surface Water Treatment Rule
FACA: Federal Advisory Committee Act
GAC10: Granular activated carbon with ten minute empty bed contact time and 180 day reactivation frequency
GAC20: Granular activated carbon with twenty minute empty bed contact time and 180 day reactivation frequency
GDP: Gross Domestic Product
GWR: Groundwater rule
HAA5: Haloacetic acids (five)(chloroacetic acid, dichloroacetic acid, trichloroacetic acid, bromoacetic acid, and dibromoacetic acid)
HAN: Haloacetonitriles
ICR: Information collection rule (issued under section 1412(b) of the SDWA)
ILSI: International Life Sciences Institute
IESTWR: Interim Enhanced Surface Water Treatment Rule
LOAEL: Lowest Observed Adverse Effect Level
LT1ESTWR: Long-Term 1Enhanced Surface Water Treatment Rule
MCL: Maximum contaminant level
MCLG: Maximum contaminant level goal
M–DBP: Microbial and Disinfectants/ Disinfection Byproducts
mg/L: Milligrams per liter
MRDL: Maximum residual disinfectant level
MRDLG: Maximum residual disinfectant level goal
NDWAC: National Drinking Water Advisory Council
NIST: National Institute of Science and Technology
NOAEL: No Observed Adverse Effect Level
NODA: Notice of Data Availability
NOM: Natural organic matter
NPDWR: National Primary Drinking Water Regulation
NTNCWS: Nontransient noncommunity water system
NTP: National Toxicology Program
NTTAA: National Technology Transfer and Advancement Act
NTU: Nephelometric turbidity unit
OMB: Office of Management and Budget
PAR: Population attributable risk
PBMS: Performance based measurement system
PE: Performance evaluation
PODR: Point of diminishing return
PQL: Practical quantitation limit
PWS: Public water system
QC: Quality control
Reg. Neg.: Regulatory Negotiation
RFA: Regulatory Flexibility Act
RfD: Reference dose
RIA: Regulatory impact analysis
RSC: Relative source contribution
SAB: Science Advisory Board
SBREFA: Small Business Regulatory Enforcement Fairness Act
SDWIS: Safe Drinking Water Information System
SUVA: Specific ultraviolet absorbance
SDWA: Safe Drinking Water Act, or the ''Act,'' as amended 1996
SWTR: Surface Water Treatment Rule
TC: Total coliforms
TCA: Trichloroacetic acid
TCR: Total Coliform Rule
TOC: Total organic carbon
TOX: Total organic halides
TTHM: Total trihalomethanes (chloroform, bromdichloromethane, dibromochloromethane, and bromoform)
TNCWS: Transient noncommunity water systems
TWG: Technical work group
UMRA: Unfunded mandates reform act
URTH: Unreasonable risk to health
WIDB: Water Industry Data Base

Table of Contents

I. Background

A. Statutory Requirements and Legal Authority

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986, requires USEPA to publish a ''maximum contaminant level goal'' (MCLG) for each contaminant which, in the judgement of the USEPA Administrator, ''may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems'' (Section 1412(b)(3)(A)). MCLGs are to be set at a level at which ''no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety'' (Section 1412(b)(4)).

The Act was amended in August 1996. As a result of these Amendments, several of these provisions were renumbered and augmented with additional language. Other sections were added establishing new drinking water requirements. These modifications are outlined below.

The Act also requires that at the same time USEPA publishes an MCLG, which is a non-enforceable health goal, it also must publish a National Primary Drinking Water Regulation (NPDWR) that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(1) and 1412(a)(3)). USEPA is authorized to promulgate a NPDWR ''that requires the use of a treatment technique in lieu of establishing a MCL,'' if the Agency finds that ''it is not economically or technologically feasible to ascertain the level of the contaminant''.

As amended, EPA's general authority to set a maximum contaminant level goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) applies to contaminants that may ''have an adverse effect on the health of persons,'' that are ''known to occur or there is a substantial likelihood that the contaminant will occur in public water

systems with a frequency and at levels of public health concern,'' and for which ''in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems'' (SDWA Section 1412(b)(1)(A)).

The amendments, also require EPA, when proposing a NPDWR that includes an MCL or treatment technique, to publish and seek public comment on an analysis of health risk reduction and cost impacts. In addition, EPA is required to take into consideration the effects of contaminants upon sensitive subpopulations (i.e. infants, children, pregnant women, the elderly, and individuals with a history of serious illness), and other relevant factors. (Section 1412 (b)(3)(C)).

The amendments established a number of regulatory deadlines, including schedules for a Stage 1 Disinfection Byproduct Rule (DBPR), an Interim Enhanced Surface Water Treatment Rule (IESWTR), a Long-Term Final Enhanced Surface Water Treatment Rule (LTESWTR) affecting Public Water Systems (PWSs) that serve under 10,000 people, and a Stage 2 DBPR (Section 1412(b)(2)(C)). The Act as amended also requires EPA to promulgate regulations to address filter backwash (Section 1412(b)(14)). Finally, the Act requires EPA to promulgate regulations specifying criteria for requiring disinfection ''as necessary'' for ground water systems (Section 1412 (b)(8)).

Finally, as part of the 1996 SDWA Amendments, recordkeeping requirements were modified to apply to ''every person who is subject to a requirement of this title or who is a grantee'' (Section 1445 (a)(1)(A)). Such persons are required to ''establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation * * *''.

B. Regulatory History

1. Existing Regulations

Surface Water Treatment Rule. Under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (EPA,1989a), EPA set maximum contaminant level goals of zero for Giardia lamblia, viruses, and Legionella; and promulgated NPDWR for all PWSs using surface water sources or ground water sources under the direct influence of surface water. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to Giardia lamblia, viruses, and Legionella, as well as many other pathogenic organisms. Briefly, those requirements include: (1) requirements for a maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3 logs (99.9%) for Giardia and 4 logs (99.99%) for viruses; (3) combined filter effluent performance of 5 nephelometric turbidity unit (NTU) as a maximum and 0.5 NTU at 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems.

Total Coliform Rule. The Total Coliform Rule (TCR) (54 FR 27544; June 29, 1989) applies to all public water systems (EPA, 1989b). This regulation sets compliance with the MCL for total coliforms (TC) as follows. For systems that collect 40 or more samples per month, no more than 5.0% of the samples may be TC-positive; for those that collect fewer than 40 samples, no more than one sample may be TC-positive. In addition, if two consecutive samples in the system are TC-positive, and one is also fecal coliform or E. coli-positive, then this is defined as an acute violation of the MCL. If a system exceeds the MCL, it must notify the public using mandatory language developed by the EPA. The required monitoring frequency for a system depends on the number of people served and, ranges from 480 samples per month for the largest systems to once annually for certain of the smallest systems. All systems must have a written plan identifying where samples are to be collected.

If a system has a TC-positive sample, it must test that sample for the presence of fecal coliforms or E. coli. The system must also collect a set of repeat samples, and analyze for TC (and fecal coliform or E. coli) within 24 hours of the first TC-positive sample.

The TCR also requires an on-site inspection every 5 years (10 years for non-community systems using only protected and disinfected ground water) for each system that collects fewer than five samples per month. This on-site inspection (referred to as a sanitary survey) must be performed by the State or by an agent approved by the State.

Total Trihalomethane Rule. In November 1979 (44 FR 68624) (EPA, 1979) EPA set an interim MCL for total trihalomethanes (TTHM) of 0.10 milligrams per liter (mg/L) as an annual average. Compliance is defined on the basis of a running annual average of quarterly averages of all samples. The value for each sample is the sum of the measured concentrations of chloroform, bromodichloromethane (BDCM), dibromochloromethane (DBCM) and bromoform.

The interim TTHM standard only applies to community water systems using surface water and/or ground water serving at least 10,000 people that add a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs; however, most States have not exercised this option.

Information Collection Rule. The Information Collection Rule (ICR) is a monitoring and data reporting rule that was promulgated on May 14, 1996 (61 FR 24354) (EPA, 1996a). The purpose of the ICR is to collect occurrence and treatment information to help evaluate the need for possible changes to the current SWTR and existing microbial treatment practices, and to help evaluate the need for future regulation for disinfectants and disinfection byproducts (D/DBPs). The ICR will provide EPA with additional information on the national occurrence in drinking water of (1) chemical byproducts that form when disinfectants used for microbial control react with naturally occurring compounds already present in source water and (2) disease-causing microorganisms, including Cryptosporidium, Giardia, and viruses. The ICR will also provide engineering data on how PWSs currently control for such contaminants. This information is being collected because the 1992 Regulatory Negotiating Committee (henceforth referred to as the Reg. Neg. Committee) on microbial pathogens and disinfectants and DBPs concluded that additional information was needed to assess the potential health problem created by the presence of DBPs and pathogens in drinking water and to assess the extent and severity of risk in order to make sound regulatory and public health decisions. The ICR will also provide information to support regulatory impact analyses for various regulatory options, and to help develop monitoring strategies for cost-effectively implementing regulations.

The ICR pertains to large public water systems serving populations at least 100,000; a more limited set of ICR requirements pertain to ground water systems serving between 50,000 and 100,000 people. About 300 PWSs operating 500 treatment plants are involved with the extensive ICR data collection. Under the ICR, these PWSs monitor for water quality factors affecting DBP formation and DBPs

within the treatment plant and in the distribution system monthly for 18 months. In addition, PWSs must provide operating data and a description of their treatment plan design and surface water systems must monitor for bacteria, viruses, and protozoa. Finally, a subset of PWSs must perform treatment studies, using either granular activated carbon (GAC) or membrane processes, to evaluate DBP precursor removal and control of DBPs. Monitoring for treatment study applicability began in September 1996. The remaining occurrence monitoring began in July 1997.

One initial intent of the ICR was to collect pathogen occurrence data and other information for use in developing the IESWTR and to estimate national costs for various treatment options. However, because of delays in promulgating the ICR and technical difficulties associated with laboratory approval and review of facility sampling plans, ICR monitoring did not begin until July 1, 1997, which was later than originally anticipated. As a result of this delay and the new statutory deadlines for promulgating the Stage 1 DBPR and IESWTR in November of 1998 (resulting from the 1996 SDWA amendments), ICR data were not available in time to support these rules. In place of the ICR data, the Agency worked with stakeholders to identify other sources of data developed since 1994 that could be used to support the development of the Stage 1 DBPR and IESWTR. EPA will continue to work with stakeholders in analyzing and using the comprehensive ICR data and research for developing future Enhanced Surface Water Treatment requirements and the Stage 2 DBPR.

2. Public Health Concerns to be Addressed

EPA's main mission is the protection of human health and the environment. When carrying out this mission, EPA must often make regulatory decisions with less than complete information and with uncertainties in the available information. EPA believes it is appropriate and prudent to err on the side of public health protection when there are indications that exposure to a contaminant may present risks to public health, rather than take no action until risks are unequivocally proven.

In regard to the Stage 1 DBPR, EPA recognizes that the assessment of public health risks from disinfection of drinking water currently relies on inherently difficult and preliminary empirical analysis. On one hand, epidemiologic studies of the populations in various geographic areas are hampered by difficulties of study design, scope, and sensitivity. On the other hand, uncertainty is involved in the interpretation of results using high dose animal toxicological studies of a few of the numerous byproducts that occur in disinfected drinking water to estimate the risk to humans from chronic exposure to low doses of these and other byproducts. Such studies of individual DBPs is insufficient to characterize risks from exposure to the entire mixture of DBPs in disinfected drinking water. While recognizing these uncertainties, EPA continues to believe that the Stage 1 DBPR is necessary for the protection of public health from exposure to potentially harmful DBPs.

A fundamental component in assessing the risk for a contaminant is the number of people that may be exposed to the parameter of concern. In this case, there is a very large population potentially exposed to DBPs through drinking water in the U.S. Over 200 million people are served by PWSs that apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants. While these disinfectants are effective in controlling many microorganisms, they react with natural organic and inorganic matter in the water to form DBPs, some of which may pose health risks. One of the most complex questions facing water supply professionals is how to minimize the risks from DBPs and still maintain adequate control over microbial contaminants. Because of the large number of people exposed to DBPs, there is a substantial concern for any risks associated with DBPs that may impact public health.

Since the discovery of chlorination byproducts in drinking water in 1974, numerous toxicological studies have been conducted. Results from these studies have shown several DBPs (e.g., bromodichloromethane, bromoform, chloroform, dichloroacetic acid, and bromate) to be carcinogenic in laboratory animals . Some DBPs (e.g., chlorite, BDCM, and certain haloacetic acids) have also been shown to cause adverse reproductive or developmental effects in laboratory animals. Although many of these studies have been conducted at high doses, EPA believes the studies provide evidence that DBPs present a potential public health risk that needs to be addressed.

In the area of epidemiology, a number of epidemiology studies have been conducted to investigate the relationship between exposure to chlorinated surface water and cancer. While EPA cannot conclude there is a causal link between exposure to chlorinated surface water and cancer, these studies have suggested an association, albeit small, between bladder, rectal, and colon cancer and exposure to chlorinated surface water. While there are fewer published epidemiology studies that have been conducted to evaluate the possible relationship between exposure to chlorinated surface water and reproductive and developmental effects, a recent study has suggested an association between early term miscarriage and exposure to drinking water with elevated trihalomethane levels. In addition to this study, another new study reported a small increased risk of neural tube defects associated with consumption of drinking water containing high levels of TTHMs. However, no significant associations were observed with individual THMs, HAAs, and haloacetonitriles (HANs) and adverse outcomes in this study. As with cancer, EPA cannot conclude at this time there is a causal link between exposure to DBPs and reproductive and developmental effects.

While EPA recognizes there are data deficiencies in the information on the health effects from the DBPs and the levels at which they occur, the Agency believes the weight-of-evidence presented by the available epidemiological studies on chlorinated drinking water and toxicological studies on individual DBPs support a potential hazard concern and warrant regulatory action at this time to reduce DBP levels in drinking water. Recognizing the deficiencies in the existing data, EPA believes the incremental two-stage approach for regulating DBPs, agreed upon by the regulatory negotiation process, is prudent and necessary to protect public health and meet the requirements of the SDWA.

In conclusion, because of the large number of people exposed to DBPs and the different potential health risks (e.g., cancer and adverse reproductive and developmental effects) that may result from exposure to DBPs, EPA believes the Stage 1 DBPR is needed to further prevent potential health effects from DBPs, beyond that controlled for by the 1979 total trihalomethane rule. Both the Reg. Neg. Committee for the 1994 proposed rule and the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee (henceforth cited as the M-DBP Advisory Committee) formed in March 1997 under the Federal Advisory Committee Act (FACA), agreed with the need for the Stage 1 DBPR to reduce potential risks from DBPs in the near term, while acknowledging additional information is still needed for the Stage 2 DBPR (especially on health effects),

3. Regulatory Negotiation Process

In 1992 EPA initiated a negotiated rulemaking to address public health concerns associated with disinfectants, DBPs, and microbial pathogens. The negotiators included representatives of State and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups. The Reg. Neg. Committee met from November 1992 through June 1993.

Early in the process, the negotiators agreed that large amounts of information necessary to understand how to optimize the use of disinfectants to concurrently minimize microbial and DBP risk on a plant-specific basis were unavailable. Nevertheless, the Reg. Neg. Committee agreed that EPA propose a Stage 1 DBPR to extend coverage to all community and nontransient noncommunity water systems that use disinfectants, reduce the current TTHM MCL, regulate additional DBPs, set limits for the use of disinfectants, and reduce the level of organic precursor compounds in the source water that may react with disinfectants to form DBPs.

EPA's most significant concern in developing regulations for disinfectants and DBPs was the need to ensure that adequate treatment be maintained for controlling risks from microbial pathogens. One of the major goals addressed by the Reg. Neg. Committee was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. Thus, the Reg. Neg. Committee also considered a range of microbial issues and agreed that EPA should also propose a companion microbial rule (IESWTR).

Following months of intensive discussions and technical analysis, the Reg. Neg. Committee recommended the development of three sets of rules: a two-staged approach for the DBPs (proposal: 59 FR 38668, July 29, 1994) (EPA, 1994a), an ''interim'' ESWTR (proposal: 59 FR 38832, July 29, 1994) (EPA, 1994b), and an information collection rule (proposal: 59 FR 6332, February 10, 1994) (EPA, 1994c) (promulgation: 61FR24354, May 14, 1996) (EPA, 1996a). The approach used in developing these proposals considered the constraints of simultaneously treating water to control for both microbial contaminants and D/DBPs.

The Reg. Neg. Committee agreed that the schedules for IESWTR and LTESWTR should be ''linked'' to the schedule for the Stage 1 DBPR to assure simultaneous compliance and a balanced risk-risk based implementation. The Reg. Neg. Committee agreed that additional information on health risk, occurrence, treatment technologies, and analytical methods needed to be developed in order to better understand the risk-risk tradeoff, and how to accomplish an overall reduction in health risks to both pathogens and D/DBPs.

Finally the Reg. Neg. Committee agreed that to develop a reasonable set of rules and to understand more fully the limitations of the current SWTR, additional field data were critical. Thus, a key component of the regulation negotiation agreement was the promulgation of the ICR previously described.

4. Federal Advisory Committee Process

In May 1996, the Agency initiated a series of public informational meetings to provide an update on the status of the 1994 proposal and to review new data related to microbial and DBP regulations that had been developed since July 1994. In August 1996, Congress enacted the 1996 SDWA Amendments which contained a number of new requirements, as discussed above, as well as specifying deadlines for final promulgation of the IESWTR and Stage 1 DBPR. To meet these deadlines and to maximize stakeholder participation, the Agency established the M–DBP Advisory Committee under FACA in March 1997, to collect, share, and analyze new information and data, as well as to build consensus on the regulatory implications of this new information. The Committee consisted of 17 members representing EPA, State and local public health and regulatory agencies, local elected officials, drinking water suppliers, chemical and equipment manufacturers, and public interest groups.

The M–DBP Advisory Committee met five times in March through July 1997 to discuss issues related to the IESWTR and Stage 1 DBPR. Technical support for these discussions was provided by a Technical Work Group (TWG) established by the Committee at its first meeting in March 1997. The Committee's activities resulted in the collection, development, evaluation, and presentation of substantial new data and information related to key elements of both proposed rules. The Committee reached agreement on a number of major issues that were discussed in Notices of Data Availability (NODA) for the IESWTR (62 FR 59486, November 3, 1997) (EPA, 1997a) and the Stage 1 DBPR (62 FR 59388, November 3, 1997) (EPA, 1997b). The major recommendations addressed by the Committee and in the NODAs were to: (1) Maintain the proposed MCLs for TTHM, HAA5, and bromate; (2) modify the enhanced coagulation requirements as part of DBP control; (3) include a microbial benchmarking/profiling to provide a methodology and process by which a PWS and the State, working together, assure that there will be no significant reduction in microbial protection as the result of modifying disinfection practices in order to meet MCLs for TTHM and HAA5; (4) continue credit for compliance with applicable disinfection requirements for disinfection applied at any point prior to the first customer, consistent with the existing SWTR; (5) modify the turbidity performance requirements and add requirements for individual filters; (6) establish an MCLG for Cryptosporidium; (7) add requirements for removal of Cryptosporidium; (8) provide for mandatory sanitary surveys; and (9) make a commitment to additional analysis of the role of Cryptosporidium inactivation as part of a multiple barrier concept in the context of a subsequent Federal Register microbial proposal. The new data and analysis supporting the technical areas of agreement were summarized and explained at length in EPA's 1997 NODAs (EPA, 1997a and EPA, 1997b).

5. 1997 and 1998 Notices of Data Availability

In November 1997 EPA published a NODA (USEPA, 1997b) that summarized the 1994 proposal; described new data and information that the Agency has obtained and analyses that have been developed since the proposal; provided information concerning the July 1997 recommendations of the M–DBP Advisory Committee on key issues related to the proposal (described above); and requested comment on these recommendations, as well as on other regulatory implications that flow from the new data and information. The Agency solicited additional data and information that were relevant to the issues discussed in the DBP NODA. EPA also requested that any information the Agency should consider as part of the final rule development process regarding data or views submitted to the Agency since the close of the comment period on the 1994 proposal, be formally resubmitted during the 90-day

comment period unless already in the underlying record in the docket for the NODA.

In March 1998, EPA issued a second DBP NODA (EPA, 1998a) that summarized new health effects information received and analyzed since the November 1997 NODA and requested comments on several issues related to the simultaneous compliance with the Stage 1 DBPR and the Lead and Copper Rule. The 1998 NODA indicated EPA was considering increasing the MCLG for chloroform from zero to 0.3 mg/L and the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L. EPA also requested comment on increasing the Maximum Residual Disinfection Level Goal (MRDLG) for chlorine dioxide from 0.3 mg/L to 0.8 mg/L. Today's final rule was developed based on the outcome of the 1992 Reg. Neg., the 1994 proposed rule, the 1997 FACA process, and both the 1997 and 1998 DBP NODAs, as well as a wide range of technical comments from stakeholders and members of the public. A summary of today's rule follows.

II. Summary of Final Stage 1 Disinfection Byproduct Rule

A. Applicability

The final Stage 1 DBPR applies to community water systems (CWSs) and nontransient noncommunity water systems (NTNCWs) that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient noncommunity water systems (TNCWSs).

B. MRDLGs and MRDLs for Disinfectants

EPA is finalizing the following MRDLGs and maximum residual disinfectant levels (MRDLs) for chlorine, chloramines, and chlorine dioxide in Table II–1.

TABLE II–1.—MRDLGS AND MRDLS FOR DISINFECTANTS

Disinfectant residual	MRDLG (mg/L)	MRDL (mg/L)
Chlorine	4 (as Cl_2)	4.0 (as Cl_2)
Chloramine	4 (as Cl_2)	4.0 (as Cl_2)
Chlorine Dioxide	0.8 (as ClO_2)	0.8 (as ClO_2)

C. MCLGs and MCLs for TTHMs, HAA5, Chlorite, and Bromate

EPA is finalizing the MCLGs and MCLs in Table II–2.

TABLE II–2.—MCLGS AND MCLS FOR DISINFECTION BYPRODUCTS

Disinfection byproducts	MCLG (mg/L)	MCL (mg/L)
Total trihalomethanes (TTHM) [1]	N/A	0.080
—Chloroform	0	.....
—Bromodichloromethane	0	.....
—Dibromochloromethane	0.06	.....
—Bromoform	0	.....
Haloacetic acids (five) (HAA5) [2]	N/A	0.060
—Dichloroacetic acid	0	.....
—Trichloroacetic acid	0.3	.....
Chlorite	0.8	1.0
Bromate	0	0.010

N/A—Not applicable because there are no individual MCLGs for TTHMs or HAAs.
[1] Total trihalomethanes is the sum of the concentrations of chloroform, bromodichloromethane, dibromochloromethane, and bromoform.
[2] Haloacetic acids (five) is the sum of the concentrations of mono-, di-, and trichloroacetic acids and mono- and dibromoacetic acids.

D. Treatment Technique for Disinfection Byproduct Precursors

Water systems that use surface water or ground water under the direct influence of surface water and use conventional filtration treatment are required to remove specified percentages of organic materials (measured as total organic carbon) that may react with disinfectants to form DBPs as indicated in Table II–3. Removal will be achieved through a treatment technique (enhanced coagulation or enhanced softening) unless a system meets alternative criteria discussed in Section III.D.

TABLE II–3.—REQUIRED REMOVAL OF TOTAL ORGANIC CARBON BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [a,b,c]

Source Water TOC (mg/L)	Source Water Alkalinity (mg/L as $CaCO_3$) (percent)		
	0–60	>60–120	>120
>2.0–4.0	35.0	25.0	15.0
>4.0–8.0	45.0	35.0	25.0

TABLE II–3.—REQUIRED REMOVAL OF TOTAL ORGANIC CARBON BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [a,b,c]—Continued

Source Water TOC (mg/L)	Source Water Alkalinity (mg/L as $CaCO_3$) (percent)		
	0–60	>60–120	>120
>8.0	50.0	40.0	30.0

[a] Systems meeting at least one of the conditions in Section 141.135(a)(2) (i)–(vi) of the rule are not required to operate the removals in this table.
[b] Softening systems meeting one of the two alternative compliance criteria in Section 141.135(a)(3) of the rule are not required to meet the removals in this table.
[c] Systems practicing softening must meet the TOC removal requirements in the last column to the right.

E. BAT for Disinfectants, TTHMs, HAA5, Chlorite, and Bromate

Under the SDWA, EPA must specify the BAT for each MCL (or MRDL) that is set. PWS that are unable to achieve an MCL or MRDL may be granted a variance if they use the BAT and meet other requirements (see section III.M for a discussion of variances and exemptions). Table II.4 includes the BATs for each of the MCLs or MRDLs that EPA is promulgating in today's Stage 1 DBPR.

TABLE II–4.—BAT FOR DISINFECTANTS AND DISINFECTION BYPRODUCTS

Disinfectant/DBP	Best available technology
Disinfectants	
Chlorine residual	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.
Chloramine residual	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.
Chlorine dioxide residual	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.
Disinfection Byproducts	
Total trihalomethanes	Enhanced coagulation or enhanced softening or GAC10*, with chlorine as the primary and residual disinfectant.
Total haloacetic acids	Enhanced coagulation or enhanced softening or GAC10*, with chlorine as the primary and residual disinfectant.
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.
Bromate	Control of ozone treatment process to reduce production of bromate.

*GAC10 means granular activated carbon with an empty bed contact time of 10 minutes and reactivation frequency for GAC of no more than six months.

F. Compliance Monitoring Requirements

Compliance monitoring requirements are explained in Section III.H of today's rule. EPA has developed routine and reduced compliance monitoring schemes for disinfectants and DBPs to be protective from different types of health concerns, including acute and long-term effects.

G. Analytical Methods

EPA has approved five methods for measurement of free chlorine, four methods for combined chlorine, and six for total chlorine. EPA has also approved two methods for the measurement of chlorine dioxide residuals; three methods for the measurement of HAA5; three methods for the measurement of TTHMs; three methods for the measurement of TOC/Dissolved Organic Carbon (DOC); two methods for the monthly measurement of chlorite and one method for the daily monitoring of chlorite; two methods for bromide; one method for the measurement of bromate; and one method for the measurement of UV_{254}. Finally, EPA approved all methods allowed in § 141.89(a) for measuring alkalinity. These issues are discussed in more detail in section III.G.

H. Laboratory Certification Criteria

Consistent with other drinking water regulations, determinations of compliance with the MCLs may only be conducted by certified laboratories. EPA is requiring that analyses can be conducted by a party acceptable to EPA or the State in those situations where the parameter can adequately be measured by someone other than a certified laboratory and for which there is a good reason to allow analysis at other locations (e.g., for samples which normally deteriorate before reaching a certified laboratory, especially when taken at remote locations). For a detailed discussion of the lab certification requirements, see section III.N.

I. Variances and Exemptions

Variances and exemptions will be permitted in accordance with existing statutory and regulatory authority. For a detailed discussion see section III.M.

J. State Recordkeeping, Primacy, and Reporting Requirements

The Stage 1 DBPR requires States to adopt several regulatory requirements, including public notification requirements, MCLs for DBPs, MRDLs for disinfectants, and the requirements in Subpart L. In addition, States are required to adopt several special primacy requirements for the Stage 1 DPBR. States are also required to keep specific records in accordance with existing regulations and additional records specific to the Stage 1 DBPR. Finally, the rule does not require any

State additional reporting requirements beyond those required under existing regulations. These requirements are discussed in more detail in Section III.L.

K. System Reporting Requirements

System are required to report monitoring data to the State as discussed in Section III.K.

L. Guidance Manuals

EPA is developing guidance for both systems and States for the implementation of the Stage 1 DBPR and the IESWTR. The guidance manuals include: Guidance Manual for Enhanced Coagulation and Precipitative Softening; Disinfection Benchmark Guidance Manual; Turbidity Guidance Manual; Alternative Disinfectants and Oxidants Guidance Manual; M/DBP Simultaneous Compliance Manual; Sanitary Survey Guidance Manual; Unfiltered Systems Guidance Manual; and Uncovered Finished Water Reservoirs. Guidance manuals will be available after the publication of the Stage 1 DBPR.

M. Regulation Review

Under the provisions of the SDWA (Section 1412(b)(9)), the Agency is required to review NPDWRs at least once every six years. As mentioned previously, today's final rule revises, updates, and supersedes the regulations for total trihalomethanes, initially published in 1979. Since that time, there have been significant changes in technology, treatment techniques, and other regulatory controls that provide for greater protection of human health. As such, for today's rule, EPA has analyzed innovations and changes in technology and treatment techniques that have occurred since promulgation of the interim TTHM regulations. That analysis, contained primarily in the cost and technology document supporting this rule, supports the changes in the Stage 1 DBPR from the 1979 TTHM rule. EPA believes that the innovations and changes in technology and treatment techniques that result in changes to the 1979 TTHM regulations are feasible within the meaning of SDWA Section 1412(b).

III. Explanation of Final Rule

A. MCLGs/MRDLGs

MCLGs are set at levels at which no known or anticipated adverse health effects occur, allowing for an adequate margin of safety. Establishment of an MCLG for each specific contaminant is based on the available evidence of carcinogenicity or noncancer adverse health effects from drinking water exposure using EPA's guidelines for risk assessment (see the proposed rule at 59 FR 38677 for a detailed discussion of the process for establishing MCLGs).

The final Stage 1 DBPR contains MCLGs for: four THMs (chloroform, bromodichloromethane, dibromochloromethane, and bromoform); two haloacetic acids (dichloroacetic acid and trichloroacetic acid); bromate; and chlorite (see table II–2 for final MCLG levels). These MCLGs are the same as those proposed in 1994 with the exception of chlorite, which increased from 0.08 mg/L to 0.8 mg/L. The MCLG for chloral hydrate has been dropped since EPA has concluded that it will be controlled by the MCLs for TTHM and HAA5 and the enhanced coagulation treatment technique.

The final Stage 1 DBPR contains MRDLGs for chlorine, chloramines and chlorine dioxide (see table II–1 for final MRDLG levels). The MRDLGs are as the same as those proposed in 1994, with the exception of chlorine dioxide, which increased from 0.3 mg/L to 0.8 mg/L.

The MRDLG concept was introduced in the proposed rule for disinfectants to reflect the fact that these substances have beneficial disinfection properties. As with MCLGs, MRDLGs are established at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals based only on health effects and exposure information and do not reflect the benefit of the addition of the chemical for control for waterborne microbial contaminants. By using the term ''residual disinfectant'' in lieu of ''contaminant'', EPA intends to avoid situations in which treatment plant operators are reluctant to apply disinfectant dosages above the MRDLG during short periods of time to control for microbial risk.

EPA received numerous comments on the use of the term MRDLG. The majority of commenters agreed that the term MRDLG was appropriate to use in place of MCLG for disinfectants. Other commenters agreed, but felt that the language should more strongly reflect that disinfectants are necessary and that short-term exposure to elevated levels of the disinfectants is not a health concern. Some commenters suggested that MRDLGs be extended to ozone, potassium permanganate and iodine.

In response, EPA agrees with the majority of commenters that the use of the term MRDLG is appropriate and therefore the final rule retains this term. EPA believes the language on the importance of disinfectants is adequate in the rule and thus has not changed this language. EPA does not agree that the potential health effects from short-term exposure to elevated levels of disinfectants can be dismissed. Ozone does not require an MRDLG because it reacts so completely that it does not occur in water delivered to consumers. Finally, EPA believes the use of the MRDLGs for other disinfectants or oxidants would not be appropriate since MRDLGs are developed for regulated compounds controlled by MRDLs or treatment techniques and EPA does not allow these compounds to be used to demonstrate compliance with disinfection requirements.

The information EPA relied on to establish the MCLGs and MRDLGs was described in the 1994 proposal (EPA, 1994a), the 1997 DBP NODA (EPA, 1997b), and the 1998 NODA (EPA, 1998a). Criteria and assessment documents to support the MCLGs and MRDLGs are included in the docket (EPA, 1993a; EPA, 1994 d–h; EPA, 1997c; EPA, 1998 b–f; and EPA, 1998p). A summary of the occurrence and exposure information for this rule are detailed in ''Occurrence Assessment for Disinfectants and Disinfection Byproducts in Public Drinking Water Supplies' (EPA, 1998u). The discussion of the data used to establish the MCLGs and MRDLGs and a summary of the major public comments for these chemicals are included below. A more detailed discussion is included below for chloroform, DCA, chlorite, chloride dioxide, and bromate than the other disinfectants and DBPs. This is the case because significant new data has become available since the 1994 proposal for these four DBPs and one disinfectant.

1. MCLG for Chloroform

a. Today's Rule. After careful consideration of all public comments, EPA has concluded at this time to promulgate an MCLG for chloroform of zero as proposed. This conclusion reflects an interim risk-management decision on the part of the Agency. The Agency recognizes the strength of the science in support of a non-linear approach for estimating carcinogenicity of chloroform. EPA received public comments that questioned the underlying basis and approach used to reach the science judgment that the mode of chloroform's carcinogenic action supports a nonlinear approach. Equally important are the policy and regulatory issues raised by stakeholders that touch on this issue. EPA believes that it is essential to pursue a further dialogue with stakeholders on the issues raised in the public comments before applying the substantial new data and science on the mode of carcinogenic

action discussed in the 1998 NODA to the important decision of moving to a non-linear cancer extrapolation approach for drinking water contaminants under the SDWA. Moreover, EPA will complete additional deliberations with the Agency's Science Advisory Board (SAB) (open to stakeholder presentations to the SAB) on the analytical approach used to evaluate and reach conclusions on mode of action data, and the science basis for the mode of carcinogenic action for chloroform.

In evaluating how to proceed in the development of an MCLG for chloroform, the Agency believes two additional factors must be taken into consideration. First, as part of the 1996 SDWA amendments, Congress mandated that the Stage 1 DBPR rule be promulgated by November 1998. EPA has concluded that it would be impossible to complete the additional deliberations noted above in time to meet this statutory deadline. Second, as explained below, the Agency has also completed analysis indicating that regardless of whether the MCLG is based on a low-dose linear or non-linear extrapolation approach, the MCL enforceable standard for TTHMs of 0.08 mg/L will not be affected. In light of these issues, EPA believes it is appropriate and consistent with the public health goals of the SDWA to establish a zero MCLG for chloroform based on a linear default extrapolation approach until the Agency is able to complete additional deliberations with the Agency's SAB on the analytical approach used to evaluate and reach conclusions on mode of action data and the science basis for the mode of carcinogenic action for chloroform, and complete the process of further public dialogue on the important question of moving to a non-linear cancer extrapolation approach. EPA also notes that its approach is consistent with legislative history of the SDWA (see 56 FR 3533—EPA, 1991) and the 1996 SDWA Amendments.

b. Background and Analysis. As part of its 1994 Stage 1 DBP proposal (EPA, 1994a), EPA requested comment on a zero MCLG for chloroform. This was consistent with information provided to the 1992 Reg. Neg. Committee and was based on data from a drinking water study by Jorgensen et al. (1985) indicating an increase of kidney tumors in male rats in a dose-related manner. However, at the time of the proposal there was insufficient data to determine the mode of carcinogenic action for chloroform. Therefore, EPA based its 1994 proposal on a risk management decision that a presumptive or low-dose linear default (i.e, MCLG of zero) was appropriate until more research became available and there was an adequate opportunity to work with stakeholders and the scientific community to evaluate and assess the technical as well as policy and regulatory implications of such new information. The 1994 proposal also reflected the Agency's 1986 Guidelines for Carcinogen Risk Assessment (EPA, 1986) which recommended reliance on the default assumption of low-dose linearity in the absence of substantial information on the mechanism of carcinogenicity.

Since the 1994 proposal, over 30 toxicological studies have been published on chloroform. These studies were discussed in the November 1997 Stage 1 DBP NODA (EPA, 1997b). In addition, EPA published a second DBP NODA in March 1998 (EPA, 1998a) which discussed recommendations and findings from a 1997 International Life Sciences Institute project (ILSI, 1997), co-sponsored by EPA, on the cancer assessment for chloroform. The ILSI project included the analysis and conclusions from an expert panel which was convened and charged with reviewing the available database relevant to the carcinogenicity of chloroform, and considering how end points related to mode of action can be applied in hazard and dose-response assessment by using guidance provided by the EPA's 1996 Proposed Guidelines for Carcinogen Assessment (EPA, 1996b). The panel was made up of 10 internationally recognized scientists from academia, industry, government, and the private sector. Based on a consideration of the ILSI panel findings and an assessment of new data on chloroform since 1994, EPA requested comment in the 1998 NODA on the Agency's science conclusion that chloroform is a likely human carcinogen and that available scientific analysis supports a non-linear mode of action for estimating the carcinogenic risk associated with lifetime exposure from ingesting drinking water.

As part of the 1998 NODA, EPA also requested comment on a revised chloroform MCLG of 0.30 mg/L. The revised MCLG was premised on the substantial new science noted above that supports a non-linear mode of action. In calculating the specific MCLG, EPA relied upon data relating to hepatoxicity in dogs (EPA, 1994a). This hepatoxicity endpoint was deemed appropriate given that hepatic injury is the primary effect following chloroform exposure; and that an MCLG based on protection against liver toxicity should be protective against carcinogenicity given that the putative mode of action understanding for chloroform involves cytotoxicity as a key event preceding tumor development. The MCLG of 0.3 mg/L was calculated using a relative source contribution (RSC) of 80 percent. The RSC of 80 percent was based on the assumption that most exposure to chloroform is likely to come from ingestion of drinking water. The 80 percent assumption for the RSC was consistent with the calculations used to derive the MCLGs for D/DBPs in the 1994 proposal. Based on information received during the public comment period for the 1998 NODA, EPA is considering revising its estimate of the RSC for chloroform as discussed below.

Since the 1998 NODA, EPA has reevaluated elements of the analysis underlying a revised MCLG of 0.30 mg/L. Considering recent information not fully analyzed as part of the 1998 NODA, the Agency is considering revising the assumption of an 80% RSC from ingestion of drinking water in view of data which indicates that exposure to chloroform via inhalation and dermal exposure may potentially contribute a substantial percentage of the overall exposure to chloroform depending on the activity patterns of individuals. Also, EPA is in the process of developing a policy for incorporating inhalation and dermal exposure into the derivation of the RSC. Furthermore, there is considerable uncertainty regarding the potential exposure to chloroform via the dietary route and there is information which indicates individuals who are frequent swimmers may receive a large amount of chloroform during swimming. There are additional uncertainties regarding other possible highly exposed sub-populations, e.g., from use of humidifiers, hot-tubs, and outdoor misters. In conclusion, because there may be a potential for exposure to chloroform from other routes of exposure than ingestion of drinking water, EPA is considering using the 20 percent default floor to ensure adequate public health protection. The 20 percent has been used historically for drinking water contaminants other than D/DBPs when there is uncertainty in the available exposure data. The use of the 20 percent RSC for chloroform would produce a MCLG of 0.07 mg/L:

$$\text{MCLG for chloroform} = \frac{0.01\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.2}{2\text{L/d}} = 0.07\ \text{mg/L}$$

In addition to its reassessment of technical assumptions underlying the revised MCLG, the Agency has also reviewed and carefully considered in detail a number of significant comments on the 1998 NODA. These comments reflect both substantial scientific support as well as significant concerns with a possible MCLG of 0.30 mg/L. As outlined in more detail below, a number of nationally recognized scientific experts strongly affirmed the data and technical rationale for relying upon a non-linear mode of action for chloroform. Other commenters, however, highlighted several scientific issues they felt were not adequately considered. These commenters also emphasized their concern that the policy, regulatory, and enforcement implications related to a revised MCLG were not raised by EPA in either the 1992 or the 1997 regulatory negotiation processes leading up to today's final rule. Thus, these commenters felt that a number of stakeholders who recommended support for components of the Stage 1 DBPR rule did so under one set of conditions and assumptions that the Agency subsequently changed without providing a sufficient opportunity for further debate and discussion.

EPA believes that an adequate opportunity for notice and comment was provided as a result of the 1997 and 1998 DBP NODAs on the underlying scientific data and technical issue of moving to a non-linear extrapolation approach based on an understanding of the mode of carcinogenic action for chloroform and recalculating the chloroform MCLG to a nonzero number. However, the Agency recognizes that reliance on a non-linear mode of action under the SDWA does represent a significant and precedential, albeit sound, application of new science to the policy development and risk management decision making process of establishing appropriately protective MCLGs. The Agency also recognizes that although, as discussed below, a revised MCLG for chloroform would not affect the TTHM MCL under today's rule, the precedential decision to utilize a non-linear cancer extrapolation approach clearly has important implications for the development of future MCLGs where there is also adequate scientific research and data to support such a non-linear analysis.

In reviewing the range of scientific, policy, and regulatory analyses and strongly held views associated with development of the chloroform MCLG, EPA notes that the one question not fundamentally at issue is the establishment of the 0.080 mg/L TTHM MCL. The majority of commenters who addressed the proposed TTHM MCL continue to support it. This is particularly important to EPA in light of congressional action with regard to the M–DBP process in the 1996 SDWA Amendments. In enacting the Amendments and particularly in expressing congressional intent in the conference Report, Congress was careful to emphasize ''that the new provisions of this conference agreement not conflict with the parties' agreement nor disrupt the implementation of the regulatory actions,'' (such as the current agreement on an TTHM MCL of 0.080 mg/L). Both of these important elements of the Congressional intent were reflected in the statutory text. Section 1412(b)(2)(C) requires EPA to maintain the M–DBP rule staggered promulgation strategy agreed to by the negotiated rulemaking; and Section 1412(b)(6)(C) exempted the future M–DBP rules from the new cost-benefit standard-setting provision (1412(b)(6)(A)) but not from the new risk-risk provision (1412(b)(5)), because the latter was a part of the negotiated rulemaking agreement but the former was not.

The Agency, itself, also believes that the underlying logic, data, and rationale supporting establishment of a TTHM of 0.080 mg/L MCL is compelling, and this is a critical factor in the Agency's chloroform MCLG decision under today's rule. Under either a low-dose linear or non-linear extrapolation to derive the MCLG, the final TTHM MCL remains unaffected.

After thorough review of the data and comments, EPA believes the nonlinear cancer extrapolation approach is the most appropriate means to establish an MCLG for chloroform based on carcinogenic risk. However, in light of its own reconsideration of the appropriate RSC for chloroform under such an approach, considering the range of policy, regulatory, and enforcement issues raised as part of the public comment period, recognizing the importance of deliberations with SAB before proceeding further and, yet, recognizing that this cannot be accomplished within the constraints of meeting the statutory deadline for Stage 1 DBPR rule of November 1998, EPA has determined that on balance the more appropriate and prudent risk management decision at this time is to establish an MCLG for chloroform at the proposed presumptive default level of zero. As part of this decision, the Agency will complete additional deliberations with the Agency's SAB on the analytical approach used to evaluate and reach conclusions on mode of action data, and the science basis for the mode of carcinogenic action for chloroform. The SAB's review will be factored into the Agency's Stage 2 DBP rulemaking process. EPA will also include consideration of the regulatory, policy, and precedential issues involving chloroform in the Agency's Round 2 M–BP stakeholder process. EPA wishes to make clear that its interim decision in today's rule to set an MCLG of zero pending SAB review and further stakeholder involvement is not intended to prejudge the question of what the appropriate MCLG should be for purposes of regulatory decisions under the Stage 2 DBPR. EPA may decide to retain the zero MCLG for that rule, or to revise it, depending on the outcome of the SAB review, as well as any new scientific evidence that may become available. In regard to the appropriate RSC factor, in case a non-linear approach should ultimately be adopted, the Agency requests that stakeholders provide any data they man have bearing on this determination.

The fundamental objective of the SDWA is to establish protective public health goals (MCLGs) together with enforceable standards (MCLs or treatment techniques) to move the water treatment systems as close to the public health goal as is technologically and economically feasible. In the case of the chloroform and TTHMs, this objective is met with whichever extrapolation approach (low dose linear versus nonlinear) is relied upon.

c. Summary of Comments. EPA received numerous comments on both the 1994 proposed rule regarding the MCLG of zero for chloroform and the MCLG of 0.3 mg/L contained in the 1998 NODA. Some commenters were supportive of the MCLG of zero, while others were supportive of the 0.3 mg/L MCLG. The major reason raised by commenters for establishing a nonzero MCLG (e.g., 0.3 mg/L) was that there was convincing scientific evidence to conclude that a nonlinear margin of exposure approach for evaluating the carcinogenic risk from chloroform is warranted. Commenters who were

against establishing a nonzero MCLG for chloroform presented policy and scientific concerns. Scientific concerns raised by commenters opposed to the nonzero MCLG included their perceptions that: there is insufficient scientific evidence of a threshold for chloroform; the threshold assumption is also invalid because chloroform co-occurs with other mutagenic carcinogens; EPA ignored human data in establishing the MCLG for chloroform; the linkage between cytotoxicity and regenerative proliferation and kidney tumors is not supported by the data; and the evidence for genotoxicity is mixed and it would be difficult if not impossible to conclude that the evidence demonstrate chloroform has no direct effect on DNA. As detailed at greater length in the docket, EPA does not agree with these comments as a technical matter. The Agency does agree with the commenters view that further discussion of these issues with both the SAB and as part of additional public dialogue is appropriate.

The policy issues raised by commenters included their belief that: a zero MCLG is required to comply with provisions of the SDWA; EPA is required to use the 1986 Cancer Guidelines (EPA, 1986) until the 1996 Cancer Guidelines (EPA, 1996b) are formally finalized, and under the 1986 guidelines the MCLG for chloroform must be set at zero; EPA did not provide sufficient opportunity for the members of the FACA, established to assist in the development of the Stage 1 DBP rule, to properly consider the potential implications of a nonzero MCLG; and setting a MCLG for chloroform (0.3 mg/L) above the MCL for the TTHMs (0.08 mg/L) is illogical.

In response, EPA believes that the underlying science for using a nonlinear extrapolation approach to evaluate the carcinogenic risk from chloroform is well founded. As explained above, because of the issues raised during the public comment period, EPA believes additional review and dialogue with stakeholders is needed prior to departing from a long-held EPA policy of establishing zero MCLGs for known or probable carcinogens. EPA will also complete additional deliberations with the Agency's SAB on the analytical approach used to evaluate and reach conclusions on mode of action data, and the science basis for the mode of carcinogenic action for chloroform.

In response to the policy issues raised by commenters, EPA, historically, has established MCLGs of zero for known or probable human carcinogens based on the principle that any exposure to carcinogens might represent some finite level of risk and therefore an MCLG above zero did not meet the statutory requirement that the goal be set where no known anticipated adverse effects occur, allowing for an adequate margin of safety (56 FR 3533; EPA, 1991). However, if there is scientific evidence that indicates there is a ''safe threshold'' then a non-zero MCLG could be established with an adequate margin of safety (56 FR 3533; EPA, 1991)). Even though EPA, as an interim matter, is establishing an MCLG of zero for chloroform in today's rule, it believes it has the authority to establish nonzero MCLGs for carcinogens if the scientific evidence supports this finding.

In response to commenter's concerns with EPA using the proposed 1996 Guidelines for Carcinogen Risk Assessment (EPA, 1996b) instead of the Agency's 1986 guidelines, EPA believes it is important to point out that the 1986 guidelines provide for departures from default assumptions such as low dose linear assessment. For example, the 1986 EPA guidelines reflect the position of the OSTP (1985; Principle 26) ''No single mathematical procedure is recognized as the most appropriate for low-dose extrapolation in carcinogenesis. When relevant biological evidence on mechanisms of action exists (e.g, pharmacokinetics, target organ dose), the models or procedure employed should be consistent with the evidence.'' The 1986 guideline goes on to further state ''The Agency will review each assessment as to the evidence on carcinogenesis mechanisms and other biological or statistical evidence that indicates the suitability of a particular extrapolation model.'' The EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment allow EPA to use other default approaches to estimate cancer risk than the historic, linearized multistage default when there is an understanding of an agent's mode of carcinogenic action. EPA believes that reliance on the 1986 guidance allows EPA to reach the same conclusion on the carcinogenic risk from chloroform as if the 1996 guidelines were used. The use of the best available science is a core EPA principle and is statutorily mandated by the SDWA amendments of 1996. The 1996 Proposed Guidelines for Carcinogen Risk Assessment reflect new science and are consistent with the existing 1986 Guidelines for Carcinogen Risk Assessment. EPA considered the 1996 proposed guidelines in assessing the health effects data for chloroform and the other contaminants discussed in the 1998 March NODA.

EPA agrees with commenters that additional review by the FACA of the regulatory implications of a nonlinear approach is appropriate for policy reasons, and will initiate these discussions in the context of the Stage 2 DBPR FACA deliberations. In light of the November 1998 statutory deadline to promulgate the Stage 1 DBP rule and the steps necessary to complete a final rule, EPA has concluded that there is not enough time to meet with the SAB and FACA, provide ample opportunity for debate, resolve differing points of views, and complete additional analysis to meet stakeholders policy concerns in the context of the Stage 1 DBP rule. EPA notes, however, that regardless of the MCLG for chloroform, the MCL for the THMs remains at 0.08 mg/L. Since the MCL is the enforceable standard that water systems will be required to meet, a nonlinear or low dose linear extrapolation to derive the MCLG will not have a direct impact on the compliance obligations of public water systems or on the levels of chloroform allowed in public water systems, although it may be relevant to development of enforceable regulatory limits established under future rules.

2. MCLG for Bromodichloromethane (BDCM)

a. Today's Rule. The final MCLG for BDCM is zero. The zero MCLG is based on the classification of BDCM as a probable human carcinogen. The MCLG was determined in a weight-of-evidence evaluation which considered all relevant health data including carcinogenicity and reproductive and developmental toxicity animal data. EPA believes the data are insufficient at this time to determine the mode of carcinogenic action for BDCM, and therefore a low dose linear extrapolation approach is used to estimate lifetime cancer risk as a default.

b. Background and Analysis. In the 1994 Stage 1 DBPR proposal, the MCLG of zero for BDCM was based on large intestine and kidney tumor data from a National Toxicology Program (NTP) chronic animal study (NTP, 1987). Since the proposal, several new studies have been published on BDCM metabolism (EPA, 1997c). In addition, several new genotoxicity studies and short-term toxicity studies including reproductive evaluations were found for BDCM (EPA, 1997c). These new studies contribute to the weight-of-evidence conclusions reached in the 1994 proposal. Based on this evidence, the final MCLG for BDCM is zero based on sufficient evidence of carcinogenicity in animals.

c. Summary of Comments. Several commenters disagreed with the use of a

corn oil gavage animal cancer study to determine the MCLG for BDCM. Some commenters agreed with the EPA decision to use large intestine and kidney tumor data from the corn oil gavage study, but not liver tumor data in the quantitative estimation of carcinogenic risk. One commenter agreed that a low-dose linear extrapolation approach to dose-response assessment was appropriate at this time and consistent with EPA policy. However, this commenter suggested that EPA undertake chronic studies that include a drinking water study of BDCM and toxicokinetics. One commenter disagreed with the EPA conclusion that the evidence on the mutagenicity of BDCM is adequate.

In response, EPA agrees with commenters that a drinking water study is preferable to a corn oil gavage study to assess risk from DBPs in drinking water. However, the NTP corn oil gavage study is the best data available on BDCM for a quantitative risk estimation at this time. BDCM is currently being tested for toxicokinetics and cancer in a chronic BDCM drinking water rodent study by the NTP. When these data are available, EPA will reassess the cancer risk of BDCM. EPA believes that the animal data currently available on BDCM are consistent with EPA cancer guidelines on classifying BDCM as a probable human carcinogen given the evidence on mutagenicity and given there was an increased incidence of tumors at several sites in the animals. Additionally, tumors were found in both sexes of two rodent species. Finally, there have been several new studies on the genotoxicity of BDCM that have supported a mutagenic potential for BDCM (EPA, 1997c)

3. MCLG for Dibromochloromethane (DBCM)

a. Today's Rule. The final MCLG for DBCM is 0.06 mg/L. This MCLG is based on a weight of evidence evaluation of the cancer and noncancer data which resulted in the classification of DBCM as a possible human carcinogen.

b. Background and Analysis. In the 1994 proposal, the MCLG of 0.06 mg/L for DBCM was based on observed liver toxicity from a subchronic study and possible carcinogenicity (NTP, 1985). EPA is not aware of any new information that would change its evaluation of DBCM since the proposal. The final MCLG is therefore 0.06 mg/L.

c. Summary of Comments. Several commenters disagreed with the additional safety factor of 10 to account for possible carcinogenicity that was used in the MCLG calculation. One commenter agreed with EPA's decision to base the MCLG on noncarcinogenic endpoints. Several commenters disagreed with the use of a corn oil gavage study to determine the MCLG for DBCM.

In response, because the evidence of carcinogenicity was limited on DBCM (i.e., increased tumor response in only one of the two species tested), EPA classified DBCM as a possible human carcinogen. The additional factor of 10 to account for possible carcinogenicity follows EPA's science policy for establishing MCLGs (EPA, 1994a). EPA used liver effects from the NTP subchronic corn oil gavage study as the basis for the Reference Dose (RfD). EPA agrees with the comment that this is an appropriate basis for deriving the RfD for DBCM. EPA agrees with commenters that a drinking water study is preferable to a corn oil gavage study to assess risk from DBPs in drinking water. However, the NTP corn oil gavage study is the best data available on DBCM for derivation of the MCLG at this time. EPA does not plan to conduct additional chronic studies for DBCM but is conducting additional toxicokinetics and short term drinking water studies on DBCM to better understand the potential risk associated with exposure through drinking water.

4. MCLG for Bromoform

a. Today's Rule. The final MCLG for bromoform is zero. The zero MCLG is based on a weight-of-evidence classification that bromoform is a probable human carcinogen based on a consideration of all relevant health data including cancer and noncancer effects. EPA believes the data are insufficient at this time to determine the mode of carcinogenic action for bromoform, and therefore a low dose linear extrapolation approach is used to estimate lifetime cancer risk as a default.

b. Background and Analysis. The proposed MCLG for bromoform was zero. This MCLG was based on an NTP chronic animal carcinogenicity study (NTP, 1989). Since the proposal, new studies on the genotoxicity of bromoform were found. However, these new studies do not support changing the proposed MCLG of zero for bromoform. The final MCLG for bromoform is therefore zero.

c. Summary of Comments. Several commenters agreed with EPA's classification for bromoform as a probable carcinogen. Other commenters disagreed with this classification stating that there was insufficient evidence available because tumors were found in only one species and the increased number of tumors was small. These commenters generally felt that EPA should use an RfD approach in quantifying the risk for bromoform. Some commenters encouraged EPA to conduct more experiments on bromoform toxicity. Some commenters were concerned with the use of a corn oil gavage study to determine carcinogenic risk.

In response, although the increase in tumors was small, the increase was considered significant because large intestine tumors in both male and female rats are rare and thus provides sufficient evidence to classify bromoform as a probable human carcinogen. EPA does not plan on conducting additional chronic testing for bromoform at this time, but is conducting toxicokinetic studies and shorter term drinking water studies to better understand the potential risk associated with exposure to bromoform in drinking water. EPA agrees with commenters that drinking water studies are preferable to a corn oil gavage study to assess risk from DBPs in drinking water. However, the NTP corn oil gavage study is the best data available on bromoform for derivation of the MCLG.

5. MCLG for Dichloroacetic Acid (DCA)

a. Today's Rule. The final MCLG for DCA is zero. EPA has developed a weight-of-evidence characterization for DCA in which it evaluated all relevant health data (both cancer and noncancer effects). The MCLG of zero is based on sufficient evidence of carcinogenicity in animals which indicates that DCA is a probable human carcinogen (likely under proposed cancer guidelines). EPA believes the data are insufficient at this time to determine the mode of carcinogenic action for DCA and that the data is insufficient to quantify the potential cancer risk from DCA.

b. Background and Analysis. EPA proposed an MCLG of zero for DCA. This was based on classifying DCA as a probable human carcinogen in accordance with the 1986 EPA Guidelines for Carcinogen Risk Assessment (EPA, 1986). The DCA categorization was based primarily on findings of liver tumors in rats and mice, which was regarded as ''sufficient'' evidence in animals. No lifetime risk calculation was conducted at the time of the proposal because there was insufficient data to quantify the risk (EPA, 1994a).

As pointed out in the 1997 and 1998 DBP NODAs, several toxicological studies have been identified for DCA since the 1994 proposal (EPA, 1997c). In addition, EPA co-sponsored an ILSI project in which an expert panel was

convened to explore the application of the EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (EPA, 1996b) to the available data on the potential carcinogenicity of chloroform and DCA. The panel considered data on DCA which included chronic rodent bioassay data and information on mutagenicity, tissue toxicity, toxicokinetics, and other mode of action information. The panel concluded that the potential human carcinogenicity of DCA ''cannot be determined'' primarily because of the lack of adequate rodent bioassay data (ILSI, 1997).

EPA prepared a new hazard characterization regarding the potential carcinogenicity of DCA in humans (EPA, 1998b). One objective of this report was to develop a weight-of-evidence characterization using the principles of the EPA's 1996 Proposed Guidelines for Carcinogen Risk Assessment (EPA, 1996b) which are consistent with the 1986 Guidelines. Another objective of the report was to consider new data since the 1994 proposal and to address the issues raised by the 1997 ILSI panel report.

EPA agreed with the ILSI panel report that the mode of action through which DCA induces liver tumors in both rats and mice cannot be reasonably determined at this time. EPA disagrees with the ILSI panel that the potential human carcinogenicity cannot be determined. Based on the hepatocarcinogenic effects of DCA in both rats and mice in multiple studies, as well as other date, for example, showing that DCA alters cell replication and gene expression, EPA concludes that DCA should be considered as a ''likely'' (probable) cancer hazard to humans (EPA, 1998b). Therefore, as in the 1994 proposed rule, EPA believes that the MCLG for DCA should remain zero to assure public health protection.

c. Summary of Comments. Some commenters agreed with the zero MCLG for DCA based on positive carcinogenic findings in two animal species. Several commenters stated that a zero MCLG was inappropriate due to evidence which indicates a nongenotoxic mode of action for DCA. The comment was raised that the animal evidence was insufficient to consider DCA a likely (probable) human carcinogen, and that DCA should be considered at most suggestive of carcinogenicity.

In response, EPA concludes that DCA should be considered as a probable (likely under the 1996 proposed guidelines) cancer hazard to humans (EPA, 1998b) based on the hepatocarcinogenic effects of DCA in both rats and mice in multiple studies, and mode of action related effects (e.g., mutational spectra in oncogenes, elevated serum glucocorticoid levels, alterations in cell replication and death). EPA considers the mode of action through which DCA induces liver tumors in both rats and mice to be unclear, and thus the likelihood of human hazard associated with low levels of DCA usually encountered in the environment or in drinking water is not sufficiently understood. EPA acknowledges that a mutagenic mechanism (i.e., direct DNA reactivity) may not be an important influence on the carcinogenic process at low doses. EPA believes that the lack of mutagenicity is not a sufficient basis to depart from a low dose linear default extrapolation approach for the cancer assessment. There must be other convincing evidence to explain how the tumors are caused by the chemical. The commenters have not presented such evidence. Although DCA tumor effects are associated with high doses used in the rodent bioassays, there is uncertainty regarding whether the mode of tumorgenesis is solely through mechanisms that are operative only at high doses. Therefore, as in the 1994 proposed rule, EPA believes that the MCLG for DCA should remain as zero to assure public health protection. NTP is implementing a new two year rodent bioassay that will include full histopathology at lower doses than those previously studied. Additionally, studies on the mode of carcinogenic action are being done by various investigators including the EPA health research laboratory.

6. MCLG for Trichloroacetic Acid (TCA)

a. Today's Rule. The final MCLG for TCA is 0.3 mg/L, as was proposed in 1994. This MCLG is based on developmental toxicity and limited evidence of carcinogenicity in animals.

b. Background and Analysis. The 1994 proposed rule included a MCLG of 0.3 mg/L for TCA based on developmental toxicity and possible carcinogenicity based on limited evidence in animal studies (i.e., hepatocarcinogenicity in mice). Since the proposal, a 2-year carcinogenicity study on TCA (DeAngelo et al., 1997) found that TCA was not carcinogenic in male rats. As was discussed in the 1997 DBP NODA (EPA, 1997b), there have also been several recent studies examining the mode of carcinogenic action for TCA. These new studies suggest that TCA does not operate via mutagenic mechanisms. For a more in depth discussion of this new data refer to the 1997 DBP NODA (EPA, 1997b) and related support documents (EPA, 1997c). This new information does not alter the original assessment of the health effects of TCA based on developmental toxicity and limited evidence of carcinogenicity. Therefore, the MCLG will remain 0.3 mg/L.

c. Summary of Comments. Several commenters agreed with the classification of TCA as a possible human carcinogen. One commenter felt that toxicity data on TCA indicated a threshold. Some commenters disagreed with the study selected for estimating the RfD (Smith et al. 1989). Some commenters stated the uncertainty factors used to establish the RfD were too high.

In response, EPA acknowledges that a DNA reactive mutagenic mechanism may not be involved in TCA's mode of carcinogenicity. Because an RfD was used in lieu of a quantitative cancer assessment for establishing the MCLG, however, there was no need to evaluate the mode of carcinogenic action for TCA at this time. EPA believes that the Smith et al. (1989) study is appropriate to use in quantifying risk from TCA since developmental toxicity was the most critical effect. EPA believes that an uncertainty factor of 3,000 is appropriate to account for inter and intraspecies differences (100), a lowest observed adverse effects level (LOAEL) (10), and lack of a two-generation reproductive study (3) (EPA, 1994a). These uncertainty factors are consistent with current Agency science policy on using uncertainty factors (EPA, 1994a).

7. MCLG for Chlorite and MRDLG for Chlorine Dioxide

a. Today's Rule. The final MCLG for chlorite is 0.8 mg/L and the final MRDLG for chlorine dioxide is 0.8 mg/L. The MCLG for chlorite was increased from the proposed value of 0.08 mg/L to 0.8 mg/L based on a weight-of-evidence evaluation of all health data on chlorite including a recent two-generation reproductive rat study sponsored by the Chemical Manufactures Association (CMA, 1996). The MRDLG for chlorine dioxide was increased from the proposed value of 0.3 mg/L to 0.8 mg/L based on a weight-of-evidence evaluation using all the health data on chlorine dioxide including the information on chlorite from the CMA study. EPA believes that data on chlorite are relevant to assessing the risks of chlorine dioxide because chlorine dioxide is rapidly reduced to chlorite. Therefore, the findings from the CMA study and previously described studies in the 1994 proposal were used to assess the risk for both chlorite and chlorine dioxide.

b. Background and Analysis. The 1994 proposal included an MCLG of

0.08 mg/L for chlorite. The proposed MCLG was based on an RfD of 3 mg/kg/d estimated from a lowest-observed-adverse-effect-level (LOAEL) for neurodevelopmental effects identified in a rat study by Mobley et al. (1990). This determination was based on a weight of evidence evaluation of all the available data at that time (EPA, 1994d). An uncertainty factor of 1000 was used to account for inter-and intra-species differences in response to toxicity (a factor of 100) and to account for use of a LOAEL (a factor of 10).

The 1994 proposal included an MRDLG of 0.3 mg/L for chlorine dioxide. The proposed MRDLG was based on a RfD of 3 mg/kg/d estimated from a no-observed-adverse-effect-level (NOAEL) for developmental neurotoxicity identified from a rat study (Orme et al., 1985; EPA, 1994d). This determination was based on a weight of evidence evaluation of all available health data at that time (EPA, 1994a). An uncertainty factor of 300 was applied that was composed of a factor of 100 to account for inter-and intra-species differences in response to toxicity and a factor of 3 for lack of a two-generation reproductive study necessary to evaluate potential toxicity associated with lifetime exposure. To fill this important data gap, the CMA sponsored a two-generation reproductive study in rats (CMA, 1996).

As described in more detail in the 1998 NODA (EPA, 1998a), EPA reviewed the CMA study and completed an external peer review of the study (EPA, 1997d). In addition, EPA reassessed the noncancer health risk for chlorite and chlorine dioxide considering the new CMA study (EPA, 1998d). This reassessment was also peer reviewed (EPA, 1998d). Based on this reassessment, EPA requested comment in the 1998 NODA (EPA, 1998a) on changing the proposed MCLG for chlorite from 0.08 mg/L to 0.8 mg/L based on the NOAEL identified from the new CMA study which reinforced the concern for neurodevelopmental effects associated with short-term exposures.

EPA determined that the NOAEL for chlorite should be 35 ppm (3 mg/kg/d chlorite ion, rounded) based on a weight-of-evidence approach. The data considered to support the NOAEL are summarized in EPA (1998d) and included the CMA study as well as previous reports on developmental neurotoxicity and other adverse health effects (EPA, 1998d). EPA continues to believe, as stated in the 1998 NODA (EPA, 1998a), that the RfD for chlorite should be 0.03 mg/kg/d (NOAEL of 3 mg/kg/d with an uncertainty factor of 100) and that a MCLG of 0.8 mg/L is appropriate. EPA has concluded that the RfD for chlorine dioxide should be 0.03 mg/L (NOAEL of 3 mg/kg/d with an uncertainty factor of 100) and that a MRDLG of 0.8 mg/L is appropriate.

c. Summary of Comments. EPA received numerous comments on the 1994 proposal (EPA, 1994a) and 1998 NODA (EPA, 1998a). The major comment from the 1994 proposal was that reliance on the Mobley et al. (1990) study for the MCLG for chlorite and the Orme et al. (1985) study for chlorine dioxide were inappropriate and that the results from the CMA study must be evaluated before any conclusions on the MCLG for chlorite or chlorine dioxide could be drawn. In relation to the 1998 NODA, several commenters supported changing the MCLG for chlorite and MRDLG for chlorine dioxide while others were concerned that the science did not warrant a change in these values. The major comments submitted against raising the MCLG and MRDLG focused on several issues. First, one commenter argued that the 1000-fold uncertainty factor used for chlorite in the proposal should remain in place because the CMA study used to reduce the uncertainty factor was flawed. Second, several commenters indicated that the LOAEL should be set at the lowest dose level (35 ppm) because certain effects at the lowest dose tested may have been missed. Finally, some commenters argued that an additional safety factor should be included to protect children and drinking water consumption relative to the body weight of children should be used instead of the default assumption of 2 L per day and 70 kg adult body weight.

EPA agrees with commenters on the 1994 proposal that the results from the CMA should be factored into any final decision on the MCLG for chlorite and chlorine dioxide. As explained in more detail in the 1998 DBP NODA (EPA, 1998a), EPA considered the findings from the CMA study along with other available data to reach its conclusions regarding the MCLG and MRDLG for chlorite and chlorine dioxide.

EPA disagrees with the commenter who suggested that the 1000-fold uncertainty factor for chlorite should remain because the CMA study was flawed. The study design for the neurodevelopmental component of the CMA study was in accordance with EPA's testing guidelines at the time the study was initiated. EPA had previously reviewed the study protocol for the CMA neurotoxicity component and had approved the approach. While EPA initially had some questions regarding the design of the neurodevelopmental component of the study (Moser, 1997), subsequent information submitted by the CMA provided clarification on certain aspects of the study design (CMA, 1998). EPA agrees that even with the clarifications that there are some limitations with the neurodevelopmental component of the CMA study. EPA believes that the neuropathology components of the CMA study were adequate. The functional operation battery had some shortcomings in that forelimb and hindlimb grip strength and foot splay were not evaluated. EPA believes the results from the motor activity component of the CMA study were difficult to interpret because of the high variability in controls. However, in its evaluation of the MCLG for chlorite and chlorine dioxide, EPA did not rely solely on the CMA study, but used a weight-of-evidence approach that included consideration of several studies. Thus, the shortcomings of one study are offset by the weight from other studies. EPA believes that the CMA study contributes to the weight-of the-evidence. The studies by Orme et al. (1985), Mobley et al. (1990), and CMA (1996) support a NOAEL of 3 mg/kg/d based on neurodevelopmental effects (e.g., decreased exploratory, locomotor behavior, decreased brain weight). Furthermore, the CMA study was reviewed by outside scientists as well as by EPA scientists. EPA's re-assessment for chlorite and chlorine dioxide presented in the 1998 March NODA was reviewed internally and externally in accordance with EPA peer-review policy. The three outside experts who reviewed the Agency's assessment agreed with the NOAEL of 3 mg/kg/day and the derived RfD.

Finally, EPA disagrees that an additional safety factor should be applied to provide additional protection for children or that drinking water consumption relative to the body weight of children should be used in developing the MCLG. The MCLG and MRDLG presented for chlorite and chlorine dioxide are considered to be protective of susceptible groups, including children, given that the RfD is based on a NOAEL derived from developmental testing, which includes a two-generation reproductive study. A two-generation reproductive study evaluates the effects of chemicals on the entire developmental and reproductive life of the organism. Additionally, current methods for developing RfDs are designed to be protective for sensitive populations. In the case of chlorite and chlorine dioxide a factor of 10 was used to account for variability between the average human response and the

response of more sensitive individuals. In addition, the important exposure is that of the pregnant and lactating female and the nursing pup. The 2 liter per day water consumption and the 70 kg body weight assumptions are viewed as adequately protective of all groups.

Based on a review of all the data and public comments, EPA believes that the MCLG for chlorite should be 0.8 mg/L and the MRDLG for chlorine dioxide should be 0.8 mg/L. EPA believes the MCLG and MRDLG are consistent with the discussions during the regulatory negotiations which recognized the need for an acceptable two-generation reproductive study prior to reducing the uncertainty factors for chlorite and chlorine dioxide. EPA believes the CMA provided an acceptable two-generation study with which to reduce the uncertainty factors. In addition, EPA believes potential health concerns in the proposal with having a MCLG for chlorite significantly below the MCL are no longer relevant because the MCL for chlorite in today's rule will remain at 1.0 mg/L while the MCLG has been revised to 0.8 mg/L. Given the margin of safety that is factored into the estimation of the MCLG of 0.8 mg/L, EPA believes that the MCL of 1.0 mg/L will be protective of public health of all groups, including fetuses and children.

The MCLG for chlorite is based on an RfD of 0.03 mg/kg/d using a NOAEL of 3 mg/kg/d and an uncertainty factor of 100 to account for inter- and intra-species differences. The MCLG for chlorite is calculated to be 0.8 mg/L by assuming an adult tap water consumption of 2 L per day for a 70 kg adult and using a relative source contribution of 80% (because most exposure to chlorite is likely to come from ingestion of drinking water—EPA,1998u). A more detailed discussion of this assessment is included in the public docket for this rule (EPA, 1998d).

$$\text{MCLG for chlorite} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

$$\text{MCLG for chlorite} = 0.8\ \text{mg/L (Rounded)}$$

For chlorine dioxide the MCLG is based on a NOAEL of 3 mg/kg/d and applying an uncertainty factor of 100 to account for inter-and intra-species differences in response to toxicity, the revised MRDLG for chlorine dioxide is calculated to be 0.8 mg/L. This MRDLG takes into account an adult tap water consumption of 2 L per day for a 70 kg adult and applies a relative source contribution of 80% (because most exposure to chlorine dioxide is likely to come from ingestion of drinking water—EPA, 1998u). A more detailed discussion of this assessment is included in the public docket for this rule (EPA, 1998d).

$$\text{MRDLG for chlorine dioxide} = \frac{0.03\ \text{mg/kg/d} \times 70\ \text{kg} \times 0.8}{2\text{L/day}} = 0.84\ \text{mg/L}$$

$$\text{MRDLG for chlorine dioxide} = 0.8\ \text{mg/L (Rounded)}$$

8. MCLG for Bromate

a. Today's Rule. The final MCLG for bromate is zero. The zero MCLG is based on a weight-of-evidence evaluation of both the cancer and noncancer effects which indicates there is sufficient laboratory animal data to conclude that bromate is a probable (likely under the 1996 proposed cancer guidelines) human carcinogen. EPA believes the data are insufficient at this time to determine the mode of carcinogenic action for bromate, and therefore a low dose linear extrapolation approach is used to estimate lifetime cancer risk as a default.

b. Background and Analysis. The 1994 proposed rule included a MCLG of zero for bromate based on a determination that bromate was a probable human carcinogen. This determination was based on results from a two species rodent bioassay by Kurokawa et al. (1986a and 1986b) that found kidney tumors in rats. Since the 1994 proposed rule, EPA has completed and analyzed a new chronic cancer study in male rats and mice for potassium bromate (DeAngelo et al., 1998). EPA reassessed the cancer risk associated with bromate exposure (EPA, 1998e), had this reassessment peer reviewed (EPA, 1998e), and presented its findings in the March 1998 NODA (EPA, 1998a). The new rodent cancer study by DeAngelo et al. (1998) contributes to the weight of the evidence for the potential human carcinogenicity of potassium bromate and confirms the study by Kurokawa et al. (1986 a,b).

c. Summary of Comments. Several commenters supported the zero MCLG for bromate. Others believed the MCLG of zero was not justified because there is evidence of a carcinogenic threshold. This evidence indicates that bromate causes DNA damage indirectly via lipid peroxidation, which generates oxygen radicals which in turn induce DNA damage. Other commenters argued that even if there is no carcinogenic threshold, EPA has overstated the potency of bromate by using the linearized multistage model and should instead use the Gaylor-Kodell model.

In response, EPA disagrees with commenters who believed that the zero MCLG was inappropriate. At this time, under the principles of both the 1986 EPA Guidelines for Carcinogen Risk Assessment (EPA, 1986) and the draft 1996 EPA Proposed Guidelines for Carcinogen Risk Assessment (EPA, 1996b) weight-of-evidence approach, bromate is considered to be a probable or likely human carcinogen. This weight of evidence conclusion of potential human carcinogenicity is based on sufficient experimental findings that include the following: tumors at multiple sites in rats; tumor responses in both sexes; and evidence for mutagenicity including point mutations and chromosomal aberrations in in vitro genotoxicity assays. Furthermore, EPA believes there is insufficient evidence at this time to draw conclusions regarding the mode of carcinogenic action for bromate. EPA acknowledges there are studies available showing that bromate may generate oxygen radicals which increase lipid peroxidation and damage DNA. However, no data are available that link this proposed mechanism to tumor induction. Thus, EPA believes that while there are studies which provide some evidence to support the commenters' claims, these studies are insufficient at this time to establish

lipid peroxidation and free radical production as key events responsible for the induction of the multiple tumor responses seen in the bromate rodent bioassays (EPA, 1998e). Given the uncertainty about the mode of carcinogenic action for bromate, EPA believes it is appropriate to use the default assumption of low dose linearity to estimate the cancer risk and establish the MCLG of zero for bromate. EPA is conducting additional studies investigating the mode of action for bromate.

EPA also disagrees with commenters who suggested that the Gaylor-Kodell model should be used for low-dose extrapolation of the bromate data. In the 1998 NODA, a low dose linear extrapolation of the DeAngelo et al. (1998) data was conducted using a one-stage Weibull time-to-tumor model. The Weibull model was considered to be the preferred approach to account for the reduction in animals at risk that may be due to the decreased survival observed in the high dose group toward the end of the study. The estimate of cancer risk from the DeAngelo et al. (1998) study is similar with the risk estimate derived from the Kurokawa et al. (1986a) study presented in the 1994 proposed rule.

Based on an evaluation of all the data and after review and consideration of the public comments, EPA believes the MCLG for bromate should be zero.

9. MCLG for Chloral Hydrate

a. Today's Rule. EPA has decided to not include an MCLG for chloral hydrate in the Stage 1 DBPR. This decision is based on an analysis of the technical comments and on the fact that chloral hydrate will be controlled by the MCLs for TTHM and HAAs and by the treatment technique of enhanced coagulation.

b. Background and Analysis. The 1994 proposed rule included an MCLG for chloral hydrate of 0.04 mg/L. This was based on a 90-day mice study by Sanders et al. (1982) which reported liver toxicity. A RfD of 0.0016 mg/kg/d was used (LOAEL of 16 mg/kg/d with an uncertainty factor of 10,000). In the 1997 DBP NODA (EPA,1997b) and supporting documents (EPA, 1997c), additional studies on chloral hydrate were discussed, however, these new studies did not indicate a change in the MCLG for chloral hydrate.

c. Summary of Comments. The majority of commenters disagreed with the MCLG of 0.04 mg/L for chloral hydrate. Several commenters questioned the need for an MCLG for chloral hydrate. These commenters mentioned its low toxic potential and the fact that safe concentrations of chloral hydrate are substantially greater than those present in drinking water. Commenters also questioned the need for an MCLG for chloral hydrate because the MCLs for THMs and HAAs and the treatment technique of enhanced coagulation will adequately control for chloral hydrate and because there were no monitoring provisions proposed. Other commenters argued that the use of a 10,000 uncertainty factor and the selection of the Sanders et al. (1982) study as a basis for setting the MCLG were inappropriate.

In response, EPA agrees with commenters that an MCLG for chloral hydrate is not needed. This is based on the fact that the TTHM and HAA MCLs and the treatment technique (i.e., enhanced coagulation/softening) will control for chloral hydrate, as well as other chlorination byproducts. In addition, chloral hydrate does not serve as an important indicator for other chlorination byproducts. The final rule, therefore, does not contain an MCLG for chloral hydrate. In light of this decision, EPA is not responding to comments on the uncertainty factor used as the basis for setting the MCLG.

10. MRDLG for Chlorine

a. Today's Rule. EPA is promulgating an MRDLG of 4 mg/L for chlorine based on a NOAEL from a chronic study in animals.

b. Background and Analysis. EPA proposed an MRDLG of 4 mg/L for chlorine. The MRDLG was based on a two-year rodent drinking water study in which chlorine was given to rats at doses ranging from 4 to 14 mg/kg/day and mice at doses ranging from 8 to 24 mg/kg/day (NTP, 1990). Neither systemic toxicity, nor effects on body weight and survival were found. Thus, the MRDLG was based on a NOAEL of 14 mg/kg/day and application of a 100 fold uncertainty factor to account for inter- and intra-species differences (EPA, 1994a). New information on chlorine has become available since the 1994 proposal and was discussed in the 1997 DBP NODA and is included in the public docket (EPA, 1997c). This new information did not contain data that would change the MRDLG. EPA has therefore decided to finalize the proposed MRDLG of 4 mg/L for chlorine.

c. Summary of Comments. Several commenters agreed with EPA's conclusion that there is no animal evidence of carcinogenicity for chlorine. Some commenters also agreed with EPA that 4 mg/L was the appropriate MCLG. Several commenters agreed with the proposed relative source contribution of 80 percent for chlorine. Some commenters agreed with the uncertainty factor of 100 while others felt that it was too high. Some commenters encouraged EPA to consider children in estimating risk from chlorine.

In response, EPA believes that an uncertainty factor of 100 is appropriate when a NOAEL from a chronic animal study is the basis for the RfD. Because current methods for developing RfDs are designed to be protective for sensitive subpopulations, the uncertainty factor of 100 is considered protective of children. Furthermore, animal studies indicate that chlorine is not a developmental toxicant.

11. MRDLG for Chloramine

a. Today's Rule. EPA is promulgating an MRDLG of 4 mg/L for chloramines based on a NOAEL from a chronic rodent study.

b. Background and Analysis. The 1994 proposed Stage I DBPR included an MRDLG for chloramines at 4 mg/L based on a NOAEL of 9.5 mg/kg/d for lack of toxicity in chronic rodent drinking water study and on application of an uncertainty factor of 100 to account of inter- and intra-species differences (EPA, 1994h). New information on chloramines has become available since the 1994 proposal and was included in the 1997 DBP NODA and is included in the public docket (EPA, 1997c). This new information did not contain data that would change the MRDLG. EPA has therefore decided to finalized the proposed MRDLG of 4 mg/L for chloramines.

c. Summary of Comments. Several commenters agreed with the MRDLG of 4 mg/L for chloramine (as chlorine). Some commenters felt that the MRDLG was too low due to conservative uncertainty factors. Many commenters agreed with EPA's conclusion that there is no animal evidence of carcinogenicity for chloramines. Many commenters agreed with the RSC of 80% for chloramine while other believed that the RSC should be higher.

In response, EPA believes that the uncertainty factor of 100 in the MRDLG calculation is appropriate to protect public health including that of children and sensitive subpopulations. EPA believes that the 80 percent is an appropriate ceiling for the RSC due to lack of exposure data on other sources of exposure.

B. Epidemiology

1. Cancer Epidemiology

a. Today's Rule. EPA has evaluated all of the cancer epidemiology data and the corresponding public comments received on the 1994 proposal (EPA,

1994a), 1997 NODA (EPA, 1997b), and 1998 NODA (EPA, 1998a). Based on this evaluation, EPA believes that the cancer epidemiology data provides important information that contributes to the weight-of-evidence evaluation on the potential health risks from exposure to chlorinated drinking water. At this time, however, the cancer epidemiology studies are insufficient to establish a causal relationship between exposure to chlorinated drinking water and cancer; and are thus considered limited for use in quantitative risk assessment. EPA's weight-of-evidence evaluation of the potential risk posed by chlorinated drinking water is further discussed in section IV of this preamble.

b. Background and Analysis. The preamble to the 1994 proposed rule discussed numerous cancer epidemiology studies that had been conducted over the past 20 years to examine the relationship between exposure to chlorinated water and cancer (EPA, 1994a). At the time of the regulatory negotiation, there was disagreement among the members of the Reg. Neg. Committee on the conclusions that could be drawn from these studies. Some members of the Committee felt that the cancer epidemiology data, taken in conjunction with the results from toxicological studies, provide ample and sufficient weight-of-evidence to conclude that exposure to DBPs in drinking water could result in increased cancer risk at levels encountered in some public water supplies. Other members of the Committee concluded that the cancer epidemiology studies on the consumption of chlorinated drinking water to date were insufficient to provide definitive information for the regulation.

In the 1998 DBP NODA (EPA, 1998a), EPA discussed several new epidemiology studies that had been published since the 1994 proposal. EPA concluded in the 1998 NODA, based on a review of all the cancer epidemiology studies (including the more recent studies), that a causal relationship between exposure to chlorinated surface water and cancer has not yet been demonstrated. However, several studies have suggested a weak association in various subgroups. Results from recent epidemiology studies continue to support the decision to pursue regulations to provide additional DBP control measures as discussed in section IV.D of this preamble.

c. Summary of Comments. Several commenters agreed with EPA's characterization that there was insufficient evidence to conclude that there was a causal relationship between exposure to chlorinated surface water and cancer. Other commenters disagreed with this characterization stating that they believed the evidence did indicate there was a strong association between exposure to chlorinated water and cancer. Other commenters stated that EPA had not clearly articulated the basis for its conclusions on the issue of causality.

In response, EPA continues to believe that there is insufficient evidence, based on the epidemiology data, to conclude there is a causal association between exposure to chlorinated waters and cancer. EPA agrees, however, that the basis for its conclusion on causality was not clearly articulated. This judgement of causality was based on evaluating the existing cancer epidemiologic database for the following criteria: strength of association, consistency of the findings, specificity of the association, as well as other information concerning the temporal sequence and presence of a dose-response relationship, and biological plausibility (Federal Focus, 1996; EPA, 1986; EPA 1996b).

EPA applied the criteria stated above to assess the possible causality of cancer using the best available cancer epidemiology studies (Cantor et al., 1985, McGeehin et al., 1993, King and Marrett, 1996, Cantor et al., 1998, Freedman et al., 1997, Hildesheim et al., 1998, Doyle et al., 1997). These studies found a weak association for bladder cancer, although the findings were not consistent within and among the studies. The specificity of the association, temporal association, and dose response relationship remain unknown. In addition, the biological mode of action has not been determined. Using the criteria for causality, the present epidemiologic data do not support a causal relationship between exposure to chlorinated drinking water and development of cancer at this time. This conclusion does not preclude the possibility that a causal link may be established at a later date by future epidemiology and toxicology studies.

Some commenters argued that the epidemiological evidence indicated an increased risk for cancer by exposure to chlorinated drinking water, while others argued that the epidemiological evidence does not support a health effects concern. As stated above, EPA believes that, at this time, a causal link between exposure to chlorinated drinking water and development of cancer cannot be determined. However, EPA believes that the epidemiological evidence suggests a potential increased risk for bladder cancer. It is therefore prudent public health policy to protect against this potential public health concern in light of the uncertainties and given the large population (over 200 million people) potentially exposed.

2. Reproductive and Developmental Epidemiology

a. Today's Rule. EPA has evaluated all of the reproductive and developmental epidemiology data and the public comments received on the 1994 proposal, 1997 NODA, and the 1998 NODA. Based on this evaluation, EPA believes that the reproductive and developmental epidemiology data provides important information that contributes to the weight-of-evidence evaluation on the potential risks from exposure to chlorinated drinking water. However, the reproductive epidemiology studies are insufficient to establish a causal relationship between exposure to chlorinated drinking water and reproductive and developmental effects and are limited for use in the quantification of risk.

b. Background and Analysis. In the preamble to the 1994 proposed DBPR, EPA discussed several reproductive epidemiology studies (EPA, 1994a). At the time of the proposal, EPA concluded that there was no compelling evidence to indicate a reproductive and developmental hazard due to exposure to chlorinated water because the epidemiologic evidence was inadequate and the toxicological data were limited. In 1993, an expert panel of scientists was convened by the International Life Sciences Institute to review the available human studies for developmental and reproductive outcomes and to provide research recommendations (EPA/ILSI, 1993). The expert panel concluded that the epidemiologic results should be considered preliminary given that the research was at a very early stage (EPA/ILSI, 1993; Reif et al., 1996). The 1997 NODA and the supporting documents (EPA, 1997c) presented several new studies (Savitz et al., 1995; Kanitz et al. 1996; and Bove et al., 1996) that had been published since the 1994 proposed rule and the 1993 ILSI panel review. Based on the new studies presented in the 1997 NODA, EPA stated that the results were inconclusive with regard to the association between exposure to chlorinated waters and adverse reproductive and developmental effects (EPA, 1997b).

In the 1998 DBP NODA (EPA, 1998a), EPA included the recommendations from an EPA convened expert panel in July 1997 to evaluate epidemiologic studies of adverse reproductive or developmental outcomes that may be associated with the consumption of disinfected drinking water published

since the 1993 ILSI panel review. A report was prepared entitled ''EPA Panel Report and Recommendations for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water'' (EPA, 1998f). The 1997 expert panel was also charged to develop an agenda for further epidemiological research. The 1997 panel concluded that the results of several studies suggest that an increased relative risk of certain adverse outcomes may be associated with the type of water source, disinfection practice, or THM levels. The panel emphasized, however, that most relative risks are moderate or small and were found in studies with limitations in design or conduct. The small magnitude of the relative risk found may be due to one or more sources of bias, as well as to residual confounding (factors not identified and controlled). Additional research is needed to assess whether the observed associations can be confirmed. In addition, the 1998 DBP NODA included a summary of a study by Waller et al. (1998) conducted in California and another study by Klotz and Pyrch (1998) conducted in New Jersey. EPA concluded that while the Waller et al. (1998) study does not prove that exposure to THMs in drinking water causes early term miscarriages, it does provide important new information that needs to be explored and that the study adds to the weight-of-evidence which suggests that exposure to DBPs may have an adverse health effect on humans. EPA indicated that the review of the Klotz and Pyrch study (1998) had not been completed in time for the 1998 NODA.

EPA has completed its review of the Klotz and Pyrch (1998) study and concluded that the results in the report provide limited evidence to substantiate the hypothesis that DBPs in drinking water cause adverse reproductive or developmental effects since the bulk of the findings are inconclusive. There is, however, a suggestion in the study that total THMs or some other component of surface water is associated with a small increased risk of neural tube defects; no significant associations, however, were observed with individual THMs, HAAs or other composite measures of exposure.

c. Summary of Comments. Several commenters agreed with EPA's conclusions on the significance of the reproductive and developmental effects from the various studies. Others believed EPA had not accurately characterized the potential adverse reproductive and developmental effects from exposure to DBPs in drinking water.

In response, EPA continues to believe that the available epidemiology data along with the toxicological findings suggest that exposure to DBPs may have adverse effects on humans. However, EPA believes the epidemiology evidence is insufficient at this time to conclude that there is a causal association between exposure to DBPs and adverse reproductive and developmental effects. As noted in the 1998 NODA, EPA has an epidemiology and toxicology research program that is examining the relationship between exposure to DBPs and adverse reproductive and developmental effects. In addition, EPA is pursuing appropriate follow-up studies to see if the observed association in the Waller et al. (1998) study can be replicated elsewhere. EPA will also be working with the California Department of Health Services to improve estimates of exposure to DBPs in the existing Waller et al. study population. EPA will collaborate with the Centers for Disease Control and Prevention (CDC) in a series of studies to evaluate if there is an association between exposure to DBPs in drinking water and birth defects. EPA is also involved in a collaborative testing program with the NTP under which several individual DBPs have been selected for reproductive and developmental laboratory animal studies. This information will be used in developing the Stage 2 DBPR.

C. MCLs and BAT for TTHM, HAA5, Chlorite, and Bromate; MRDLs and BAT for Chlorine, Chloramines, and Chlorine Dioxide

MCLs are enforceable standards which are established as close to the MCLG as feasible. Feasible means with the use of the best technology, treatment techniques, and other means which the Administrator finds available (taking costs into consideration) after examining for efficacy under field conditions and not solely under laboratory conditions.

EPA is promulgating MCLs for two groups of DBPs and two inorganic byproducts. EPA is also promulgating MRDLs for three disinfectants. EPA is promulgating these MCLs and MRDLs at the levels proposed in 1994. Systems will determine compliance with the MCLs and MRDLs in the same manner as was proposed in 1994, except for chlorite. EPA determined that additional monitoring requirements for chlorite were necessary based on the findings from the CMA two-generation reproductive and developmental study.

Along with introducing the concept of the MRDLG in the proposed rule, EPA also introduced the MRDL for the three disinfectants (chlorine, chloramines, and chlorine dioxide). The MRDLs are enforceable standards, analogous to MCLs, which recognize the benefits of adding a disinfectant to water on a continuous basis and to maintain a residual to control for pathogens in the distribution system. As with MCLs, EPA has set the MRDLs as close to the MRDLGs as feasible. The Agency has also identified the BAT which is feasible for meeting the MRDL for each disinfectant.

EPA received similar comments on the use of the term MRDL as with MRDLG. The majority of commenters agreed with the use of the term MRDL for the disinfectants and therefore EPA is using the term MRDL in the final rule.

1. MCLs for TTHMs and HAA5

a. Today's Rule. In today's rule, EPA is promulgating an MCL for TTHMs of 0.080 mg/L. TTHM is the sum of measured concentrations of chloroform, bromodichloromethane, dibromochloromethane, and bromoform. EPA is also promulgating an MCL for HAA5 of 0.060 mg/L. HAA5 is the sum of measured concentrations of mono-, di-, and trichloroacetic acids, and mono- and dibromoacetic acids. A system is in compliance with these MCLs when the running annual average of quarterly averages of all samples taken in the distribution system, computed quarterly, is less than or equal to the MCL. If the running annual average computed for any quarter exceeds the MCL, the system is out of compliance. EPA believes that by meeting MCLs for TTHMs and HAA5, water suppliers will also control the formation of other DBPs not currently regulated that may also adversely affect human health.

EPA has identified the best available (BAT) technology for achieving compliance with the MCLs for both TTHMs and HAA5 as enhanced coagulation or treatment with granular activated carbon with a ten minute empty bed contact time and 180 day reactivation frequency (GAC10), with chlorine as the primary and residual disinfectant, as was proposed in 1994.

b. Background and Analysis. The 1994 proposal for the Stage 1 DBPR included MCLs for TTHM and HAA5 at 0.080 and 0.060 mg/L, respectively (EPA, 1994a). In addition to the proposed MCLs, subpart H systems—utilities treating either surface water or groundwater under the direct influence of surface water—that use conventional treatment (i.e., coagulation, sedimentation, and filtration) or precipitative softening would be

required to remove DBP precursors by enhanced coagulation or enhanced softening. The removal of TOC would be used as a performance indicator for DBP precursor control.

As part of the proposed rule, EPA estimated that 17% of PWSs would need to change their treatment process to alternative disinfectants (ozone or chlorine dioxide) or advanced precursor removal (GAC or membranes) in order to comply with the Stage 1 requirements. This evaluation was important to assist in determining whether the proposed MCLs were achievable and at what cost. This evaluation required an understanding of the baseline occurrence for the DBPs and TOC being considered in the Stage 1 DBPR, an understanding of the baseline treatment in-place, and an estimation of what treatment technologies systems would use to comply with the Stage 1 DBPR requirements.

In 1997, at the direction of the M–DBP Advisory Committee, the TWG reviewed MCL compliance predictions developed for the 1994 proposal because of concern by several Committee members that modifications to the rule would result in more PWSs not being able to meet the new TTHM and HAA5 MCLs without installation of higher cost technologies such as ozone or GAC. Some members were concerned that allowing disinfection inactivation credit prior to precursor removal (by enhanced coagulation or enhanced softening) in order to prevent significant reductions in microbial protection would result in higher DBP formation and force systems to install alternative disinfectants or advanced precursor removal to meet the 1994 proposed TTHM and HAA5 MCLs. As discussed later in today's document in Section III.E (Preoxidation CT Credit), most PWSs can achieve significant reduction in DBP formation through the combination of enhanced coagulation (or enhanced softening) while maintaining predisinfection. The TWG's analysis indicated that there would be a decrease in the percentage of PWSs that would need to install higher cost technologies. This decrease was attributed to changes in the proposed IESWTR which altered the constraints by which systems could comply with the MCLs. The requirements of the IESWTR would also prevent significant reduction in microbial protection as described in the 1997 NODA (EPA, 1997a) and elsewhere in today's **Federal Register**. EPA has included a discussion of the prediction of technology choices in Section IV (Economic Analysis) of today's rule and a more detailed discussion in the RIA for this rule (EPA, 1998g). EPA continues to believe the proposed MCLs are achievable without large-scale technology shifts.

c. Summary of Comments. Several commenters questioned whether the TTHM MCL of 0.080 mg/L and the HAA5 MCL of 0.060 mg/L were set at a level that would preclude the use of chlorine as an effective disinfectant. EPA does not believe the MCLs will preclude the use of chlorine. While there are currently systems that are exceeding these MCLs, the Agency has concluded that most systems will be able to achieve compliance by relatively low cost alternatives such as: improved DBP precursor removal through enhanced coagulation or enhanced softening; moving the point of disinfection to reduce the reaction between chlorine and DBP precursors; the use of chloramines for residual disinfection instead of chlorine; or a combination of these alternatives.

Many commenters also questioned the need for a modified TTHM MCL and a new MCL for HAA5. As discussed in section I.B.2. of today's rule, EPA believes the potential public health risks do justify a reduction in exposure to DBPs and hence a modification in the MCL for TTHMs and a new MCL for HAA5. Also as discussed in section IV of this rule, EPA continues to believe that the potential risks associated with both TTHM and HAA5 and unregulated DBPs will be reduced by the combination of these MCLs and DBP precursor removal through enhanced coagulation and enhanced softening.

While most commenters agreed with EPA's definition of GAC10 and GAC20 (GAC with a 10 and a 20 minute empty bed contact time, respectively), several commenters thought that designating GAC as BAT meant that they would have to install GAC at their treatment plant. EPA is required to designate a BAT for any MCL that the Agency promulgates; however, a system may use any technology it wants to comply with the MCL. However, a system must install BAT prior to the State issuing a variance to one of these MCLs.

Commenters also questioned the use of group MCLs for TTHM and HAA5, instead of MCLs for the individual DBPs, since a group MCL does not take into account differing health effects and potencies of individual DBPs. EPA continues to believe that regulating TTHMs and HAAs as group MCLs is appropriate at this time for several reasons. First, EPA does not have adequate occurrence data for individual trihalomethanes and haloacetic acids to develop national occurrence estimates which are needed for estimating the potential costs and benefits of the rule (although the Agency has an adequate database of group occurrence). Second, there is not an adequate understanding of how water quality parameters (such as pH, temperature, bromide, and alkalinity) affect individual THM and HAA formation. Third, EPA does not have an adequate understanding of how treatment technologies control the formation of individual THMs and HAAs to enable specifying appropriate MCLs for individual TTHMs or HAAs at this time. Finally, there are inadequate health data to characterize the potential health risks for several of the HAAs and to then determine the potential benefits from reduction in exposures. In conclusion, EPA continues to believe the most appropriate approach for reducing the health risk from all DBPs is by the combination of TTHM and HAA5 MCLs and DBP precursor removal.

Some commenters stated that EPA may have underestimated HAA formation, especially in certain areas of the country. The Agency was aware that waters in particular regions of the country would be more difficult to treat in order to control for HAA5 than for TTHM. Based on additional data received since the proposal, EPA continues to believe that the HAA5 MCL can be met by most systems through the same general low-cost strategies as used for TTHM (e.g., improved DBP precursor removal, moving the point of disinfection, use of chloramines for residual disinfection) rather than higher cost alternatives (see section IV.C for cost estimates of technology treatment choices).

Many commenters also requested that States be granted sufficient flexibility in implementing this rule. While the State must adopt rules that are at least as stringent as those published in today's rule, EPA has given the States and systems much latitude in monitoring plans (frequency and location), allowable disinfectants, and other rule elements. Much of this flexibility carries over from the 1979 TTHM Rule (EPA, 1979).

Finally, some commenters stated that requirements in this rule are complicated. EPA acknowledges that this rule is complicated, but that this complexity is necessary in order to adequately and economically address the potential DBP risks. EPA was required to consider a host of complicating factors in developing regulatory requirements: different disinfectants, different health effects (acute and chronic), different DBP formation kinetics, different source water types and qualities, different treatment processes, and the need for

simultaneous compliance with other rules such as the Total Coliform Rule, Lead and Copper Rule, and Interim Enhanced Surface Water Treatment Rule. The Agency chose to evaluate all these factors by developing requirements that minimized impacts on various classes of systems while enabling States to implement the rule. In addition to the further description of the requirements in today's rule, EPA will publish a State implementation manual, a small system compliance manual, and a series of guidance manuals that will provide additional information to systems and States in implementing this rule.

EPA has reviewed all comments and determined that the requirements promulgated today are necessary to control the occurrence of TTHM and HAA5 and are feasible to achieve. These requirements take into account the difficulties in simultaneously controlling risks from DBPs and pathogens, while appropriately addressing implementation and compliance issues.

2. MCL for Bromate

a. Today's Rule. In today's rule, EPA is promulgating an MCL for bromate of 0.010 mg/L. Bromate is one of the principal byproducts of ozonation in bromide-containing source waters. The proposed MCL for bromate was 0.010 mg/l. A system is in compliance with the MCL when the running annual average of monthly samples, computed quarterly, is less than or equal to the MCL. If the running annual average computed for any quarter exceeds the MCL, the system is out of compliance. EPA has identified the BAT for achieving compliance with the MCL for bromate as control of ozone treatment process to reduce formation of bromate, as was proposed in 1994 (EPA, 1994a).

b. Background and Analysis. For systems using ozone, a separate MCL was proposed for the primary inorganic DBP associated with ozone usage: bromate. Although the theoretical 10^{-4} risk level for bromate is 0.005 mg/l, an MCL of 0.010 mg/L was proposed because available analytical detection methods for bromate were reliable only to the projected practical quantification limit (PQL) of 0.01 mg/L (EPA, 1994a).

In the preamble to the proposed rule, EPA requested comment on whether there were ways to set (or achieve) a lower MCL (i.e., 0.005 mg/L [5 μg/L]) and whether the PQL for bromate could be lowered to 5 μg/L in order to allow compliance determinations for a lower MCL in Stage 1 of the proposed rule. The proposed MCL of 0.010 mg/L for bromate was based on a projected PQL that would be achieved by improved methods. The PQL of the revised method is approximately 0.010 mg/L for bromate, as discussed in Section III.G (Analytical Methods). At the time of the November 1997 NODA, EPA was not aware of any new information that would lower the PQL for bromate and thus allow lowering the MCL. As a result, EPA concluded that the proposed bromate MCL was appropriate.

c. Summary of Comments. Several commenters were concerned that the bromate MCL may have been set at a level that would preclude the use of ozone. During the M–DBP Advisory Committee discussions, the TWG evaluated the feasibility of ozone for certain systems that were predicted to have problems in complying with the TTHM and HAA5 MCLs. While ozone was not feasible for all systems, it was feasible for many that did not have elevated source water bromide levels to react with ozone to form bromate. The TWG predicted that most of the systems not able to use ozone would be able to switch to chlorine dioxide for primary disinfection.

EPA has reviewed all comments and determined that the requirements promulgated today are necessary to control the occurrence of bromate and are feasible to achieve. For additional discussion on the treatment technologies for controlling bromate formation and their costs see the Cost and Technology Document for Controlling Disinfectants and Disinfection Byproducts (EPA, 1998k). These requirements take into account the difficulties in simultaneously controlling risks from DBPs and pathogens, while appropriately addressing compliance and implementation issues. In addition, the Reg. Neg. Committee and the M–DBP Advisory Committee supported these conclusions.

3. MCL for Chlorite

a. Today's Rule. In today's rule, EPA is promulgating an MCL for chlorite of 1.0 mg/L. EPA has modified the monitoring requirements from the proposed rule for the reasons discussed in section III.A.7. The issue of monitoring and MCL compliance determinations as they relate to the health effect of concern for chlorite were discussed in the proposed rule (EPA, 1994a). CWSs and NTNCWSs using chlorine dioxide for disinfection or oxidation are required to conduct sampling for chlorite both daily at the entrance to the distribution system and monthly (3 samples on the same day) within the distribution system. Additional distribution system monitoring is required when the chlorite concentration measured at the entrance to the distribution system exceeds a chlorite concentration of 1.0 mg/L. Distribution system monitoring may be reduced if certain conditions are met (described in section III.H of this rule).

b. Background and Analysis. For systems using chlorine dioxide, EPA proposed a separate MCL for chlorite associated with its usage in 1994. The proposed chlorite MCL of 1.0 mg/L was supported by the Reg. Neg. Committee because 1.0 mg/L was the lowest level considered practicably achievable by typical systems using chlorine dioxide, from both treatment and monitoring perspectives. The MCLG was 0.08 mg/L, due (in part) to data gaps that required higher uncertainty factors in the MCLG determination. The CMA agreed to fund new health effects research on chlorine dioxide and chlorite—with EPA approval of the experimental design—to resolve these data gaps. EPA completed its review of the study and published its findings in a NODA in March 1998. Those findings led to a chlorite MCLG of 0.8 mg/L and support for an MCL of 1.0 mg/L.

c. Summary of Comments. Many commenters requested that EPA not modify the MCL for chlorite prior to receipt and evaluation of the CMA study, since lowering the MCL could preclude the use of chlorine dioxide for drinking water disinfection. EPA has evaluated the CMA study and concluded that the MCLG for chlorite should be 0.8 mg/L. EPA believes the proposed MCL of 1.0 mg/L, based on a three sample average to determine compliance, is appropriate because this is the lowest level achievable by typical systems using chlorine dioxide. In addition, considering the margin of safety that is factored into the estimate of the MCLG, EPA believes the MCL will be protective of public health. Once the final MCLG was established, EPA decided that the chlorite MCL should be finalized at the level proposed which was as close as economically and technically feasible to the MCLG, and modified the proposed requirements for monitoirng and compliance in response to the health concerns associated with chlorite.

EPA has reviewed all comments and determined that the requirements promulgated today are necessary to control the occurrence of chlorite and are feasible to achieve. These requirements take into account the difficulties in simultaneously controlling risks from DBPs and pathogens, while appropriately addressing compliance and

implementation issues. In addition, the Reg. Neg. Committee and the M–DBP Advisory Committee supported these conclusions.

4. MRDL for Chlorine

a. Today's Rule. Chlorine is a widely used and highly effective water disinfectant. In today's rule, EPA is promulgating an MRDL for chlorine of 4.0 mg/L. As a minimum, CWSs and NTNCWSs must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms, as specified in § 141.21. Subpart H systems may use the results of residual disinfectant concentration sampling done under the SWTR (§ 141.74(b)(6) for unfiltered systems, § 141.74(c)(3) for systems that filter) in lieu of taking separate samples. Monitoring for chlorine may not be reduced.

A system is in compliance with the MRDL when the running annual average of monthly averages of all samples, computed quarterly, is less than or equal to the MRDL. Notwithstanding the MRDL, operators may increase residual chlorine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems (e.g., including distribution line breaks, storm runoff events, source water contamination, or cross-connections).

EPA has identified the best means available for achieving compliance with the MRDL for chlorine as control of treatment processes to reduce disinfectant demand, and control of disinfection treatment processes to reduce disinfectant levels.

b. Background and Analysis. The 1994 proposed Stage I DBPR included an MRDL for chlorine at 4.0 mg/L (EPA, 1994a). The MRDL for chlorine is equal to the MRDLG for chlorine. EPA requested comment on a number of issues relating to the calculation of the MRDLG for chlorine. New information on chlorine has become available since the 1994 proposal and was discussed in the 1997 NODA (EPA, 1997b). EPA believes that no new information has become available to warrant changing the proposed MRDL. EPA has therefore decided to promulgate the MRDL of 4.0 mg/L for chlorine.

c. Summary of Comments. Some commenters expressed concern that the MRDL for chlorine is too high. These commenters were concerned that 4 mg/L levels of chlorine would have a detrimental effect on piping materials and would cause taste and odor problems. One commenter supported the chlorine MRDL and the methods of calculating compliance with the MRDL. This commenter felt that 4.0 mg/L appropriately allows for disinfection under varying circumstances. One commenter requested that EPA increase the flexibility of utilities to meet the MRDL for chlorine during periods when chlorine levels in the distribution systems may need to be raised to protect public health.

EPA believes that the MRDL of 4.0 mg/L for chlorine is appropriate to control for potential health effects (MRDLG is 4.0 mg/L) from chlorine while high enough to allow for control of pathogens under a variety of conditions. EPA also believes that compliance based on a running annual average of monthly averages of all samples, computed quarterly is sufficient to allow systems to increase residual chlorine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems and still maintain compliance. If a system has taste and odor problems associated with excess chlorine levels it can lower its level of chlorine. Since there may not be any health effects associated with taste and odor problems, EPA does not have a statutory requirement to address this concern.

5. MRDL for Chloramines

a. Today's Rule. Chloramines are formed when ammonia is added during chlorination. In today's rule, EPA is promulgating an MRDL for chloramines of 4.0 mg/L (measured as combined total chlorine). As a minimum, CWSs and NTNCWSs must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms, as specified in § 141.21. Subpart H systems may use the results of residual disinfectant concentration sampling done under the SWTR (§ 141.74(b)(6) for unfiltered systems, § 141.74(c)(3) for systems that filter) in lieu of taking separate samples. Monitoring for chloramines may not be reduced.

A PWS is in compliance with the MRDL when the running annual average of monthly averages of all samples, computed quarterly, is less than or equal to the MRDL. Notwithstanding the MRDL, operators may increase residual chloramine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems (e.g., including distribution line breaks, storm runoff events, source water contamination, or cross-connections).

EPA has identified the best means available for achieving compliance with the MRDL for chloramines as control of treatment processes to reduce disinfectant demand, and control of disinfection treatment processes to reduce disinfectant levels.

b. Background and Analysis. The 1994 proposed Stage 1 DBPR included an MRDL for chloramines at 4.0 mg/L (EPA, 1994a). The MRDL for chloramines is equal to the MRDLG for chloramines. EPA requested comment on a number of issues relating to the calculation of the MRDLG for chloramines. New information on chloramines has become available since the 1994 proposal and was cited in the 1997 NODA and is included in the public docket for this rule (EPA, 1997b). This new information did not contain data that would warrant changing the MRDL. EPA has therefore decided to promulgate the proposed MRDL of 4.0 mg/L for chloramines.

c. Summary of Comments. Some commenters remarked that systems with high concentrations of ammonia would have difficulty meeting the MRDL for chloramine of 4.0 mg/L and still maintain adequate microbial protection. One commenter felt that there should not be a limit for chloramine residual due to variations in parameters such as distribution system configurations and temperature. One commenter felt that the MRDL for chloramines was too low and should not be set at the same level as the chlorine MRDL since chlorine is a stronger disinfectant than chloramines. This commenter felt that limiting the chloramine residual would reduce the capability to sustain high water quality in the distribution system. One commenter supported the chloramine MRDL and the methods of calculating compliance with the MRDL. This commenter felt that 4.0 mg/L adequately allows for disinfection under varying circumstances.

EPA believes that compliance based on a running annual average of monthly averages of all samples, computed quarterly, is sufficient to allow systems to increase residual chloramine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems and still maintain compliance. The MRDL for chloramine does not limit disinfectant dosage but rather disinfectant residual in the distribution system. EPA therefore, believes that systems with high levels of ammonia should be able to comply with the MRDL. Systems that have difficulty sustaining high water quality in the distribution system should consider modifying their

treatment or maintenance procedures to reduce demand. Although chlorine is a stronger disinfectant than chloramine, EPA believes that an MRDL of 4.0 mg/L is sufficient to provide adequate microbial protection.

6. MRDL for Chlorine Dioxide

a. Today's Rule. Chlorine dioxide is used primarily for the oxidation of taste and odor-causing organic compounds in water. It can also be used for the oxidation of reduced iron and manganese and color, and as a disinfectant and algicide. Chlorine dioxide reacts with impurities in water very rapidly, and is dissipated quickly. In today's rule, EPA is promulgating an MRDL of 0.8 mg/L for chlorine dioxide. Unlike chlorine and chloramines, the MRDL for chlorine dioxide may not be exceeded for short periods of time to address specific microbiological contamination problems because of potential health concerns with short-term exposure to chlorine dioxide above the MCL.

CWSs and noncommunity systems must monitor for chlorine dioxide only if chlorine dioxide is used by the system for disinfection or oxidation. Monitoring for chlorine dioxide may not be reduced. If monitoring is required, systems must take daily samples at the entrance to the distribution system. If any daily sample taken at the entrance to the distribution system exceeds the MRDL, the system is required to take three additional samples in the distribution system on the next day. Systems using chlorine as a residual disinfectant and operating booster chlorination stations after the first customer must take three samples in the distribution system: one as close as possible to the first customer, one in a location representative of average residence time, and one as close as possible to the end of the distribution system (reflecting maximum residence time in the distribution system). Systems using chlorine dioxide or chloramines as a residual disinfectant or chlorine as a residual disinfectant and not operating booster chlorination stations after the first customer must take three samples in the distribution system as close as possible to the first customer at intervals of not less than six hours.

If any daily sample taken at the entrance to the distribution system exceeds the MRDL and if, on the following day, any sample taken in the distribution system also exceeds the MRDL, the system will be in acute violation of the MRDL and must take immediate corrective action to lower the occurrence of chlorine dioxide below the MRDL and issue the required acute public notification. Failure to monitor in the distribution system on the day following an exceedance of the chlorine dioxide MRDL shall also be considered an acute MRDL violation.

If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL, but none of the samples taken in the distribution system exceed the MRDL, the system will be in nonacute violation of the MRDL and must take immediate corrective action to lower the occurrence of chlorine dioxide below the MRDL. Failure to monitor at the entrance to the distribution system on the day following an exceedance of the chlorine dioxide MRDL shall also be considered a nonacute MRDL violation.

EPA has identified the best means available for achieving compliance with the MRDL for chlorine dioxide as control of treatment processes to reduce disinfectant demand, and control of disinfection treatment processes to reduce disinfectant levels.

b. Background and Analysis. EPA proposed an MRDL for chlorine dioxide of 0.8 mg/L in 1994. The MRDL was determined considering the tradeoffs between chemical toxicity and the beneficial use of chlorine dioxide as a disinfectant. The Reg. Neg. Committee agreed to this MRDL with the reservation that it would be revisited, if necessary, after completion of a two-generation reproductive study by CMA.

As discussed above for chlorite, a two-generation reproductive study on chlorite, which is relevant to health effects of chlorine dioxide, was completed by the CMA. EPA completed its review of this study and published its findings in a NODA in March 1998 (EPA, 1998a). Based on its assessment of the CMA study and a reassessment of the noncancer health risk for chlorite and chlorine dioxide, EPA concluded that the MRDLG for chlorine dioxide be changed from 0.3 mg/L to 0.8 mg/L. Since this new MRDLG was equal to the proposed MRDL for chlorine dioxide, the MRDL will remain 0.8 mg/L.

c. Summary of Comments. A number of commenters were concerned that the MRDL for chlorine dioxide not be lowered below the proposed level of 0.8 mg/L because this would preclude the use of chlorine dioxide as a water disinfectant. One commenter supported the MRDL for chlorine dioxide based on public health protection, adequate microbial protection, and technical feasibility. One commenter agreed that a running annual average of samples for compliance determination should not be allowed for chlorine dioxide. One commenter was concerned that the chlorine dioxide MRDL was too high and that EPA should consider children and vulnerable populations in establishing drinking water standards.

EPA has reassessed the health effects data on chlorine dioxide, including the new CMA two-generation study and determined that the MRDL should remain at 0.8 mg/L as proposed. EPA believes that this MRDL is set at a technically feasible level for the majority of chlorine dioxide plants. This is the case because EPA considered children and susceptible populations in its MRDLG determination (EPA, 1998h). The MRDL is set as close to this MRDLG as is technically and economically feasible.

D. Treatment Technique Requirement

1. Today's Rule

Today's rule establishes treatment technique requirements for removal of TOC to reduce the formation of DBPs by means of enhanced coagulation or enhanced softening. The treatment technique applies to Subpart H systems using conventional filtration treatment regardless of size. Subpart H systems are systems with conventional treatment trains that use surface water or ground water under the influence of surface water as their source. The treatment technique requirement has two steps of application. Step 1 specifies the percentage of influent TOC a plant must remove based on the raw water TOC and alkalinity levels. The matrix in Table III–1 specifies the removal percentages.

TABLE III–1.—REQUIRED REMOVAL OF TOTAL ORGANIC CARBON BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [a,b]

Source water TOC (mg/L)	Source water alkalinity (mg/L as $CaCO_3$)		
	0–60 (percent)	>60–120 (percent)	>120 [c] (percent)
>2.0–4.0	35.0	25.0	15.0

TABLE III–1.—REQUIRED REMOVAL OF TOTAL ORGANIC CARBON BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [a,b]—Continued

Source water TOC (mg/L)	Source water alkalinity (mg/L as $CaCO_3$)		
	0–60 (percent)	>60–120 (percent)	>120 [c] (percent)
>4.0–8.0	45.0	35.0	25.0
>8.0	50.0	40.0	30.0

[a] Systems meeting at least one of the conditions in Section 141.135(a)(2) (i)–(vi) of the rule are not required to meet the removals in this table.
[b] Softening systems meeting one of the two alternative compliance criteria in Section 141.135(a)(3) of the rule are not required to meet the removals in this table.
[c] Systems practicing softening must meet the TOC removal requirements in the last column to the right.

Step 2 provides alternate performance criteria when it is technically infeasible for systems to meet the Step 1 TOC removal requirements. For systems practicing enhanced coagulation, Step 2 of the treatment technique requirement is used to set an alternative TOC removal requirement (i.e. alternative percent removal of raw water TOC) for those systems unable to meet the TOC removal percentages specified in the matrix. The alternative TOC removal percentage is determined by performing jar tests on at least a quarterly basis for one year. During the jar tests, alum or an equivalent dose of ferric coagulant is added in 10 mg/L increments until the pH is lowered to the target pH value. The target pH is the value the sample must be at or below before the incremental addition of coagulant can be discontinued. For the alkalinity ranges 0–60, >60–120, >120–240, and >240 mg/L (as $CaCO_3$), the target pH values are 5.5, 6.3, 7.0, and 7.5, respectively. Once the Step 2 jar test is complete, the TOC removal (mg/L) is then plotted versus coagulant dose (mg/L). The alternative TOC removal percentage is set at the point of diminishing returns (PODR) identified on the plot.

Today's rule defines the PODR as the point on the TOC versus coagulant dose plot where the slope changes from greater than 0.3/10 to less than 0.3/10 and remains less than 0.3/10. After identifying the PODR, the alternative TOC removal percentage can be set. If the TOC removal versus coagulant dose plot does not meet the PODR definition, the water is considered not amenable to enhanced coagulation and TOC removal is not required if the PWS requests, and is granted, a waiver from the enhanced coagulation requirements by the State. Systems are required to meet the alternative TOC removal requirements during full-scale operation to maintain compliance with the treatment technique. For the technical reasons outlined in the 1997 DBP NODA (EPA 1997b), EPA has concluded that this definition of the PODR is a reliable indicator of the amount of TOC that is feasible to remove.

Systems practicing enhanced softening are not required to perform jar testing under today's treatment technique as part of a Step 2 procedure. Rather, they are required to meet one of three alternative performance criteria if they cannot meet the Step 1 TOC removal requirements. These criteria are: (1) Produce a finished water with a SUVA of less than or equal to 2.0 L/mg-m; (2) remove a minimum of 10 mg/L magnesium hardness (as $CaCO_3$); or (3) lower alkalinity to less then 60 mg/L (as $CaCO_3$). All three of these alternative performance criteria are measured monthly and can be calculated quarterly as a running annual average to demonstrate compliance. As discussed in the 1997 DBP NODA (EPA 1997b) EPA has not been able, from a technical and engineering standpoint, to identify a Step 2 testing procedure at this time that allows softening systems to set an alternative TOC removal amount. Enhanced softening systems unable to meet the Step 1 TOC removal requirements or any of the three alternative performance criteria may apply to the State for a waiver from the treatment technique requirements. EPA believes the three alternative performance criteria listed above provide assurance that softening systems have maximized TOC removal to the extent feasible.

Today's rule also provides alternative compliance criteria—which are separate and independent of the Step 2 enhanced coagulation procedure and the enhanced softening alternative performance criteria—from the treatment technique requirements provided certain conditions are met. These criteria are:

(1) the system's source water TOC is <2.0 mg/L;

(2) the system's treated water TOC is <2.0 mg/L;

(3) the system's source water TOC <4.0 mg/L, its source water alkalinity is >60 mg/L (as $CaCO_3$), and the system is achieving TTHM <40μg/L and HAA5 <30μg/L (or the system has made a clear and irrevocable financial commitment to technologies that will meet the TTHM and HAA level);

(4) the system's TTHM is <40μg/L, HAA5 is <30μg/L, and only chlorine is used for primary disinfection and maintenance of a distribution system residual;

(5) the system's source water SUVA prior to any treatment is ≤ 2.0 L/mg–m; and

(6) the system's treated water SUVA is ≤ 2.0 L/mg–m.

Alternative compliance criteria 1, 2, 5, and 6 are determined based on monthly monitoring calculated quarterly as a running annual average of all measurements. Alternative compliance criteria 3 is based on monthly monitoring for TOC and alkalinity or quarterly monitoring for TTHMs and HAA5, calculated quarterly as a running annual average of all measurements. Alternative criteria 4 is determined based on monitoring for TTHMs and HAA5, calculated quarterly as a running annual average of all measurements. SUVA, an indicator of DBP precursor removal treatability, is defined as the UV–254 (measured in m^{-1}) divided by the DOC concentration (measured as mg/L).

2. Background and Analysis

The general structure of the 1994 proposed rule and today's final rule are similar. The 1994 proposal included an enhanced coagulation and enhanced softening treatment technique requirement for Subpart H systems. The 1994 proposed rule included a TOC removal matrix for Step 1 TOC removal requirements and it also provided for a Step 2 jar test procedure for systems practicing enhanced coagulation. The PODR for the Step 2 procedure was defined as a slope of .3/10 on the TOC removal versus coagulant dose plot. The Step 2 procedure included a maximum pH value, now referred to as the ''target pH'' for conducting the jar tests and it also allowed systems to request a waiver from the State if the PODR was never

attained. The target pH values in the 1994 proposal were the same as those in today's final rule. A Step 2 procedure for enhanced softening systems was not specified in the proposal.

The proposed rule also provided for a number of exceptions to the enhanced coagulation and enhanced softening requirements, but it did not include use of SUVA as an alternative compliance criteria.

A major goal of the TOC removal treatment technique requirements was to minimize transactional costs to the States both in terms of limiting the number of systems seeking alternative performance criteria and in providing relatively simple methodologies for determining alternative performance criteria. In the 1997 DBP NODA (EPA 1997b), EPA presented new data and analysis and the basis for modifying the proposed criteria to those described in today's final rule. The 1997 NODA also solicited public comment on EPA's intended changes to the proposal and the recommendations of the M–DBP Advisory Committee to EPA. An overview of the key points in the 1997 NODA most pertinent to modifying the treatment technique requirements are presented below.

Data Supporting Changes in the TOC Removal Requirements. The proposed TOC removal percentages, which were set with the intent that 90% of affected systems would be able to achieve them, were developed with limited data. Since the proposal, several jar studies and analyses of full-scale plant TOC removal performance have been performed. They were analyzed by EPA as part of the M–DBP Advisory Committee process. This data will not be thoroughly reviewed here; instead, the major points salient to development of the final regulation will be summarized. See the 1997 DBP NODA (EPA 1997b) to review EPA's detailed analysis of the new data.

As discussed in greater detail in the 1997 DBP NODA, research by Singer et al. (1995) indicated that a significant number of waters, especially low-TOC, high-alkalinity waters in the first row of the proposed TOC removal matrix, would probably not be able to meet the TOC removal percentages and would therefore need to use the Step 2 protocol to establish alternative performance criteria. The Singer et al. (1995) study raised concern regarding the number of systems that might need to use the Step 2 procedure to set alternative performance criteria. A study by Malcolm Pirnie, Inc. and Colorado University addressed this issue by developing a nationally representative database of 127 source waters and used this data to develop a model to predict enhanced coagulation's ability to remove TOC from different source waters (Edwards, 1997; Tseng & Edwards, 1997; Chowdhury, 1997). The model was subsequently used to analyze the level or percentage of TOC removal that is operationally feasible to achieve for the boxes in the proposed TOC removal matrix. Nine predictive equations for TOC removal were developed, one for each box of the TOC removal matrix, to select TOC removal percentages that could be ''reasonably'' met by 90 percent of the systems implementing enhanced coagulation. The equations indicated that many systems having source waters within the low TOC boxes of the matrix (i.e. 2.0–4.0 mg/L, the first row of the matrix) would meet the Step 2 slope criterion before meeting the required TOC removal percentages. In other words, less than 90 percent of the systems in this row could achieve the proposed TOC removal with reasonable coagulant doses. The equations indicated that the TOC removal percentages in the medium and high TOC boxes (the bottom two rows of the matrix) could be met by approximately 90 percent of the systems in these boxes. The research team also examined 90th-percentile SUVA curves, in conjunction with the nine TOC removal curves, to predict what TOC removal percentage is appropriate for each of the nine boxes of the matrix.

An analysis of full-scale TOC removal has also been performed since 1994. Data was obtained from 76 treatment plants of the American Water Works Service Company (AWWSCo) system, plants studied by Randtke et al. (1994), and plants studied by Singer et al. (1995). These data represent a one-time sampling at each plant under current operating conditions when enhanced coagulation was not being practiced. This sampling is different from the proposed compliance requirements which would be based on an annual average of monthly samples. Based on current treatment at the plants in the study, 83 percent of the systems treating moderate-TOC, low-alkalinity water removed an amount of TOC greater than that required by the TOC removal matrix, whereas only 14 percent of the systems treating water with low TOC and high alkalinity met the proposed TOC removal requirements. The results of the survey, coupled with the information discussed in the preceding paragraph, indicate that the proposed TOC removal percentages in the top row of the matrix might be too high for 90 percent of plants to avoid the Step 2 procedure, while the removal percentages in the bottom two rows may be reasonable and allow 90 percent of plants to avoid the Step 2 procedure. Therefore, the TOC removal percentages in the first row have been lowered 5.0 percentage points to enable 90 percent of plants to comply without unreasonable coagulant dosage or resorting to the Step 2 procedure.

Data Supporting the Use of SUVA as an Exemption from Treatment Technique Requirements. At the time of the proposal, insufficient data on SUVA was available to define precise criteria for when enhanced coagulation would not be effective for removing DBP precursors. The M–DBP Advisory Committee examined the role of SUVA as an indicator of the amount of DBP precursor material enhanced coagulation is capable of removing. It has been well established that coagulation primarily removes the humic fraction of the natural organic matter (NOM) in water (Owen et al., 1993). Furthermore, Edzwald and Van Benschoten (1990) have found SUVA to be a good indicator of a water's humic content. The humic fraction of a water's organic content significantly affects DBP formation upon chlorination.

A study by White et al. (1997) showed that waters with high initial SUVA values exhibited significant reductions in SUVA as a result of coagulation, demonstrating a substantial removal of the humic (and other UV-absorbing) components of the organic matter, whereas waters with low initial SUVA values exhibited relatively low reductions in SUVA. For all of the waters examined, the SUVA tended to plateau at high alum doses, reflecting that the residual organic matter was primarily non-humic and therefore unamenable to removal by enhanced coagulation. SUVA's ability to indicate the amount of humic matter present, and enhanced coagulation's ability to preferentially remove humic matter, logically establishes SUVA as an indicator of enhanced coagulation's ability to remove humic substances from a given water. The M–DBP Advisory Committee therefore recommended that a SUVA value $\leq$ 2.0 L/mg–m be an exemption from the treatment technique requirement and that this SUVA value also be added as a Step 2 procedure.

Effect of Coagulant Dose on TOC Removal for Enhanced Softening. At the time of proposal, limited data was available on the effectiveness of TOC removal by enhanced coagulation and enhanced softening and on conditions that define feasibility. Several studies examined the relationship between increased coagulant dose and TOC removal (Shorney et al., 1996; Clark et

al. 1994). These studies indicate some improvement in TOC removal with small doses of iron salts (5 mg/L ferric sulfate), but no additional TOC removal during softening occurred with increased coagulant addition (up to 25 mg/L dose). Pilot testing by the City of Austin's softening plant confirmed the study's jar test results by showing that increasing ferric sulfate doses beyond the level required for turbidity removal provided no additional TOC removal.

Multiple jar tests on various waters performed by Singer et al. (1996) examined the relationship between use of lime and soda ash and TOC removal. Only lime and soda ash (no coagulants) were used in the tests. The study showed the removal of 10 mg/L of magnesium hardness would probably have less of an impact on plant residual generation than using a lime soda-ash process. However, the amount of residual material generated under both scenarios could be substantial.

Step 2 Requirements for Softening Systems. As stated above, the proposed rule did not include a Step 2 procedure for softening plants because of a lack of data. The M-DBP Advisory Committee examined new data that had been collected since the proposal to determine if a Step 2 procedure for softening plants could be identified. Data included the current TOC removals being achieved by softening plants covered by the ICR (49 plants). The data were analyzed to find the appropriate TOC removal levels for softening plants. The results of plotting the average TOC percent removals on a percentile basis indicated that the relative impact of meeting the TOC removal requirement in the proposed rule would be greatest in the low TOC group (>2–4 mg/L). However, forcing a plant to increase pH may require it to add soda ash (due to the decrease in alkalinity caused by high lime dose necessary to raise the pH). This would be a significant treatment change due to the additional solids generation and because significant amounts of magnesium hydroxide may precipitate at the higher pH. Most softening plants are normally operated without soda ash addition because of the high cost of soda ash, the additional sludge production, the increased chemical addition to stabilize the water, and the increased sodium levels in the finished water (Randtke et al., 1994 and Shorney et al., 1996). Due to these difficulties, EPA does not currently believe that a lime and soda-ash softening process would be a viable Step 2 procedure for softening systems. The final rule instead specifies two alternative compliance criteria, mentioned earlier in this section, as a Step 2 procedure for softening systems.

3. Summary of Comments

A large number of comments on the 1994 proposal questioned whether the required TOC removal percentages could be obtained by 90 percent of affected systems. In response, since the time of proposal, a large body of additional data and analysis has been developed to help address this question. The analyses discussed above showed that the top row of the TOC removal matrix needed to be lowered by 5.0 percentage points to enable 90 percent of systems within the row to achieve the required TOC removal without unreasonable coagulant doses. Analysis also showed the TOC removal percentages contained in the two lower rows of the TOC removal matrix accurately reflected the TOC removal 90 percent of these systems could remove. EPA believes the final TOC removal matrix, which includes the adjustments to the top row mentioned above, accurately reflects the TOC removal that 90 percent of the systems affected by the rule could practically achieve.

Commenters questioned why systems that meet the DBP Stage 1 MCLs for TTHM and HAA5 must still practice enhanced coagulation. The enhanced coagulation treatment technique is designed to remove DBP precursor material to help reduce the risks posed by DBPs. Also, EPA believes that enhanced coagulation would reduce the number of systems switching to alternative disinfectants, which was a goal of the Reg. Neg. Committee. EPA believes that even if systems are meeting the MCLs, an additional risk reduction benefit can be achieved through removal of DBP precursor material at a relatively low cost to the system. Therefore, systems that meet the MCLs must still practice enhanced coagulation to decrease the risks posed by DBPs in general.

The Agency received numerous comments on the 1994 proposal that expressed doubt regarding the definition of the PODR. Specifically, the commenters stated that the accuracy of the slope criterion (0.3 mg/L TOC removed per 10 mg/L coagulant added) for determining the PODR was not supported with adequate data. The data developed since the proposal and the corresponding analysis demonstrate that the slope criterion accurately predicts the PODR. The analyses discussed above showed that there is a particular relationship between SUVA and the slope criterion, namely, that they both predict the PODR at the same point of the TOC removal versus coagulant dose curve. Since SUVA is a very good predictor of the humic fraction of TOC, which is the fraction preferentially removed by enhanced coagulation, and the PODR predicted by SUVA and the slope criterion agree, EPA believes the slope criterion of 0.3 mg/L TOC removal per 10 mg/L of coagulant addition accurately predicts the PODR.

The majority of commenters did not support requiring the use of bench-scale filtration as part of the Step 2 enhanced coagulation procedure. The commenters generally believed that using filtration at bench scale is of limited value because the great majority of TOC is removed via sedimentation, not through filtration. Additionally, some commentors felt that attempting to replicate full-scale filtration at bench scale can contain inherent inaccuracy. EPA generally agrees that a Step 2 filtration procedure should not be required. The Agency believes that most of the TOC removed by conventional treatment plants is removed in the sedimentation basin rather than in the filters. Therefore, requiring a bench-scale filtration procedure as part of Step 2 testing will not increase the accuracy of the procedure or its value to the treatment technique implementation. Accordingly, today's final rule does not require the use of a bench scale filtration procedure during Step 2 enhanced coagulation testing. Detailed guidance on conducting the Step 2 testing will be provided in the Guidance Manual for Enhanced Coagulation and Enhanced Precipatative Softening.

Commenters expressed varied opinions regarding the frequency of Step 2 testing. Several commenters stated that the rule should not set a minimum testing frequency, but that it should be left to State discretion based on source water characteristics. Other commenters believed a minimum of quarterly monitoring should be required with a provision for more frequent testing to address source water quality events. EPA believes that Step 2 testing frequency should be related to seasonal and other variations in source water quality as these variations may influence the amount of TOC removal the treatment plant can achieve. Accordingly, EPA recommends that systems utilizing the Step 2 procedure for compliance perform Step 2 testing quarterly for one year after the effective data of the rule. The system may then apply to the State to reduce testing to a minimum of once per year. If the State does not approve the request for reduced testing frequency, the system must continue to test quarterly.

E. Predisinfection Disinfection Credit

1. Today's Rule

Today's rule does not impose any constraints on the ability of systems to practice predisinfection and take microbial inactivation credit for predisinfection to meet the disinfection requirements of the SWTR. Utilities are free to take disinfection credit for predisinfection, regardless of the disinfectant used, for disinfection that occurs after the last point the source water is subject to surface water run-off and prior to the first customer.

2. Background and Analysis

The 1994 proposed Stage 1 DBPR (EPA,1994a) discouraged the use of disinfectants prior to precursor (measured as TOC) removal by not allowing compliance credit for the SWTR's disinfection requirements to be taken prior to removal of a specified percentage of TOC. The proposed IESWTR options were intended to include microbial treatment requirements to prevent increases in microbial risk due to the loss of predisinfection credit. These options were to be implemented simultaneously with the Stage 1 DBPR. The purpose of not allowing predisinfection credit was to maximize removal of organic precursors (measured as TOC) prior to the addition of a disinfectant, thus lowering the formation of DBPs.

Many drinking water systems use preoxidation to control a variety of water quality problems such as iron and manganese, sulfides, zebra mussels, Asiatic clams, and taste and odor. The 1994 proposed rule did not preclude the continuous addition of oxidants to control these problems. However, the proposed regulation, except under a few specific conditions, did not allow credit for compliance with disinfection requirements prior to TOC removal. Analysis supporting the proposed rule concluded that many plants would be able to comply with the Stage 1 MCLs for THMs and HAA5 of 0.080 mg/L and 0.060 mg/L, respectively, by reductions in DBP levels as a result of reduced disinfection practice in the early stages of treatment. Also, enhanced coagulation and enhanced softening were thought to lower the formation of other unidentified DBPs as well. The 1994 proposal assumed that addition of disinfectant prior to TOC removal would initiate DBP formation through contact of the chlorine with the TOC, effectively eliminating the value of enhanced coagulation for DBP reduction. Finally, the analysis underlying the 1994 proposed elimination of the preoxidation credit assumed that the addition of disinfectant was essentially ''mutually exclusive'' to the goal of reducing DBP formation by the removal of TOC. As discussed below, new data developed since 1994 suggest this may not be the case.

Reasons for Disinfectant Use. In order to obtain information on the impact that disallowing predisinfection would have on utilities' disinfection practices, a survey was sent out to ICR utilities to obtain information on their current predisinfection practices. The results of the survey of 329 surface water treatment plants indicated that 80 percent (263) of these plants use predisinfection for one or more reasons. The survey indicated that the majority of the plants using predisinfection were doing so for multiple reasons. However, the main reason reported for predisinfection was microbial inactivation. Algae control, taste and odor control, and inorganic oxidation, in that order, were the next most frequently cited reasons for practicing predisinfection. Seventy-seven percent of plants that predisinfected reported that their current levels of *Giardia lamblia* inactivation would be lowered if predisinfection was discontinued and no subsequent additional disinfection was added to compensate for change in practice. Eighty-one percent of plants that predisinfected would have to make major capital investments to make up for the lost logs of *Giardia lamblia* inactivation. For example, to maintain the same level of microbial protection currently afforded, construction to provide for additional contact time or use of a different disinfectant might be needed if predisinfection credit was eliminated.

In addition to the ICR mail survey, results from EPA's Comprehensive Performance Evaluations (CPE) from 307 PWSs (4 to 750 mgd) reported that 71% of the total number of plants used predisinfection and 93% of those that predisinfected used two or three disinfectant application points during treatment.

Based on the above information, EPA believes that predisinfection is used by a majority of PWSs for microbial inactivation, as well as other drinking water treatment objectives. Therefore, disallowing predisinfection credit could influence systems to make changes in treatment to comply with the disinfection requirements of the SWTR or to maintain current levels of microbial inactivation.

Impact of Point of Chlorination on DBP Formation. The results of a study by Summers et al. (1997) indicate that practicing enhanced coagulation, while simultaneously maintaining prechlorination, can still result in decreased DBP formation (especially for TOX and TTHM). Greater benefits are realized by moving the point of chlorination to post-rapid mixing or further downstream for HAA5 control, and to mid-flocculation or post-sedimentation for TOX and TTHM control. These data show that the assumption made in the 1994 proposal, namely that application of any disinfectant prior to TOC removal would critically effect DBP formation, was not accurate. The data indicate that simultaneous employment of enhanced coagulation and predisinfection does not necessarily mean that DBP formation cannot be substantially controlled (see EPA 1997b for detailed analysis).

Impact on Softening Plants. In order to obtain additional information on the current TOC removals being achieved by softening plants, a survey was sent to all the ICR softening utilities (49 plants) requesting that they fill out a single page of information with yearly average, maximum and minimum values for multiple operating parameters for each softening plant. The survey showed that in spite of the fact that 78 percent of softening plants are using free chlorine for at least a portion of their disinfection, 90 percent of plants are currently meeting an 80 μg/L MCL level for TTHMS. All the softening plants reported average HAA5 levels below 60 μg/L. Without predisinfection credit, these plants may have to provide disinfection contact time after sedimentation, which could mean significantly increasing the free chlorine contact time to make up for a shortened detention time.

3. Summary of Comments

Most commenters stated that the proposed elimination of predisinfection would result in many plants not being able to maintain existing levels of disinfection or comply with the SWTR disinfection requirements without making significant compensatory changes in their disinfection practice. Commenters were concerned that without predisinfection the level of microbial risk their customers were exposed to could significantly increase, and that eliminating microbial inactivation credit for predisinfection to comply with the SWTR might influence utilities to abandon predisinfection to more easily comply with the TTHM and HAA5 MCLs. EPA agrees with this concern and therefore the final rule has been modified from the proposal to allow predisinfection credit.

F. Requirements for Systems to Use Qualified Operators

EPA believes that systems that must make treatment changes to comply with requirements to reduce the microbiological risks and risks from disinfectants and disinfection byproducts should be operated by personnel who are qualified to recognize and react to problems. Therefore, in today's rule, the Agency is requiring that all systems regulated under this rule be operated by an individual who meets State specified qualifications, which may differ based on size and type of the system. Subpart H systems already are required to be operated by qualified operators under the provisions of the SWTR (40 CFR 141.70(c)). Current qualification or certification programs developed by the States should, in many cases, be adequate to meet this requirement for Subpart H systems. Also, States must maintain a register of qualified operators.

EPA encourages States which do not already have operator certification programs in effect to develop such programs. The Reg. Neg. Committee and TWG believed that properly trained personnel are essential to ensure safer drinking water. States with existing operator certification programs may wish to update their programs for qualifying operators under the SWTR. In these cases, States may wish to indicate that their operator certification programs are being developed in accordance with EPA's new guidelines.

G. Analytical Methods

1. Today's Rule

Chlorine (Free, Combined, and Total). Today's rule approves four methods for measuring free, combined, and total chlorine to determine compliance with the chlorine MRDL (using either free or total chlorine) and chloramines MRDL (using either combined or total chlorine): ASTM Method D1253–86 (ASTM, 1996), Standard Methods 4500–Cl D (APHA, 1995), 4500–Cl F (APHA, 1995), and 4500–Cl G (APHA, 1995). Additionally, this rule approves two methods for measuring total chlorine to determine compliance with the chlorine MRDL and chloramines MRDL: Standard Methods 4500–Cl E (APHA, 1995) and 4500–Cl I (APHA, 1995). The rule also contains an additional method for measuring free chlorine to determine compliance with the chlorine MRDL: Standard Method 4500–Cl H (APHA, 1995).

Chlorine Dioxide. Today's rule approves two methods for determining compliance with the chlorine dioxide MRDL: Standard Methods 4500–ClO_2 D (APHA, 1995) and 4500–ClO_2 E (APHA 1995). EPA did not approve Standard Method 4500–ClO_2 C (APHA, 1995), which was included in the 1994 proposed rule. The Agency determined, in concurrence with the majority of commenters on this issue, that Standard Method 4500–ClO_2 C is outdated and inaccurate in comparison to chlorine dioxide methods approved in today's rule and is inadequate for compliance monitoring.

TTHM. Today's rule approves three methods for determining compliance with the TTHM MCL: EPA Methods 502.2 (EPA, 1995), 524.2 (EPA, 1995), and 551.1 (EPA, 1995).

HAA5. Today's rule approves three methods for determining compliance with the HAA5 MCL: EPA Methods 552.1 (EPA, 1992) and 552.2 (EPA, 1995) and Standard Method 6251B (APHA, 1995).

Bromate. Today's rule approves a method for determining compliance with the bromate MCL: EPA Method 300.1 (EPA, 1997e). EPA has demonstrated this method to be capable of quantifying bromate at the MCL of 10 μg/L under a wide range of solution conditions. EPA did not approve EPA Method 300.0 (EPA, 1993b) for bromate analysis, although this method was included for analysis of bromate in the 1994 proposed rule. As stated in the proposed rule, EPA Method 300.0 is not sensitive enough to measure bromate at the MCL established in today's rule. EPA Method 300.1 was developed subsequent to the proposed rule in order to provide a method with adequate sensitivity to assess bromate compliance.

Chlorite. Today's rule approves two methods for determining compliance with the chlorite MCL: EPA Methods 300.0 (EPA, 1993b) and 300.1 (EPA, 1997e). As described elsewhere in today's rule, chlorite compliance analyses are made on samples taken in the distribution system during monthly monitoring, or during additional distribution system monitoring as required. Today's rule establishes the following method for daily monitoring of chlorite: Standard Method 4500-ClO_2 E (APHA, 1995), amperometric titration. As stated elsewhere in today's rule, daily monitoring of chlorite is conducted on samples taken at the entrance to the distribution system. Commenters supported the use of amperometric titration as a feasible method for daily monitoring of chlorite.

TOC. Today's Rule approves three methods for TOC analysis: Standard Methods 5310 B, 5310 C, and 5310 D, as published in the Standard Methods 19th Edition Supplement (APHA, 1996). EPA believes that all of these methods can achieve the precision and detection level necessary for compliance determinations required in today's rule when the quality control (QC) procedures contained in the method descriptions and this rule are followed. However, while any of these methods may be used, EPA advises that a consistent method be employed for all measurements in order to reduce the impact of possible instrument bias.

In accordance with the concerns of commenters, today's rule requires certain QC procedures for TOC analyses in addition to those contained in the method descriptions. These additional QC steps are designed to increase the integrity of the analysis and have been found to be effective in data collection under the ICR. Filtration of samples prior to TOC analysis is not permitted, as this could result in removal of organic carbon. Where turbidity interferes with TOC analysis, samples should be homogenized and, if necessary, diluted with organic-free reagent water. TOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 24 hours. Samples must be analyzed within 28 days.

SUVA (Specific Ultraviolet Absorbance). Today's rule establishes SUVA as an alternative criterion for demonstrating compliance with TOC removal requirements contained in today's rule. SUVA is a calculated parameter defined as the UV absorption at 254 nm (UV_{254}) (measured as m^{-1}) divided by the DOC concentration (measured as mg/L). If the UV absorption is first determined in units of cm^{-1}, the SUVA equation is multiplied by 100 to convert to m^{-1}, as shown below:

$$SUVA = 100\ (cm/m)\ [UV_{254}\ (cm^{-1})/DOC\ (mg/L)]$$

Two separate analytical methods are necessary to make this measurement: UV_{254} and DOC. Today's rule approves three methods for DOC analysis: Standard Methods 5310 B, 5310 C, and 5310 D, as published in the Standard Methods 19th Edition Supplement (APHA, 1996); and approves Standard Method 5910 B (APHA, 1995) for UV_{254} analysis.

The final rule contains QC steps for the SUVA analyses that are required in addition to those mandated in the method descriptions. These requirements were developed in response to comments solicited by EPA in the 1997 DBP NODA (EPA, 1997b) and are as follows:

—sample acquisition (DOC and UV_{254} samples used to determine a SUVA value must be taken at the same time and at the same location. SUVA must be determined on water prior to the addition of disinfectants/oxidants.)
—sample preservation (DOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 48 hours. The pH of UV_{254} samples may not be adjusted.)
—holding times (DOC samples must be analyzed within 28 days of sampling. UV_{254} samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.)
—filtration (Prior to analysis, UV_{254} and DOC samples must be filtered through a 0.45 μm pore-diameter filter. DOC samples must be filtered prior to acidification.)
—background concentrations in the filtered blanks (Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: TOC <0.5 mg/L.)

Bromide. Today's rule approves the following two methods for monitoring bromide: EPA Methods 300.0 (EPA, 1993b) and 300.1 (EPA, 1997e).

Alkalinity. Today's rule approves three methods for measuring alkalinity: ASTM Method D1067–92B (ASTM, 1994), Standard Method 2320 B (APHA, 1995), and Method I–1030–85 (USGS, 1989).

pH. Today's rule requires the use of methods that have been previously approved in § 141.23(k) for measurement of pH.

Approved analytical methods are summarized in Table III–2.

TABLE III–2.—APPROVED ANALYTICAL METHODS

Analyte	EPA method	Standard method	Other
Chlorine (free, combined, total)	.....	4500–Cl D	ASTM D1253–8.
	.....	4500–Cl F	
	.....	4500–Cl G	
(Total)	.....	4500–Cl E	
	.....	4500–Cl I	
(Free)	.....	4500–Cl H	
Chlorine Dioxide	.....	4500–ClO_2 D	
	.....	4500–ClO_2 E	
TTHM	502.2		
	524.2		
	551.1		
HAA5	552.1	625l B	
	552.2		
Bromate	300.1		
Chlorite (monthly)	300.0		
	300.1		
(Daily)	.....	4500–ClO_2 E	
TOC/DOC	.....	5310 B	
	.....	5310 C	
	.....	5310 D	
UV_{254}	.....	5910 B	
Bromide	300.0		
	300.1		
Alkalinity	.....	2320 B	ASTM D1067–92B.
			USGS I–1030–85.
pH	150.1	4500–H+B	ASTM D1293–84.
	150.2		

2. Background and Analysis

Chlorine (Free, Combined, and Total). In the 1994 proposed rule, EPA included all Standard Methods for analysis of free, combined, and total chlorine that were approved in today's rule.

Chlorine Dioxide. The 1994 proposed rule included the same three methods for analyzing chlorine dioxide (ClO_2) that are approved under the SWTR and ICR regulations. Two of these methods, Standard Methods 4500.ClO_2 C (APHA, 1992) and 4500.ClO_2 E (APHA, 1992), are amperometric methods. The third proposed method was Standard Method 4500.ClO_2 D (APHA, 1992), a colorimetric test using the color indicator N,N-diethyl-*p*-phenylenediamine (DPD).

TTHM. The 1994 proposed rule included three methods for the analysis of TTHMs. They were EPA Methods 502.2, 524.2, and 551. In 1995, EPA Method 551 was revised to EPA Method 551.1, rev. 1.0 (EPA, 1995), which was approved for ICR monitoring under 40 CFR 141.142.

EPA Method 551.1 has several improvements upon EPA Method 551. The use of sodium sulfate is strongly recommended over sodium chloride for the MTBE extraction of DBPs. This change was in response to a report indicating elevated recoveries of some brominated DBPs due to bromide impurities in the sodium chloride (Xie, 1995). Other changes to EPA Method 551.1 include a buffer addition to stabilize chloral hydrate, elimination of the preservative ascorbic acid, and modification of the extraction procedure to minimize the loss of volatile analytes. The revised method requires the use of surrogate and other quality control standards to improve the precision and accuracy of the method.

HAA5. The 1994 proposed rule included two methods for the analysis of five haloacetic acids—EPA Method 552.1 (EPA, 1992) and Standard Method 6233B (APHA, 1992). Both methods use capillary column gas chromatographs equipped with electron capture

detectors. The two methods differ in the sample preparation steps. EPA Method 552.1 uses solid phase extraction disks followed by an acidic methanol derivitization. Standard Method 6233B is a small volume liquid-liquid (micro) extraction with methyl-t-butyl ether, followed by a diazomethane derivitization. Following the proposed rule, Standard Method 6233B was revised and renumbered 6251B (APHA, 1995) to include bromochloroacetic acid, for which a standard was not commercially available in 1994. Recognizing these improvements, EPA approved Standard Method 6251B for analysis under the ICR (40 CFR Part 141 or EPA, 1996a). Several commenters requested that the revised and renumbered method, Standard Method 6251B, also be approved for the analysis of haloacetic acids under the Stage 1 DBPR.

In 1995 EPA published a third method for HAAs, EPA Method 552.2 (EPA, 1995), and subsequently approved it for HAA analysis under the 1996 ICR (40 CFR Part 141 or EPA, 1996a). EPA Method 552.2 is an improved method, combining the micro extraction procedure of Standard Method 6233B with the acidic methanol derivitization procedure of EPA Method 552.1. It is capable of analyzing nine HAAs.

Bromate. The 1994 proposed rule required systems that use ozone to monitor for bromate ion. EPA proposed EPA Method 300.0 (EPA, 1993b) for the analysis of bromate and chlorite ions. However, at the time of the proposal, EPA was aware that EPA Method 300.0 was not sensitive enough to measure bromate ion concentration at the proposed MCL of 10 μg/L. EPA recognized that modifications to the method would be necessary to increase the method sensitivity. Studies at that time indicated that changes to the injection volume and the eluent chemistry would decrease the detection limit below the MCL. Many commenters to the 1994 proposal agreed that EPA Method 300.0 was not sensitive enough to determine compliance with a MCL of 10 μg/L bromate ion, given that MCLs are typically set at 5 times the minimum detection levels (MDLs).

Following the proposal, EPA improved EPA Method 300.0 and renumbered it as EPA Method 300.1 (EPA, 1997b). EPA Method 300.1 specifies a new, high capacity ion chromatography (IC) column that is used for the analysis of all anions listed in the method, instead of requiring two different columns as specified in EPA Method 300.0. The new column has a higher ion exchange capacity that improves chromatographic resolution and minimizes the potential for chromatographic interferences from common anions at concentrations 10,000 times greater than bromate ion. For example, quantification of 5.0 μg/L bromate is feasible in a matrix containing 50 mg/L chloride. Minimizing the interferences permits the introduction of a larger sample volume to yield method detection limits in the range of 1–2 μg/L.

In the 1997 DBPR NODA (EPA, 1997b), EPA discussed EPA Method 300.1 and projected that by using it laboratories would be able to quantify bromate with the accuracy and precision necessary for compliance determination with an MCL of 10 μg/L. Although there would be a limited number of laboratories that would be qualified to do such analyses, EPA determined that there should be adequate laboratory capacity for bromate ion compliance monitoring by the time the rule becomes effective.

Chlorite. The proposed rule required systems using chlorine dioxide for disinfection or oxidation to perform monthly monitoring for chlorite ion in the distribution system. EPA designated EPA Method 300.0 (ion chromatography) for chlorite analysis. EPA considered other methods using amperometric and potentiometric techniques but decided that only the ion chromatography method (EPA Method 300.0) would produce results with the accuracy and precision needed for determining compliance. Subsequent to the proposed rule, EPA Method 300.0 was improved in order to achieve lower detection limits for bromate ion and renumbered as EPA Method 300.1.

TOC. To satisfy requirements of the Stage 1 DBPR, the 1994 proposed rule directed that a TOC analytical method should have a detection limit of at least 0.5 mg/L and a reproducibility of ± 0.1 mg/L over a range of 2 to 5 mg/L TOC. The proposed rule included two methods for analyzing TOC: Standard Methods 5310 C, which is the persulfate-ultraviolet oxidation method, and 5310 D, the wet-oxidation method (APHA, 1992). These methods were selected because, according to data published in Standard Methods (APHA 1992), they could achieve the necessary precision and detection limit. Standard Method 5310 B, the high-temperature combustion method, was considered but not proposed because it was described in Standard Methods (1992, APHA) as having a detection limit of 1 mg/L. The proposal stated that if planned improvements to the instrumentation used in Standard Method 5310 B were successful, the next version would be considered for promulgation. Revisions of Standard Methods 5310 B, C, and D were published in Standard Methods 19th Edition Supplement (APHA, 1996). The revised version of Standard Method 5310 B recognized the capacity of certain high temperature instruments to achieve detection limits below 1 mg/L using this method.

SUVA (Specific Ultraviolet Absorbance). SUVA analytical methods were not addressed in the 1994 proposed rule because SUVA had not been developed and proposed as a compliance parameter for TOC removal requirements at that time. The analytical methods and associated QC procedures for DOC and UV_{254} approved in today's rule are those on which the Agency solicited comment in the 1997 DBPR NODA (EPA, 1997b).

Bromide. The 1994 proposed rule included EPA Method 300.0 for analysis of bromide. EPA believed that the working range of this method adequately covered the requirements proposed for bromide monitoring. As described above, EPA developed Method 300.1 for improved bromate analysis subsequent to the proposed rule. EPA Method 300.1 can also effectively measure bromide at the concentration of 50 μg/L, required in today's rule for reduced monitoring of bromate.

Alkalinity. The proposed rule included all methods approved by EPA for measuring alkalinity. These methods have all been approved in today's rule.

3. Summary of Comments

Following is a discussion of major comments on the analytical methods requirements of the Stage 1 DBPR.

Chlorine. A commenter to the 1994 proposal recommended approval of ASTM method D1253–86. EPA determined that this method is equivalent to Standard Method 4500–Cl D, and has approved this method in today's rule.

Chlorine Dioxide. EPA received comments on the proposed rule detailing weaknesses of the methods selected to calculate ClO_2. Commenters pointed out that other halogenated species, such as free chlorine, chloramines, and chlorite, as well as common metal ions (e.g. copper, manganese, chromate) will interfere with these methods. Additionally, where these methods determine concentrations by difference, they are potentially inaccurate and subject to propagation of errors. Commenters specifically criticized Standard Method 4500–ClO_2 C (APHA 1995), amperometric method I, which was characterized as outdated and inaccurate, and stated that Standard

Method 4500–ClO_2 E (APHA 1995), amperometric method II, is a substantially better method. Consequently, in the 1997 DBP NODA, EPA requested comment on removing Standard Method 4500–ClO_2 C from the list of approved methods for the analysis of chlorine dioxide for compliance with the MRDL.

Comments on the 1997 DBPR NODA favored eliminating Standard Method 4500.ClO_2 C as an approved method for ClO_2 compliance analysis. EPA does not approve this method in today's rule. EPA recognizes that the two methods approved for ClO_2 monitoring under today's rule are subject to interferences. However, EPA believes that these methods can be used effectively to indicate compliance with the ClO_2 MRDL when the quality control procedures contained in the method descriptions are followed. Several commenters also encouraged EPA to approve a more sensitive and specific method for ClO_2 analysis, and suggested alternative methods including Acid Chrome Violet K, Lissamine Green B, and Chlorophenol Red. While EPA supports the development of improved analytical methods for chlorine dioxide, the Agency believes that at this time the methods suggested by commenters have not gone through the necessary performance validation processes to warrant their approval for compliance monitoring.

Bromate. In the 1994 proposed rule, EPA discussed the fact that the current version of EPA Method 300.0 was not sensitive enough to measure bromate ion concentrations at the proposed MCL and requested comment on modifications to EPA Method 300.0 to improve its sensitivity. In the 1997 NODA, EPA presented EPA Method 300.1 and requested comment on replacing EPA Method 300.0 with EPA Method 300.1 for the analysis of bromate.

Commenters agreed that EPA Method 300.1 is a more sensitive method than EPA Method 300.0 for low level bromate analysis and the majority suggested that EPA Method 300.1 be the approved method for bromate analysis. One commenter requested that interlaboratory round-robin testing be conducted before EPA Method 300.1 is accepted for Stage 1 DBPR compliance monitoring. EPA considers interlaboratory round-robin testing of EPA Method 300.1 to be unnecessary because this method is essentially an improvement of EPA Method 300.0 which is already approved. EPA Method 300.1 primarily makes use of a superior analytical column to achieve increased sensitivity for bromate analysis. Moreover, the efficacy of EPA Method 300.1 in a wide range of sample matrices is demonstrated by the performance validation data contained in the published method description. Based on a review of all the public comments, EPA is approving EPA Method 300.1 for bromate analysis in today's rule.

Chlorite. EPA solicited comment in the 1997 DBPR NODA on approving EPA Method 300.1, in addition to EPA Method 300.0, for compliance analysis of chlorite. The majority of commenters on this issue favored approval of both methods and today's rule establishes both for determining compliance with the chlorite MCL.

In the 1994 proposed rule, EPA requested comment on changing monitoring requirements for chlorite to reflect concern about potential acute health effects. Several commenters stated that daily monitoring of chlorite would be feasible if an amperometric analytical method could be used. Commenters suggested that daily amperometric analyses for chlorite be conducted on samples taken from the entrance to the distribution system, and that weekly or monthly analyses using ion chromatography still be required as a check, because ion chromatography is a more accurate analytical method. Commenters noted that daily monitoring for chlorite would provide improved operational control of plants and reduce the likelihood of systems incurring compliance violations.

Today's rule establishes amperometric titration (Standard Method 4500–ClO_2 E) for daily analyses of chlorite samples taken at the entrance to the distribution system, along with monthly (or quarterly if reduced, or additional as required), analyses by ion chromatography (EPA Methods 300.0 and 300.1) of chlorite samples taken from within the distribution system. EPA believes that the ion chromatography method, rather than the amperometric method, should be used for making chlorite compliance determinations in the distribution system due to its greater accuracy. However, the amperometric method is sufficient for the purposes of daily monitoring at the entrance to the distribution system, which are to significantly aid in proper operational control of a treatment plant and to indicate when distribution system testing is appropriate. For this reason, only the ion chromatographic methods (EPA Method 300.0 and 300.1), and not the amperometric titration methods, are approved in today's rule for determining compliance with the chlorite MCL.

A minority of commenters on this issue suggested that the DPD method (Standard Method 4500–ClO_2 D (APHA 1995)) be approved for daily monitoring of chlorite ion levels. EPA has determined that the accuracy and precision of the DPD method (Standard Method 4500–ClO_2 D) in the measurement of chlorite are substantially worse than with Standard Method 4500–ClO_2 E, and are insufficient for this method to be used for daily monitoring of chlorite. As a consequence, EPA has not approved the DPD method for chlorite monitoring in today's rule.

TOC. EPA received several comments on the 1994 proposal requesting approval of Standard Method 5310 B for TOC compliance analysis. Commenters stated that newer instrumentation could achieve a detection limit of 0.5 mg/L TOC using this method. Following the publication of a revised version of Method 5310 B in Standard Methods 19th Edition Supplement (APHA 1996) which recognized the capacity of some combustion based TOC analyzers to achieve detection limits below 1 mg/L, EPA requested comment on approving Standard Method 5310 B, along with Standard Methods 5310 C and 5310 D, for the analysis of TOC in the 1997 DBPR NODA.

The majority of commenters on TOC analysis urged EPA to approve all three methods. Commenters were concerned, though, that because these three methods employ different processes to oxidize organic carbon to carbon dioxide, results from different TOC analyzers could vary to a degree that is of regulatory significance. Specifically, the efficiency of oxidation of large organic particles or very large organic molecules such as tannins, lignins, and humic acids may be lower with persulfate based instruments (APHA 1996). Although available data comparing different TOC methods is limited, one study observed a persulfate catalytic oxidation technique to underestimate the TOC concentration measured by a high temperature catalytic oxidation technique by 3–6% on stream water and soil water samples (Kaplan, 1992). Standard Methods recommends checking the oxidation efficiency of the instrument with model compounds representative of the sample matrix, because many factors can influence conversion of organic carbon to carbon dioxide (APHA 1996).

EPA believes that the potential regulatory impact of small disparities in oxidation efficiencies between different TOC analyzers is minor. Studies using PE samples indicate that for instruments calibrated in accordance with the

procedures specified in *Standard Methods* (APHA, 1996), the magnitude of measurement error due to analytical discrepancies between instruments will typically be less than the measurement uncertainty attributed to a particular instrument (EPA, 1994c). In addition, EPA anticipates that most systems will use a consistent method for TOC analyses and that this will assist in minimizing the importance of instrument bias. This practice was suggested by several commenters.

Commenters also suggested that EPA implement a formal certification process for laboratories measuring TOC. Some commenters recommended that EPA require a laboratory approval process for TOC measurements under the Stage 1 DBPR that is similar to what is required under the ICR. EPA requires that TOC analyses be conducted by a party approved by EPA or the State but not that TOC measurements be subject to the same laboratory certification procedures required for the analysis of DBPs. However, today's rule contains QC requirements for TOC analyses which are in addition to those in *Standard Methods*. These additional QC procedures pertain to sample preservation and holding time, and have been found to be effective for TOC analyses under the ICR.

SUVA. In the 1997 DBPR NODA, EPA solicited comment on a range of issues dealing with the determination of SUVA including: analytical methods, sampling, sample preparation, filter types, pH, interferences to UV, high turbidity waters, quality control, and other issues that should be addressed. The Agency requested comment on approving Standard Method 5910 B for measuring UV_{254} and Standard Methods 5310 B, C, and D, for measuring DOC. In requesting comment on filtration, EPA noted that filtration is necessary prior to both UV_{254} and DOC analyses in order to eliminate particulate matter and separate the operationally defined dissolved organic matter (based on a 0.45 µm-pore-diameter cut-off). However, filtration can also corrupt samples through adsorption of carbonaceous material onto the filter or its desorption from it (APHA 1996). In addition, EPA requested comment on requiring that UV_{254} and DOC analyses be measured from the same sample filtrate.

The majority of commenters on SUVA analytical methods recommended that EPA approve Standard Methods 5310 B, C, and D, for DOC analysis and Standard Method 5910 B for UV_{254} analysis. EPA has approved these methods in today's rule. In addition, commenters stressed the importance of sample preparation, especially filtration, in the measurement of DOC and observed that sufficient washing of filters prior to filtration of samples is critical to preventing contamination of the samples by organic carbon from the filters. Several comments on the 1997 DBPR NODA expressed opposition to a requirement that UV_{254} and DOC analyses be made on the same sample filtrate. Commenters stated that this is impractical because UV analyses are often conducted at the treatment plant while DOC analyses are typically run off-site. Commenters also noted that DOC samples should be acid preserved whereas pH adjustment of samples for UV_{254} analysis is improper.

Today's rule establishes that samples for DOC and UV_{254} analyses must be filtered through a 0.45 µm-pore-diameter filter. EPA does not have specific requirements on the type of filter that is used, provided it has a 0.45 µm pore-diameter, but will provide guidance on this issue in the *Guidance Manual for Enhanced Coagulation*. This manual will be available for public review after promulgation of the Stage 1 DBPR. Today's rule addresses filter washing prior to analysis by requiring that water passed through the filter prior to filtration of the sample serve as the filtered blank. The filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: TOC < 0.5 mg/L. These criteria are the maximum allowable background concentrations specified for these analyses under the ICR. In the *Guidance Manual for Enhanced Coagulation*, EPA will furnish instructions on sample handling and filter washing to assist systems in achieving acceptable field reagent blanks.

Filtration of samples for DOC analysis must be done prior to acid preservation, as stipulated in today's rule. This is necessary because acidification of the sample to pH < 2 can cause substantial precipitation of dissolved organic species. Because biological activity will rapidly alter the DOC of a sample that has not been preserved, EPA requires that DOC samples be acidified to pH < 2.0 within 48 hours of sampling. Consequently, filtration of DOC samples must be done within 48 hours in order to allow acid preservation within this time period. The pH of UV_{254} samples may not be adjusted. Today's rule places a maximum holding time from sampling to analysis of 2 days for UV_{254} samples and 28 days for DOC samples. These holding times are the same as those approved for ICR data collection.

Because the filtration procedures for UV_{254} and DOC samples are largely identical, EPA anticipates that most systems will find it economical when determining SUVA to filter one sample. The filtrate would then be split into two portions, one of which would be used for UV analysis while the other would be acid preserved and used for DOC analysis. However, EPA has not included a requirement that the DOC and UV_{254} analyses used in the SUVA determination be made on the same sample filtrate. Instead, EPA requires that DOC and UV_{254} samples used to determine a SUVA value must be taken at the same time and at the same location.

In the 1997 DBPR NODA, EPA also observed that because disinfectants/oxidants (chlorine, ozone, chlorine dioxide, potassium permanganate) typically reduce UV_{254} without substantially impacting DOC, raw water SUVA should be determined on water prior to the application of disinfectants/oxidants. If disinfectants/oxidants are applied in raw-water transmission lines upstream of the plant, then raw water SUVA should be based on a sample collected upstream of the point of disinfectant/oxidant addition. For determining settled-water SUVA, if the plant applies disinfectants/oxidants prior to the settled water sample tap, then settled-water SUVA should be determined in jar testing. No commenters were opposed to these provisions and today's rule requires that samples used for SUVA determinations be taken from water prior to the addition of any oxidants/disinfectants.

A few commenters stated that SUVA should not be subject to rigorous analytical procedures because the application of SUVA in this rule is based on a relationship which is largely empirical (i.e. correlations between SUVA and TOC removal by coagulation). EPA recognizes the empirical nature of this relationship and the variance it has displayed in studies. Regulations, however, must address specific SUVA values if SUVA is to serve as an alternative compliance parameter. For compliance with these regulations to be meaningful, SUVA must be determined accurately. Consequently, today's rule requires certain QC procedures in the DOC and UV_{254} analyses that are used to calculate SUVA.

Today's rule establishes the removal of 10 mg/L magnesium hardness (as CaCO3) as an alternative performance criterion that systems practicing enhanced softening can use to demonstrate compliance with the treatment technique requirement for TOC removal. However, EPA did not propose methods for the analysis of

magnesium in drinking water and therefore the final rule does not contain any approved methods for magnesium. EPA expects to propose magnesium analytical methods to be used for compliance monitoring under the Stage 1 DBPR by the end of 1998.

4. Performance Based Measurement Systems

On October 6, 1997, EPA published a Document of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all of its programs to the extent feasible (EPA, 1997f). The Agency is currently determining the specifics steps necessary to implement PBMS in its programs and preparing an implementation plan. Final decisions have not yet been made concerning the implementation of PBMS in drinking water programs. However, EPA is currently evaluating what relevant performance characteristics should be specified for monitoring methods used in the drinking water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods. EPA expects to publish its PBMS implementation strategy for water programs in the **Federal Register** by the end of calendar year 1998.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Safe Drinking Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of regulated contaminants in the drinking water program regulations.

H. Monitoring Requirements

1. Today's Rule

Today's rule establishes monitoring requirements to support implementation of the enhanced coagulation and enhanced softening treatment technique, implementation of new MCLs for TTHM, HAA5, bromate, and chlorite, and implementation of MRDLs for chlorine, chloramines, and chlorine dioxide. Monitoring for DBPs, disinfectant residuals, and TOC must be conducted during normal operating conditions. Failure to monitor in accordance with the monitoring plan is a monitoring violation. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs, this failure to monitor will be treated as a violation.

Tables III–3 and III–4 below summarize routine and reduced monitoring requirements of today's rule.

TABLE III–3.—ROUTINE MONITORING REQUIREMENTS [1]

Requirement (reference)	Location for sampling	Large surface systems [2]	Small surface systems [2]	Large ground water systems [3]	Small ground water systems [3]
TOC and Alkalinity (141.132(d)(1)).	Source Water [4] ..... Only required for plants with conventional filtration treatment.	1sample/month/plant [3]	1 sample/month/plant[3].	NA	NA.
TTHMs and HAA5 (141.132(b)(1)(i)).	25% in dist sys at max res time, 75% at dist sys representative locations.	4/plant/quarter	1/plant/quarter[5] ..... at maximum residence time. if pop.<500, then 1/plant/yr [8]. during warmest month.	1/plant/quarter [6] ..... at maximum residence time.	1/plant/year [5,6] at maximum residence time. during warmest month.
Bromate [7] (141.132(b)(3)(i)).	Dist sys entrance point.	1/month/trt plant using O_3.	1/month/trt plant using O_3.	1/month/trt plant using O_3.	1/month/trt plant using O_3.
Chlorite[8] (daily) (141.132(b)(2)(i)(A)).	Dist sys entrance point.	Daily/trt plant using ClO_2.	Daily/trt plant using ClO_2.	Daily/trt/plant using ClO_2.	
Chlorite[8] (monthly) 141.132(b)(2)(i)(B)).	Dist sys: 1 near first cust, 1 in dist sys middle, 1 at max res time.	3 sample set/month ..	3 sample set/month ..	3 sample set/month ..	3 sample set/month.
Chlorine and chloramines (141.132(c)(1)(i)).	Same points as total coliform in TCR.	Same times as total coliform in TCR.	Same times as total coliform in TCR.	Same times as total coliform in TCR.	Same times as total coliform in TCR.
Chlorine dioxide[8] (141.132(c)(2)(i)).	Dist sys entrance point.	Daily/trt plant using ClO_2.	Daily/trt plant using ClO_2.	Daily/trt plant using ClO_2.	Daily/trt plant using ClO.

[1] Samples must be taken during representative operating conditions. Provisions for reduced monitoring shown elsewhere.

[2] Large surface (subpart H) systems serve 10,000 or more persons. Small surface (subpart H) systems serve fewer than 10,000 persons.

[3] Large systems using ground water not under the direct influence of surface water serve 10,000 or more persons. Small systems using ground water not under the direct influence of surface water serve fewer than 10,000 persons.

[4] Subpart H systems which use conventional filtration treatment (defined in section 141.2) must monitor 1) source water TOC prior to any treatment and 2) treated TOC at the same time; these two samples are called paired samples. Systems must take a source water alkalinity sample at the same time.

[5] If the annual monitoring result exceeds the MCL, the system must increase monitoring frequency to 1/plant/quarter. Compliance determinations will be based on the running annual average of quarterly monitoring results.

[6] Multiple wells drawing water from a single aquifer may, with State approval, be considered one treatment plant for determining the minimum number of samples.
[7] Only required for systems using ozone for oxidation or disinfection.
[8] Only required for systems using chlorine dioxide for oxidation or disinfection. Additional chlorite monitoring required if daily sample exceeds MCL. Additional chlorine dioxide monitoring requirements apply if any chlorine dioxide sample exceeds the MRDL.

TABLE III–4.—REDUCED MONITORING REQUIREMENTS [1]

Requirement (reference)	Location for reduced sampling	Reduced monitoring frequency and prerequisites [2]
TOC and Alkalinity (141.132(d)(2)).	Paired samples [3]	Subpart H systems-reduced to 1 paired sample/plant/quarter if 1) avg TOC < 2.0 mg/l for 2 years or 2) avg TOC < 1.0 mg/l for 1 year.
TTHMs and HAA5s (141.132(b)(1)(ii)).	In dist sys at point with max res time.	Monitoring cannot be reduced if subpart H system source water TOC > 4.0 mg/l.
		Subpart H systems serving 10,000 or more-reduced to 1/plant/qtr if 1) system has completed at least 1 yr of routine monitoring and 2) *both* TTHM and HAA5 running annual averages are no more than 40 μg/l and 30 μg/l, respectively.
		Subpart H systems serving <10,000 and ground water systems [4] serving 10,000 or more-reduced to 1/plant/yr if 1) system has completed at least 1 yr of routine monitoring and 2) *both* TTHM and HAA5 running annual averages are no more than 40 μg/l and 30 μg/l, respectively. Samples must be taken during month of warmest water temperature. Subpart H systems serving <500 may not reduce monitoring to less than 1/plant/yr.
		Groundwater systems [6] serving<10,000-reduced to 1/plant/3yr if 1) system has completed at least 2 yr of routine monitoring and *both* TTHM and HAA5 running annual averages are no more than 40 μg/l and 30 μg/l, respectively or 2) system has completed at least 1 yr of routine monitoring and *both* TTHM and HAA5 annual samples are no more than 20 μg/l and 15 μg/l, respectively. Samples must be taken during month of warmest water temperature.
Bromate [5] (141.132(b)(3)(ii)).	Dist sys entrance point	1/qtr/trt plant using O_3, if system demonstrates 1) avg raw water bromide <0.05 mg/l (based on annual avg of monthly samples).
Chlorite [6] (141.132(b)(2)(iii)).	Dist sys: 1 near first cust, 1 in dist sys middle, 1 at max res time.	Systems may reduce routine distribution system monitoring from monthly to quarterly if the chlorite concentration in all samples taken in the distribution system is below 1.0 mg/L for a period of one year; 3 samples per quarter.
Chlorine, chlorine dioxide [6], chloramines (141.132(c)(2)(ii) and (c)(2)(iii).	NA	Monitoring may not be reduced.

[1] Samples must be taken during representative operating conditions. Provisions for routine monitoring shown elsewhere.
[2] Requirements for cancellation of reduced monitoring are found in the regulation.
[3] Subpart H systems which use conventional filtration treatment (defined in Section 141.2) must monitor 1) source water TOC prior to any treatment and 2) treated TOC before continuous disinfection (except that systems using ozone followed by biological filtration may sample after biological filtration) at the same time; these two samples are called paired samples.
[4] Multiple wells drawing water from a single aquifer may, with State approval, be considered one treatment plant for determining the minimum number of samples.
[5] Only required for systems using ozone for oxidation or disinfection.
[6] Only required for systems using chlorine dioxide for oxidation or disinfection.

The formation rate of DBPs is affected by type and amount of disinfectant used, water temperature, pH, amount and type of precursor material in the water, and the length of time that water remains in the treatment and distribution systems. For this reason, today's rule specifies the points in the distribution system (and, in some cases, the time) where samples must be taken. For purposes of this regulation, multiple wells drawing raw water from a single aquifer may, with State approval, be considered one plant for determining the minimum number of samples.

TTHM and HAA5. Any system may take samples in excess of the required frequency. In such cases, at least 25 percent of all samples collected each quarter must be taken at locations within the distribution system that represent the maximum residence time of the water in the system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

Subpart H Systems Serving 10,000 or More People. Routine Monitoring: CWSs and NTNCWSs using surface water (or ground water under direct influence of surface water) (Subpart H systems) that treat their water with a chemical disinfectant and serve 10,000 or more people must routinely take four water samples each quarter for both TTHMs and HAA5 for each treatment plant in the system. At least 25 percent of the samples must be taken at the point of maximum residence time in the distribution system. The remaining samples must be taken at representative points in the distribution system. This monitoring frequency is the same as the frequency required under the current TTHM rule (§ 141.30).

Reduced Monitoring: To qualify for reduced monitoring, systems must meet certain prerequisites (see Figure III–1). Systems eligible for reduced monitoring may reduce the monitoring frequency for TTHMs and HAA5 to one sample per treatment plant per quarter. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5. Systems that do not meet these levels must revert to routine monitoring in the quarter immediately following the quarter in which the system exceeded 0.060 mg/L for TTHM or 0.045 mg/L for HAA5. Additionally, the State may return a system to routine monitoring at the State's discretion.

FIGURE III–1.—ELIGIBILITY FOR REDUCED TTHM AND HAA5 MONITORING: GROUND WATER SYSTEMS SERVING 10,000 OR MORE PEOPLE AND SUBPART H SYSTEMS SERVING 500 OR MORE PEOPLE

Ground water systems serving 10,000 or more people, and Subpart H systems serving 500 or more people, may reduce monitoring of TTHMs and HAA5 if they meet all of the following conditions:
—The annual average for TTHMs is no more than 0.040 mg/L.
—The annual average for HAA5 is no more than 0.030 mg/L.
—At least one year of routine monitoring has been completed.
—Annual average source water TOC level is no more than 4.0 mg/L prior to treatment (applies to Subpart H systems only).

Compliance Determination: A public water system (PWS) is in compliance with the MCL when the running annual arithmetic average of quarterly averages of all samples, computed quarterly, is less than or equal to the MCL. If the running annual average computed for any quarter exceeds the MCL, the system is out of compliance.

Subpart H Systems Serving 500 to 9,999 People. Routine Monitoring: Systems are required to take one water sample each quarter for each treatment plant in the system. Samples must be taken at the point of maximum residence time in the distribution system.

Reduced Monitoring: To qualify for reduced monitoring, systems must meet certain prerequisites (see Figure III–1). Systems eligible for reduced monitoring may reduce the monitoring frequency for TTHMs and HAA5 to one sample per treatment plant per year. Sample must be taken at a distribution system location reflecting maximum residence time and during the month of warmest water temperature. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5. Systems that do not meet these levels must revert to routine monitoring in the quarter immediately following the quarter in which the system exceeded 0.060 mg/L for TTHM or 0.045 mg/L for HAA5. Additionally, the State may return a system to routine monitoring at the State's discretion.

Compliance Determination: A PWS is in compliance with the MCL for TTHM and HAA5 when the annual average of all samples, taken that year, is less than or equal to the MCL. If the average for these samples exceeds the MCL, the system is out of compliance.

Subpart H Systems Serving Fewer than 500 People. Routine Monitoring: Subpart H systems serving fewer than 500 people are required to take one sample per year for each treatment plant in the system. The sample must be taken at the point of maximum residence time in the distribution system during the month of warmest water temperature. If the annual sample exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter, taken at the point of maximum residence time in the distribution system.

Reduced Monitoring: These systems may not reduce monitoring. Systems on increased monitoring may return to routine monitoring if the annual average of quarterly samples is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5.

Compliance Determination: A PWS is in compliance when the annual sample (or average of annual samples, if additional sampling is conducted) is less than or equal to the MCL. If the annual sample exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter. If the running annual average of the quarterly samples then exceeds the MCL, the system is out of compliance.

Ground Water Systems Serving 10,000 or More People. Routine Monitoring: CWSs and NTNCWSs using only ground water sources not under the direct influence of surface water that treat their water with a chemical disinfectant and serve 10,000 or more people are required to take one water sample each quarter for each treatment plant in the system. Samples must be taken at points that represent the maximum residence time in the distribution system.

Reduced Monitoring: To qualify for reduced monitoring, systems must meet certain prerequisites (see Figure III–1). Systems eligible for reduced monitoring may reduce the monitoring frequency to one sample per treatment plant per year. Sample must be taken at a distribution system location reflecting maximum residence time and during the month of warmest water temperature. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5. Systems that do not meet these levels must revert to routine monitoring in the quarter immediately following the quarter in which the system exceeded 0.060 mg/L for TTHM or 0.045 mg/L for HAA5. Additionally, the State may return a system to routine monitoring at the State's discretion.

Compliance Determination: A PWS is in compliance with the MCL when the running arithmetic annual average of quarterly averages of all samples, computed quarterly, is less than or equal to the MCL. If the running annual average for any quarter exceeds the MCL, the system is out of compliance.

Ground Water Systems Serving Fewer than 10,000 People Routine Monitoring: CWSs and NTNCWSs using only ground water sources not under the direct influence of surface water that treat their water with a chemical disinfectant and serve fewer than 10,000 people are required to sample once per year for each treatment plant in the system. The sample must be taken at the point of maximum residence time in the distribution system during the month of warmest water temperature. If the sample (or the average of annual samples if more than one sample is taken) exceeds the MCL, the system must increase monitoring to one sample per treatment plant per quarter.

Reduced Monitoring: To qualify for reduced monitoring, systems must meet certain prerequisites (see Figure III–2). Systems eligible for reduced monitoring may reduce the monitoring frequency for TTHMs and HAA5 to one sample per three-year monitoring cycle. Sample must be taken at a distribution system location reflecting maximum residence time and during the month of warmest water temperature. Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5. Systems that do not meet these levels must resume routine monitoring. Systems on increased monitoring may return to routine monitoring if the annual average of quarterly samples is no more than 0.060 mg/L for TTHM and 0.045 mg/L for HAA5.

Compliance Determination: A PWS is in compliance when the annual sample (or average of annual samples) is less than or equal to the MCL.

FIGURE III–2.—ELIGIBILITY FOR REDUCED TTHM AND HAA5 MONITORING: GROUND WATER SYSTEMS SERVING FEWER THAN 10,000 PEOPLE

Systems using ground water not under the direct influence of surface water that serve fewer than 10,000 people may reduce monitoring for TTHMs and HAA5 if they meet either of the following conditions:

1. The average of two consecutive annual samples for TTHMs is no more than 0.040 mg/L, the average of two consecutive annual samples for HAA5 is no more than 0.030 mg/L, and at least two years of routine monitoring has been completed.
2. The annual sample for TTHMs is no more than 0.020 mg/L, the annual sample for HAA5 is no more than 0.015 mg/L, and at least one year of routine monitoring has been completed.

Chlorite. Routine Monitoring: CWSs and NTNCWSs using chlorine dioxide for disinfection or oxidation are required to conduct sampling for chlorite both daily at the entrance to the distribution system and monthly within the distribution system. Additional distribution system monitoring may be required, and distribution system monitoring may be reduced if certain conditions are met. This monitoring is described below.

Routine Monthly Monitoring—Systems are required to take a three sample set each month in the distribution system. One sample must be taken at each of the following locations: (1) as close as possible to the first customer, (2) in a location representative of average residence time, and (3) as close as possible to the end of the distribution system (reflecting maximum residence time in the distribution system). As described elsewhere in this document, all samples taken in the distribution system must be analyzed by ion chromatography (Methods 300.0 and 300.1).

Routine Daily Monitoring—Systems must take one sample each day at the entrance to the distribution system. As described elsewhere in this document (section III.G), samples taken at the distribution system entrance may be analyzed by amperometric titration (Method 4500–ClO_2 E). If the chlorite MCL is exceeded at the entrance to the distribution system, the system is not out of compliance. However, the system must carry out addition monitoring as described in the following paragraph.

Additional Monitoring: On any day when the chlorite concentration measured at the entrance to the distribution system exceeds the chlorite MCL (1.0 mg/L), the system is required to take a three sample set in the distribution system on the following day, at the locations specified for routine monthly monitoring. If the system is required to conduct distribution system monitoring as a result of having exceeded the chlorite MCL at the entrance to the distribution system, and the average of the three samples taken in the distribution system is below 1.0 mg/L, the system will have satisfied its routine monthly monitoring requirement for that month. Further distribution system monitoring will not be required in that month unless the chlorite concentration at the entrance to the distribution system again exceeds 1.0 mg/L.

Reduced Monitoring: Systems may reduce routine distribution system monitoring for chlorite from monthly to quarterly if the chlorite concentration in all samples taken in the distribution system is below 1.0 mg/L for a period of one year and the system has not been required to conduct any additional monitoring. Systems that qualify for reduced monitoring must continue to conduct daily monitoring at the entrance to the distribution system. If the chlorite concentration at the entrance to the distribution system exceeds 1.0 mg/L, the system must resume routine monthly monitoring.

Compliance Determination: A PWS is out of compliance with the chlorite MCL when the arithmetic average concentration of any three sample set taken in the distribution system is greater than 1.0 mg/L.

Bromate. Routine Monitoring: CWSs and NTNCWSs using ozone for disinfection or oxidation are required to take at least one sample per month for each treatment plant in the system using ozone. The sample must be taken at the entrance to the distribution system when the ozonation system is operating under normal conditions.

Reduced Monitoring: Systems may reduce monitoring from monthly to once per quarter if the system demonstrates that the annual average raw water bromide concentration is less than 0.05 mg/L, based upon monthly measurements for one year.

Compliance Determination: A PWS is in compliance if the running annual arithmetic average of samples, computed quarterly, is less than or equal to the MCL.

Chlorine. Routine Monitoring: As a minimum, CWSs and NTNCWSs must measure the residual disinfectant level (as either free chlorine or total chlorine) at the same points in the distribution system and at the same time as total coliforms, as specified in § 141.21. Subpart H systems may use the results of residual disinfectant concentration sampling done under the SWTR (§ 141.74(b)(6)(i) for unfiltered systems, § 141.74(c)(3)(i) for systems that filter) in lieu of taking separate samples.

Reduced Monitoring: Monitoring for chlorine may not be reduced.

Compliance Determination: A PWS is in compliance with the MRDL when the running annual arithmetic average of monthly averages of all samples, computed quarterly, is less than or equal to the MRDL. Notwithstanding the MRDL, operators may increase residual chlorine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems (e.g., including distribution line breaks, storm runoff events, source water contamination, or cross-connections).

Chloramines. Routine Monitoring: As a minimum, CWSs and NTNCWSs must measure the residual disinfectant level (as either total chlorine or combined chlorine) at the same points in the distribution system and at the same time as total coliforms, as specified in § 141.21. Subpart H systems may use the results of residual disinfectant concentration sampling done under the SWTR (§ 141.74(b)(6) for unfiltered systems, § 141.74(c)(3) for systems that filter) in lieu of taking separate samples.

Reduced Monitoring: Monitoring for chloramines may not be reduced.

Compliance Determination: A PWS is in compliance with the MRDL when the running annual arithmetic average of monthly averages of all samples, computed quarterly, is less than or equal to the MRDL. Notwithstanding the MRDL, operators may increase residual chloramine levels in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems (e.g., including distribution line breaks, storm runoff events, source water contamination, or cross-connections).

Chlorine Dioxide Routine Monitoring: CWSs, NTNCWSs, and TNCWSs must monitor for chlorine dioxide only if chlorine dioxide is used by the system for disinfection or oxidation. If monitoring is required, systems must take daily samples at the entrance to the

distribution system. If the MRDL (0.8 mg/L) is exceeded, the system must conduct additional monitoring.

Additional Monitoring: If any daily sample taken at the entrance to the distribution system exceeds the MRDL, the system is required to take three additional samples in the distribution system on the next day. Samples must be taken at the following locations.

Systems using chlorine as a residual disinfectant and operating booster chlorination stations after the first customer—These systems must take three samples in the distribution system: one as close as possible to the first customer, one in a location representative of average residence time, and one as close as possible to the end of the distribution system (reflecting maximum residence time in the distribution system).

Systems using chlorine dioxide or chloramines as a residual disinfectant or chlorine as a residual disinfectant and not operating booster chlorination stations after the first customer—These systems must take three samples in the distribution system as close as possible to the first customer at intervals of not less than six hours.

Reduced Monitoring: Monitoring for chlorine dioxide may not be reduced.

Compliance Determination: Acute violations—If any daily sample taken at the entrance to the distribution system exceeds the MRDL and if, on the following day, one or more of the three samples taken in the distribution system exceeds the MRDL, the system will be in acute violation of the MRDL and must issue the required acute public notification. Failure to monitor in the distribution system on the day following an exceedance of the chlorine dioxide MRDL shall also be considered an acute MRDL violation.

Nonacute violations—If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL, but none of the samples taken in the distribution system exceed the MRDL, the system will be in nonacute violation of the MRDL. Failure to monitor at the entrance to the distribution system on the day following an exceedance of the chlorine dioxide MRDL shall also be considered a nonacute MRDL violation.

Important Note: Unlike chlorine and chloramines, the MRDL for chlorine dioxide may not be exceeded for short periods of time to address specific microbiological contamination problems.

TOC. Routine Monitoring: CWSs and NTNCWSs which use conventional filtration treatment must monitor each treatment plant water source for TOC on a monthly basis, with samples taken in both the source water prior to any treatment and in the treated water no later than the point of combined filter effluent turbidity monitoring. At the same time, systems must monitor for source water alkalinity.

Reduced Monitoring: Subpart H systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample per plant per quarter.

Compliance Determination: Compliance criteria for TOC are dependent upon a variety of factors and is discussed elsewhere in this rule.

2. Background and Analysis

The monitoring requirements in today's rule are the same as those in the 1994 proposed rule, with the exception of requirements for bromide monitoring and chlorite.

Bromide Monitoring for Reduced Bromate Monitoring. The 1994 proposal included a provision for reduced bromate monitoring for utilities with source water bromide concentrations less than 0.05 mg/L. EPA believes there is a very small likelihood that systems using ozone will exceed the bromate MCL if source water bromide concentrations are below this level. The provision did not specify a bromide monitoring frequency, however. Today's rule allows utilities to reduce bromate monitoring from monthly to once per quarter if the system demonstrates, based on representative monthly samples over the course of a year, that the average raw water bromide concentration is less than 0.05 mg/L.

Chlorite Monitoring. The proposed rule required treatment plants using chlorine dioxide to monitor for chlorite ion by taking a three sample set in the distribution system, once per month, and to analyze these samples using ion chromatography. However, the proposal states that after the Negotiating Committee had agreed to the above monitoring scheme for chlorite at its last meeting in June, 1993, EPA's Reference Dose Committee met and determined a different toxicological endpoint for chlorite, based on the identification of neurobehavioral effects. In light of this finding, EPA asserted that it did not believe the proposed monthly monitoring requirement for chlorite was sufficiently protective of public health. Following the proposed rule, EPA acquired additional information on chlorite toxicity, including the results of a two-generation study sponsored by the CMA. This additional information, discussed elsewhere in this document (III.A.7), supported EPA's finding of neurobehavioral health effects resulting from chlorite, along with the rationale for daily monitoring at the entrance to the distribution system as a trigger for further compliance monitoring in the distribution system.

3. Summary of Comments

TOC. Many commenters expressed confusion regarding the raw and finished water TOC monitoring scheme and their relationship to compliance calculations. Commenters noted, correctly, that changes in alkalinity and TOC level can move the utility to a different box of the TOC removal matrix, and questioned whether this would affect requisite monitoring. As in the proposal, moving to a different box of the matrix will not affect monitoring requirements. Utilities are required to take a minimum of one paired (raw and finished water) TOC sample per month. Commenters were also concerned that the TOC monitoring provisions would limit their ability to take additional TOC samples for operational control. This concern is unfounded; EPA recommends in the Enhanced Coagulation and Enhanced Precipitative Softening Guidance Manual that utilities take as many TOC samples as necessary to maintain proper operational control. EPA also recommends that TOC compliance samples, as opposed to operational samples, be taken on a constant schedule or be identified one month prior to the samples being taken. This will allow utilities to take numerous operational samples and still provide for unbiased compliance sampling. Systems may use their sampling plans for this purpose.

Chlorite. In the proposal, EPA solicited comment on changing the frequency and location of chlorite monitoring in consideration of potential acute health effects. Commenters stated that daily monitoring of chlorite would be feasible if amperometric titration were allowed as an analytical method. Commenters recommended that daily amperometric analyses for chlorite be conducted on samples taken from the entrance to the distribution system, and that weekly or monthly analyses using ion chromatography still be required as a check since ion chromatography is a more accurate analytical method. Several comments stated that daily monitoring for chlorite would improve operational control of plants and decrease the probability of a PWS exceeding the chlorite MCL in the distribution system. However, commenters requested that if daily monitoring for chlorite were to be

required, a provision for reduced chlorite monitoring be included as well.

In response to these comments, today's rule requires treatment plants using chlorine dioxide to conduct daily monitoring for chlorite by taking one sample at the entrance to the distribution system. This sample may be measured using amperometric titration (Standard Method 4500-ClO_2 E). Treatment plants are also required to take a three sample set from the distribution system once per month, as was proposed in 1994. In addition, today's rule requires that on any day that the concentration of chlorite measured at the distribution system entrance exceeds the MCL, the treatment plant must take a three sample set in the distribution system on the following day. All samples taken in the distribution system must be analyzed by ion chromatography (Method 300.0 or 300.1).

EPA recommends that treatment plants keep chlorite levels below 1.0 mg/L and believes that if treatment plants exceed the MCL in finished water, immediate distribution system testing is warranted to ensure that chlorite levels are below 1.0 mg/L. EPA has not, however, changed the compliance determination for chlorite from the 1994 proposed rule. Compliance is still based on the average of three sample sets taken in the distribution system. The results of daily monitoring do not serve as a compliance violation; rather, they can only trigger immediate distribution system monitoring. Moreover, if the treatment plant is required to take distribution system samples by the results of daily monitoring and the average chlorite concentration in the three distribution system samples is below the MCL, then that sampling will meet the treatment plant's requirement for routine monthly monitoring in the distribution system for that month. Today's rule also includes a provision for reduced chlorite monitoring. Treatment plants may reduce routine distribution system monitoring for chlorite from monthly to quarterly if the chlorite concentration in all samples both at the entrance to the distribution system and within the distribution system are below 1.0 mg/L for a period of one year.

In summary, after review of all public comments and associated data, EPA believes that these provisions for chlorite monitoring will be both feasible for treatment plants and provide a level of protection to public health commensurate with the toxic effects associated with chlorite.

I. Compliance Schedules

1. Today's Rule

Today's action establishes revised compliance deadlines for States to adopt and for public water systems to implement the requirements in this rulemaking. Central to the determination of these deadlines are the principles of simultaneous compliance between the Stage 1 DBPR and the corresponding rules (Interim Enhanced Surface Water Treatment Rule, Long Term Enhanced Surface Water Treatment Rule, and Ground Water Rule) to ensure continued microbial protection, and minimization of risk-risk tradeoffs. These deadlines also reflect new legislative provisions enacted as part of 1996 SDWA amendments. Section 1412 (b)(10) of the SDWA as amended provides PWSs must comply with new regulatory requirements 36 months after promulgation (unless EPA or a State determines that an earlier time is practicable or that additional time up to two years is necessary for capital improvements). In addition, Section 1413(a)(1) provides that States have 24 instead of the previous 18 months from promulgation to adopt new drinking water standards.

Applying the 1996 SDWA Amendments to today's action, this rulemaking provides that States have two years from promulgation to adopt and implement the requirements of this regulation. Simultaneous compliance will be achieved as follows.

Subpart H water systems covered by today's rule that serve a population of 10,000 or more generally have three years from promulgation to comply with all requirements of this rule. In cases where capital improvements are needed to comply with the rule, States may grant such systems up to an additional two years to comply. These deadlines were consistent with those for the IESWTR.

Subpart H systems that serve a population of less than 10,000 and all ground water systems will be required to comply with applicable Stage 1 DBPR requirements within five years from promulgation. Since the Long Term Enhanced Surface Water Treatment Rule (LT1) requirements that apply to systems under 10,000 and the Ground Water Rule are scheduled to be promulgated two years after today's rule or in November 2000, the net result of this staggered deadline is that these systems will be required to comply with both Stage 1 DBPR and LT1/GWR requirements three years after promulgation of LT1/GWR at the same end date of November 2003. For reasons discussed in more detail below, EPA believes this is both consistent with the requirements of section 1412(b)(10) as well as with legislative history affirming the Reg. Neg. objectives of simultaneous compliance and minimization of risk-risk tradeoff.

2. Background and Analysis

The background, factors, and competing concerns that EPA considered in developing the compliance deadlines in today's rule are explained in detail in both the Agency's IESWTR and Stage 1 DBPR November 1997 NODAs. As explained in those NODAs, EPA identified four options to implement the requirements of the 1996 SDWA Amendments. The requirements outlined above reflect the fourth option that EPA requested comment upon in November 1997.

By way of background, the SDWA 1996 Amendments affirmed several key principles underlying the M–DBP compliance strategy developed by EPA and stakeholders as part of the 1992 regulatory negotiation process. First, under Section 1412(b)(5)(A), Congress recognized the critical importance of addressing risk/risk tradeoffs in establishing drinking water standards and gave EPA the authority to take such risks into consideration in setting MCL or treatment technique requirements. The technical concerns and policy objectives underlying M/DBP risk/risk tradeoffs are referred to in the initial sections of today's rule and have remained a key consideration in EPA's development of appropriate compliance requirements. Second, Congress explicitly adopted the phased M–DBP regulatory development schedule developed by the Negotiating Committee. Section 1412(b)(2)(C) requires that the M/DBP standard setting intervals laid out in EPA's proposed ICR rule be maintained even if promulgation of one of the M–DBPRs is delayed. As explained in the 1997 NODA, this phased or staggered regulatory schedule was specifically designed as a tool to minimize risk/risk tradeoff. A central component of this approach was the concept of ''simultaneous compliance'', which provides that a PWS must comply with new microbial and DBP requirements at the same time to assure that in meeting a set of new requirements in one area, a facility does not inadvertently increase the risk (i.e., the risk ''tradeoff'') in the other area.

A complicating factor that EPA took into account in developing today's deadlines is that the SDWA 1996 Amendments changed two statutory provisions that elements of the 1992

Negotiated Rulemaking Agreement were based upon. The 1994 Stage 1 DBPR and ICR proposals provided that 18 months after promulgation large PWS would comply with the rules and States would adopt and implement the new requirements. As noted above, Section 1412(b)(10) of the SDWA as amended now provides that drinking water rules shall become effective 36 months after promulgation (unless the Administrator determines that an earlier time is practicable or that additional time for capital improvements is necessary—up to two years). In addition, Section 1413(a)(1) now provides that States have 24 instead of the previous 18 months to adopt new drinking water standards that have been promulgated by EPA.

Today's compliance deadline requirements reflect the principle of simultaneous compliance and the concern with risk/risk tradeoffs. Subpart H systems serving a population of at least 10,000 will be required to comply with the key provisions of this rule on the same schedule as they will be required to comply with the parallel requirements of the accompanying IESWTR that is also included in today's **Federal Register**.

With regard to subpart H systems serving fewer than 10,000, EPA believes that providing a five year compliance period under Stage 1 DBPR is appropriate and warranted under section 1412(b)(10), which expressly allows five years where necessary for capital improvements. As discussed in more detail in the 1997 IESWTR NODA, capital improvements require, of necessity, preliminary planning and evaluation. An essential prerequisite of such planning is a clear understanding of final compliance requirements that must be met. In the case of the staggered M/DBP regulatory schedule established as part of the 1996 SDWA Amendments, LT1 microbial requirements for systems under 10,000 are required to be promulgated two years after the final Stage 1 DBPR. As a result, small systems will not even know what their final combined compliance obligations are until promulgation of the LT 1 rule. Thus, an additional two year period reflecting the two year Stage 1 DBPR/LT 1 regulatory development interval established by Congress is required to allow for the preliminary planning and design steps which are inherent in any capital improvement process.

In the case of ground water systems, the statutory deadline for promulgation of the GWR is May 2002. However, EPA intends to promulgate this rule by November 2000, in order to allow three years for compliance and still ensure simultaneous compliance by ground water systems with the Stage 1 DBPR and the GWR. As in the case of subpart H systems serving fewer than 10,000, system operators will not know until November 2000 what the final compliance requirements for both rules are. EPA thus believes it appropriate to grant the additional two years for compliance with the Stage 1 DBPR allowed by the statute.

EPA has been very successful in meeting all of the new statutory deadlines and is on track for the LT1 Rule and GWR. While EPA fully intends to meet the schedule discussed earlier, if those rules are delayed the Agency will evaluate all available options to protect against unacceptable risk-risk trade-offs. Part of this effort is the extensive outreach to systems already underway to fully inform water supplies of the likely elements in the upcoming rules. In addition, EPA would consider including provisions for streamlined variance and/or exemption processing in these rules if they were delayed, in order to enhance State flexibility in ensuring that compliance with the Stage 1 DBPR is not required before the corresponding microbial protection rule.

Under today's Stage 1 DBPR, EPA has already provided small subpart H systems and ground water systems the two-year extension for capital improvements since these systems will not know with certainty until November 2000 if capital improvements will be needed for simultaneous compliance with the Stage 1 DBPR and LT1/GWR. States considering whether to grant a two-year capital improvement extension for compliance with the GWR or LT1 will also need to consider the impact of such extensions on compliance with today's rule, given that a similar extension for capital improvement has already been provided in the initial compliance schedule for the Stage 1 DBPR. EPA believes, however, that these systems will generally not require extensive capital improvements that take longer than three years to install to meet Stage 1 DBPR, GWR, and LT1 requirements, or will require no capital improvements at all. However if needed, EPA will work with States and utilities to address systems that require time beyond November 2003 to comply. This strategy may include exemptions.

In addition, EPA will provide guidance and technical assistance to States and systems to facilitate timely compliance with both DBP and microbial requirements. EPA will request comment on how best to do this when the Agency proposes the LTESWTR and GWR.

3. Summary of Comments

Commenters were in general agreement that the compliance deadline strategy contained in the fourth option of the 1997 NODA did the best job of complying with the requirements to 1996 SDWA Amendments and meeting the objectives of the 1993 Reg. Neg. Agreement that Congress affirmed as part of the 1996 Amendments. Nonetheless, a number of commenters expressed concern about the ability of large surface water systems that had to make capital improvements to comply with all requirements of the Stage 1 DBPR and IESWTR. They pointed out that capital improvements include more than just the construction, but also financing, design, and approval.

EPA believes that the provisions of Section 1412(b)(10) of the SDWA as amended allow systems the flexibility needed to comply. As noted earlier in this section, States may grant up to an additional two years compliance time for an individual system if capital improvements are necessary. Moreover, as both of these rules have been under negotiation since 1992, proposed in 1994 and further clarified in 1997, EPA believes that most systems have had substantial time to consider how to proceed with implementation and to initiate preliminary planning. Several commenters also supported delaying the promulgation of the Stage 1 DBPR for ground water systems until the GWR is promulgated, in order to ensure simultaneous compliance with both rules. EPA believes that this option would not be consistent with the reg-neg agreement, as endorsed by Congress, because the agreement specifies that the Stage 1 DBPR will apply to all community and nontransient noncommunity water systems. Moreover, EPA has committed to the LT1 and GWR promulgation schedule outlined above precisely to address this issue.

In conclusion EPA believes that the compliance deadlines outlined above for systems covered by this rule are appropriate and consistent with the requirements of the 1996 SDWA amendments. The Agency notes, however, that some elements of Option 4 outlined in the 1997 NODA apply to systems that may be covered by future Long Term Enhanced and Ground Water rules. EPA intends to follow the deadline strategy outlined in Option 4 for these future rules. However, as today's action only relates to the Stage 1 DBPR, the Agency will defer final action on deadlines associated with future rules until those rules, themselves, are finalized.

J. Public Notice Requirements

1. Today's Rule

Today's action addresses public notification by promulgating public notification language for the regulated compounds in 40 CFR Section 141.32 (e). EPA takes this opportunity to note that the 1996 amendments to the SDWA require the Agency to make certain changes to the public notice regulations. EPA intends to propose changes to the public notice requirements in the **Federal Register** shortly after promulgation of the Stage 1 DBPR. Applicable changes in the public notice requirements, when they become effective, will supersede today's provisions. In general, the public notification for the Stage 1 DBPR is not substantially changed from that included in the 1994 Proposed Stage 1 DBPR (EPA, 1994a).

2. Background and Analysis

Under Section 1414(c)(1) of the Act, each owner or operator of a public water system must give notice to the persons served by the system of (1) any violation of any MCL, treatment technique requirement, or testing provision prescribed by an NPDWR; (2) failure to comply with any monitoring requirement under section 1445(a) of the Act; (3) existence of a variance or exemption; (4) failure to comply with the requirements of a schedule prescribed pursuant to a variance or exemption; and (5) notice of the concentration level of any unregulated contaminant for which the Administrator has required public notice.

EPA promulgated the current regulations for public notification on October 28, 1987 (52 FR 41534—EPA, 1987). These regulations specify general notification requirements, including frequency, manner, and content of notices, and require the inclusion of EPA-specified health effects information in each public notice. The public notification requirements divide violations into two categories (Tier 1 and Tier 2) based on the seriousness of the violations, with each tier having different public notification requirements. Tier 1 violations include violations of an MCL, treatment technique, or a variance or exemption schedule. Tier 1 violations contain health effects language specified by EPA which concisely and in non-technical terms conveys to the public the adverse health effects that may occur as a result of the violation. States and water utilities remain free to add additional information to each notice, as deemed appropriate for specific situations. Tier 2 violations include monitoring violations, failure to comply with an analytical requirement specified by an NPDWR, and operating under a variance or exemption.

Today's final rule contains specific health effects language for the contaminants which are in today's rulemaking. EPA believes that the mandatory health effects language is the most appropriate way to inform the affected public of the potential health implications of violating a particular EPA standard.

3. Summary of Comments

EPA received comments on the topic of the public notification language for TTHM, HAA5, chlorine, chloramines, chlorine dioxide, and enhanced coagulation. Some commenters noted that the language in 141.32(e)(79) is satisfactory. One commenter requested that the language for DBPs be modified to recognize that disinfectants react with naturally occurring organic and inorganic matter to form DBPs. Some commenters did not support the use of the same public notification language for both DBP MCL and enhanced coagulation treatment technique violations. Several commenters suggested that the content of the notices for chlorine, chloramine, and chlorine dioxide should reflect that disinfection is an essential step in surface water treatment. One commenter suggested that the language for chlorine dioxide acute effects should be deleted. Other commenters felt that the notice to consumers of chlorine dioxide violations at the treatment facility which do not result in violations in the distribution system (nonacute violations) should not require public notification.

In response, EPA has modified the public notification language for DBPs to indicate that disinfectants react with naturally occurring organic and inorganic matter to form DBPs. EPA believes it is appropriate to use the same public notification language for the enhanced coagulation treatment technique violation as for violations for the TTHM and HAA5 MCLs, since enhanced coagulation is meant to limit exposure to DBPs. EPA believes the current language in the public notification language is appropriate to reflect that disinfection is an essential step in water treatment. EPA believes that since the potential health effects from chlorine dioxide are short-term that it is appropriate to maintain the acute effects language to protect the fetus, infants, and children. In general, the public notification requirements for the Stage 1 DBPR will not substantially change from that included in the 1994 Proposed Stage 1 DBPR (EPA, 1994a).

K. System Reporting and Record Keeping Requirements

1. Today's Rule

The Stage 1 DBPR, consistent with the current system reporting regulations under 40 CFR 141.31, requires PWSs to report monitoring data to States within ten days after the end of the compliance period. In addition, systems are required to submit the data required in § 141.134. These data are required to be submitted quarterly for any monitoring conducted quarterly or more frequently, and within 10 days of the end of the monitoring period for less frequent monitoring. Systems that are required to do extra monitoring because of the disinfectant used have additional reporting requirements specified. This applies to systems that use chlorine dioxide (must report chlorine dioxide and chlorite results) and ozone (must report bromate results).

Subpart H systems that use conventional treatment are required to report either compliance/noncompliance with DBP precursor (TOC) removal requirements or report which of the enhanced coagulation/enhanced softening exemptions they are meeting. There are additional requirements for systems that cannot meet the required TOC removals and must apply for an alternate enhanced coagulant level. These requirements are included in § 141.134(b).

Calculation of compliance with the TOC removal requirements is based on normalizing the percent removals over the most recent four quarters, since compliance is based on that period. Normalization, which would prescribe equal weight to the data collected each month, is necessary since source water quality changes may change the percent TOC removal requirements from one month to another. EPA has developed a sample reporting and compliance calculation sheet that will be available in the enhanced coagulation guidance manual to assist utilities in making these calculations.

2. Summary of Comments

There were no significant comments on the system reporting and recordkeeping requirements and therefore EPA is finalizing the requirements as proposed.

L. State Recordkeeping, Primacy, and Reporting Requirements

The SDWA provides that States and eligible Indian Tribes may assume primary enforcement responsibilities.

Fifty-four out of fifty-six State and territorial jurisdictions have applied for and received primary enforcement responsibility (primacy) under the Act. No Tribes have received primacy. To obtain primacy for the federal drinking water regulations, States must adopt their own regulations which are at least as stringent as the federal regulations. This section describes the regulations and other procedures and policies that States must adopt to implement the final Stage 1 DBPR.

To implement the final rule, States are required to adopt the following regulatory requirements:

—Section 141.32, Public Notification;
—Section 141.64, MCLs for Disinfection Byproducts;
—Section 141.65, MRDLs for Disinfectants;
—Subpart L, Disinfectant Residuals, Disinfectant Byproducts, and Disinfection Byproduct Precursors.

In addition to adopting regulations no less stringent than the federal regulations, States must adopt certain requirements related to this regulation in order to have their program revision applications approved by EPA. This rule also requires States to keep specific records and submit specific reports to EPA.

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 to incorporate the new process identified in the 1996 SDWA amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review (63 FR 23362; EPA, 1998i). The new process grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a final determination. However, this interim primacy authority is only available to a State that has primacy for every existing national primary drinking water regulation in effect when the new regulation is promulgated.

As a result, States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits its complete and final primacy application for this rule to EPA, or the effective date of its revised regulations, whichever is later. In addition, a State which wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule.

1. State Recordkeeping Requirements

a. Today's Rule. The current regulations in § 142.14 require States with primacy to keep various records, including analytical results to determine compliance with MCLs, MRDLs, and treatment technique requirements; system inventories; State approvals; enforcement actions; and the issuance of variances and exemptions. The Stage 1 DBPR requires States to keep additional records of the following, including all supporting information and an explanation of the technical basis for each decision:

(1) Records of determinations made by the State when the State has allowed systems additional time to install GAC or membrane filtration. These records must include the date by which the system is required to have completed installation;

(2) Records of systems that are required to meet alternative minimum TOC removal requirements or for whom the State has determined that the source water is not amendable to enhanced coagulation. These records must include the results of testing to determine alternative limits and the rationale for establishing the alternative limits;

(3) Records of subpart H systems using conventional treatment meeting any of the enhanced coagulation or enhanced softening exemption criteria;

(4) Register of qualified operators;

(5) Records of systems with multiple wells considered to be one treatment plant for purposes of determining monitoring frequency;

(6) Records of the sampling plans for subpart H systems serving more than 3,300 persons must be keep on file at the State after submission by the system;

(7) A list of laboratories that have completed performance sample analyses and achieved the quantitative results for TOC, TTHMs, HAA5, bromate, and chlorite; and

(8) A list of all systems required to monitor for disinfectants and DBPs under subpart L.

b. Background and Analysis. In addition to requesting comments on the requirements (1) through (5), and (7) and (8) listed above, EPA also requested comments on whether States should be required to keep the monitoring plan submitted by systems serving more than 3,300 people on file at the State after submission to make it available for public review.

c. Summary of Comments. There were several commenters who suggested that EPA should keep in mind State budget constraints when requiring specific additional recordkeeping requirements. Other commenters stated that they believed the requirements were necessary. EPA understands commenters concerns with requiring recordkeeping requirements that are unnecessary, but believes this information is important to conduct effective State program oversight, including the review of State decisions and their basis. After further review, EPA has decided to eliminate the requirement in the proposal that States must keep records of systems that apply for alternative TOC performance criteria. EPA is more concerned with the systems that are required to meet alternative TOC performance criteria, not the systems that have applied for the alternative performance criteria. In addition, EPA has added three recordkeeping requirements, two of which were originally in the reporting requirements section and one for which EPA requested comment.

The first additional requirement will require States to keep lists of all systems required to monitor for various disinfectants and DBPs (#8 above). The second additional requirement will require States to maintain a list of laboratories that have completed performance sample analyses and achieved the quantitative results for TOC, TTHMs, HAA5, bromate, and chlorite (#6 above). EPA believes both of these recordkeeping requirements are necessary to ensure adequate EPA program oversight. As discussed below, these two requirements are no longer in the State reporting requirements as EPA has decided that the requirements in the proposal on State reporting requirements are not needed on a regular basis, but are needed for program oversight. The third additional requirement pertains to the request for comment in the proposal on maintaining the monitoring plans submitted by systems (#6 above). Several commenters supported this additional requirement stating that it was a necessary element for implementing the final rule. Others believed it was not necessary to keep this on file because the public could request this information from the system or the State as normal public records. EPA believes that it is important for States to review, and keep on file the systems monitoring plan to ensure that the PWS is monitoring and calculating compliance in accordance with the plan. This will also enable the public to view the plan. Thus, EPA is adding this requirement to the final recordkeeping requirements. In conclusion, based on a review of all public comments the final

rule contains eight State recordkeeping requirements in addition to those required under current regulations in § 142.14.

2. Special Primacy Requirements

a. Today's Rule. To ensure that a State program includes all the elements necessary for an effective and enforceable program under today's rule, a State application for program revision approval must include a description of how the State will:

(1) Determine the interim treatment requirements for systems granted additional time to install GAC and membrane filtration under 141.64(b)(2).

(2) Qualify operators of community and nontransient noncommunity water systems subject to this regulation under 141.130(c). Qualification requirements established for operators of systems subject to 40 CFR Part 141 Subpart H (Filtration and Disinfection) may be used in whole or in part to establish operator qualification requirements for meeting subpart L requirements if the State determines that the subpart H requirements are appropriate and applicable for meeting subpart L requirements.

(3) Approve DPD colorimetric tests kits for free and total chlorine measurements under 141.131(c)(2). State approval granted under subpart H (§ 141.74(a)(2)) for the use of DPD colorimetric test kits for free chlorine testing would be considered acceptable approval for the use of DPD test kits in measuring free chlorine residuals as required in subpart L.

(4) Approve parties to conduct analyses of water quality parameters under 141.132(a)(2) (pH, alkalinity, bromide, and residual disinfectant concentration measurements). The State's process for approving parties performing water quality measurements for systems subject to subpart H requirements may be used for approving parties measuring water quality parameters for systems subject to subpart L requirements, if the State determines the process is appropriate and applicable.

(5) Define criteria to use in determining if multiple wells are being drawn from a single aquifer and therefore can be considered as a single source under 141.132(a)(2). Such criteria will be used in determining the monitoring frequency for systems using only ground water not under the direct influence of surface water.

(6) Approve alternative TOC removal levels as allowed under 141.135(b).

b. Background and Analysis. As discussed above, EPA included several special primacy requirements to ensure that State programs contain all the essential elements for an effective program. Specifically, EPA believes the special requirements are important to ensure that the process or approach used by the State for evaluating whether the interim treatment in place for systems granted additional time to install GAC or membranes or alternative enhanced coagulation levels will be protective of public health. The requirement to have qualified operators is important because the treatment technologies used to comply with the Stage 1 DBPR and the IESWTR simultaneously are complex and will require a certain level of expertise. The requirement to approve parties for conducting analyses of specific water quality parameters is important because each of the parameters required to be tested is critical to a specific component of the final rule (e.g., bromide ion is important because for bromate it is possible to reduce monitoring from monthly to once per quarter, if a system demonstrates that the average raw water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year). Finally, it is important to define the criteria used to determine if multiple wells are to be considered a single source as this could have significant implications for monitoring.

c. Summary of Comments. There were no significant comments on the primacy requirements. The only change from the proposal was to delete the requirement that States must have approved parties to perform temperature evaluations. This requirement was included in the proposed rule because of the need to have accurate measurements as a part of the process for not allowing predisinfection credit. Since the final rule allows credit for compliance with applicable disinfection requirements consistent with the SWTR, the temperature requirement was removed.

3. State Reporting Requirements

a. Today's Rule. EPA currently requires in § 142.15 that States report to EPA information such as violations, variance and exemption status, and enforcement actions. The Stage 1 DBPR does not add any additional reporting requirements.

b. Background and Analysis. The preamble to the proposed rule included six State reporting requirements. These included:

(1) A list of all systems required to monitor for various disinfectants and disinfection byproducts;

(2) A list of all systems for which the State has granted additional time for installing GAC or membrane technology and the basis for the additional time;

(3) A list of laboratories that have completed performance sample analyses and achieved the quantitative results for TOC, TTHMs, HAA5, bromate, and chlorite;

(4) A list of all systems using multiple ground water wells which draw from the same aquifer and are considered a single source for monitoring purposes;

(5) A list of all Subpart H systems using conventional treatment which are not required to operate with enhanced coagulation, and the reason why enhanced coagulation is not required for each system; and

(6) A list of all systems with State-approved alternate performance standards (alternate enhanced coagulation levels).

c. Summary of Comments. Several commenters stated that the reporting requirements were not necessary to operate an oversight program and that these reports could be made available for EPA review during annual audits. EPA agrees with commenters that the reports are not necessary to operate an oversight program, and that if needed EPA could request this information from the States. However, EPA does believe it is important that States maintain this information in their records. In conclusion, based on commenters concerns and for the reasons cited above, the final rule contains no additional State reporting requirements other than those required by 142.15.

M. Variances and Exemptions

1. Today's Rule

Variances may be granted in accordance with section 1415(a)(1)(A) of the SDWA and in accordance with 1415(e) and EPA's regulations. Exemptions may be granted in accordance with section 1416(a) of the SDWA and EPA's regulations.

2. Background and Analysis

Variances. The SDWA provides for two types of variances—general variances and small system variances. Under section 1415(a)(1)(A) of the SDWA, a State which has primary enforcement responsibility (primacy), or EPA as the primacy agency, may grant variances from MCLs to those public water systems of any size that cannot comply with the MCLs because of characteristics of the water sources. The primacy agency may grant general variances to a system on condition that the system install the best available technology, treatment techniques, or other means, and provided that alternative sources of water are not

reasonably available to the system. At the time this type of variance is granted, the State must prescribe a compliance schedule and may require the system to implement additional control measures. Furthermore, before EPA or the State may grant a general variance, it must find that the variance will not result in an unreasonable risk to health (URTH) to the public served by the public water system.

Under section 1413(a)(4), States that choose to issue general variances must do so under conditions, and in a manner, that are no less stringent than section 1415. Of course, a State may adopt standards that are more stringent than the EPA standards. EPA specifies BATs for general variance purposes. EPA may identify as BAT different treatments under section 1415 for variances other than the BAT under section 1412 for MCLs. EPA's section 1415 BAT findings may vary depending on a number of factors, including the number of persons served by the public water system, physical conditions related to engineering feasibility, and the costs of compliance with MCLs. In this final rule, EPA is not specifying different BAT for variances under section 1415(a). Section 1415(e) authorizes the primacy Agency (EPA or the State) to issue variances to small public water systems (those serving less than 10,000 persons) where the system cannot afford to comply with an MCL and where the primacy agency determines that the terms of the variances ensure adequate protection of public health (63 FR 1943–57; EPA, 1998j). These variances also may only be granted where EPA has identified a variance technology under Section 1412(b)(15) for the contaminant, system size and source water quality in question.

Prior to the 1996 SDWA amendments, EPA was required to set the MCL for a contaminant as close to the MCLG as is feasible. Section 1412(b)(4)(D) of the SDWA states that ''the term ''feasible'' means with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into consideration).''

The cost assessment for the feasibility determinations have historically been based upon impacts to regional and large metropolitan water systems serving populations greater than 50,000 people. Since large systems served as the basis for the feasibility determinations, the technical and/or cost considerations associated with these technologies often were not applicable to small water systems. While EPA will continue to use feasibility for large systems in setting NPDWRs, the 1996 amendments to the SDWA specifically require EPA to make small system technology assessments for both existing and future regulations.

The 1996 amendments to the SDWA identifies three categories of small public water systems that need to be addressed: (1) those serving a population between 3301 to 10,000; (2) those serving a population of 501—3300; and (3) those serving a population of 26—500. The SDWA requires EPA to make determinations of available compliance technologies and, if needed, variance technologies for each size category. A compliance technology is a technology that is affordable and that achieves compliance with the MCL and/or treatment technique. Compliance technologies can include point-of-entry or point-of-use treatment units. Variance technologies are only specified for those system size/source water quality combinations for which there are no listed compliance technologies.

EPA has completed an analysis of the affordability of DBP control technologies for each of the three size categories included above. Based on this analysis, multiple affordable compliance technologies were found for each of the three system sizes (EPA, 1998q and EPA, 1998r) and therefore variance technologies were not identified for any of the three size categories. The analysis was consistent with the methodology used in the document ''National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act'' (EPA, 1998s) and the ''Variance Technology Findings for Contaminants Regulated Before 1996'' (EPA, 1998t).

Exemptions. Under section 1416(a), EPA or a State may exempt a public water system from any requirements related to an MCL or treatment technique of an NPDWR, if it finds that (1) due to compelling factors (which may include economic factors such as qualification of the PWS as serving a disadvantaged community), the PWS is unable to comply with the requirement or implement measure to develop an alternative source of water supply; (2) the exemption will not result in an unreasonable risk to health; and; (3) the PWS was in operation on the effective date of the NPWDR, or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and (4) management or restructuring changes (or both) cannot reasonably result in compliance with the Act or improve the quality of drinking water.

If EPA or the State grants an exemption to a public water system, it must at the same time prescribe a schedule for compliance (including increments of progress or measures to develop an alternative source of water supply) and implementation of appropriate control measures that the State requires the system to meet while the exemption is in effect. Under section 1416(b)(2)(A), the schedule prescribed shall require compliance as expeditiously as practicable (to be determined by the State), but no later than 3 years after the effective date for the regulations established pursuant to section 1412(b)(10). For public water systems which do not serve more than a population of 3,300 and which need financial assistance for the necessary improvements, EPA or the State may renew an exemption for one or more additional two-year periods, but not to exceed a total of 6 years, if the system establishes that it is taking all practicable steps to meet the requirements above.

A public water system shall not be granted an exemption unless it can establish that either: (1) the system cannot meet the standard without capital improvements that cannot be completed prior to the date established pursuant to section 1412(b)(10); (2) in the case of a system that needs financial assistance for the necessary implementation, the system has entered into an agreement to obtain financial assistance pursuant to section 1452 or any other Federal or state program; or (3) the system has entered into an enforceable agreement to become part of a regional public water system.

3. Summary of Comments on Variance and Exemptions

In the 1994 proposal, EPA requested comment on whether exemptions to the rule should be granted if a system could demonstrate to the State that due to unique water quality characteristics it could not avoid, through the use of BAT, the possibility of increasing total health risk to its consumers by complying with the Stage 1 regulations. The Agency requested information under which such a scenario may unfold. Several commenters supported granting exemptions provided a system could demonstrate that installation of BAT will increase the total health risk.

After additional consideration, EPA believes it is not appropriate, for several reasons, to grant exemptions based on a demonstration that the use of BAT could increase the total health risk by complying with the Stage 1 DBPR. First,

EPA does not believe the analytical tools and methodologies are currently available that would allow a determination of whether the total health risk from the installation of BAT would increase. Second, at the time of proposal there was concern that in waters with high bromide concentrations it may be possible to increase the concentrations of certain brominated DBPs when using precursor removal processes even though the concentrations of the TTHMs and HAA5 may decrease. Also, at the time of proposal, the health risks associated with many of the brominated DBPs was unknown, and it was unclear whether the benefits of lowering the concentrations of chlorinated DBPs outweigh the possible downside risks of increasing certain brominated DBPs. Since the proposal, some additional health effects research has been completed evaluating the toxicity of brominated DBPs. However, this research is still preliminary and no conclusions can be drawn on the potential for increased risks from the brominated DBPs. In addition, it is unclear to what extent the use of precursor removal processes will change the concentrations of certain brominated DBPs. The ICR data should provide some additional information that may be helpful in this area along with additional ongoing research. This information will be available for consideration in the Stage 2 rule deliberations. Based on the reasons stated above, EPA does not believe it is appropriate to allow exemptions to the rule based on a finding that the installation of BAT would increase the total risk from DBPs.

N. Laboratory Certification and Approval

1. Today's Rule

EPA recognizes that the effectiveness of today's regulations depends on the ability of laboratories to reliably analyze the regulated disinfectants and DBPs at the MRDL or MCL, respectively. Laboratories must also be able to measure the trihalomethanes and haloacetic acids at the reduced monitoring trigger levels, which are between 25 and 50 percent of the MCLs for these compound classes. EPA has established State primacy requirements for a drinking water laboratory certification program for the analysis of DBPs. States must adopt a laboratory certification program as part of primacy. [40 CFR 142.10(b)]. EPA has also specified laboratory requirements for analyses of DBP precursors and disinfectant residuals which must be conducted by approved parties. [40 CFR 141.89 and 141.74]. EPA's ''Manual for the Certification of Laboratories Analyzing Drinking Water'', EPA 815–B–97–001—(EPA, 1997g), specifies the criteria for implementation of the drinking water laboratory certification program.

In today's rule, EPA is promulgating MCLs for TTHMs, HAA5, bromate, and chlorite. Today's rule requires that only certified laboratories be allowed to analyze samples for compliance with the proposed MCLs. For the disinfectants and certain other parameters in today's rule, which have MRDLs or monitoring requirements, EPA is requiring that analyses be conducted by a party acceptable to the State.

Performance evaluation (PE) samples, which are an important tool in the SDWA laboratory certification program (laboratories seeking certification) may be obtained from a PE provider approved by the National Institute of Science and Technology (NIST). To receive and maintain certification, a laboratory must use a promulgated method and, at least once per year, successfully analyze an appropriate PE sample. In the drinking water PE studies, NIST-approved providers will provide samples for bromate, chlorite, five haloacetic acids, four trihalomethanes, free chlorine, and alkalinity. The NIST-approved PE providers will provide total chlorine and TOC samples in the wastewater PE studies and have the potential to provide these samples for drinking water studies. Due to the lability of chlorine dioxide, EPA does not expect a suitable PE sample can be designed for chlorine dioxide measurements.

PE Sample Acceptance Limits for Laboratory Certification. Historically, EPA has set minimum PE acceptance limits based on one of two criteria: statistically derived estimates or fixed acceptance limits. Statistical estimates are based on laboratory performance in the PE study. Fixed acceptance limits are ranges around the true concentration of the analyte in the PE sample. Today's rule combines the advantages of these approaches by specifying statistically-derived acceptance limits around the study mean, within specified minimum and maximum fixed criteria.

EPA believes that specifying statistically-derived PE acceptance limits with upper and lower bounds on acceptable performance provides the flexibility necessary to reflect improvement in laboratory performance and analytical technologies. The acceptance criteria maintain minimum data quality standards (the upper bound) without artificially imposing unnecessarily strict criteria (the lower bound). Therefore, EPA is establishing the following acceptance limits for measurement of bromate, chlorite, each haloacetic acid, and each trihalomethane in a PE sample.

EPA is defining acceptable performance for each chemical measured in a PE sample from estimates derived at a 95% confidence interval from the data generated by a statistically significant number of laboratories participating in the PE study. However, EPA requires that these acceptance criteria not exceed ±50% nor be less than ±15% of the study mean. If insufficient PE study data are available to derive the estimates required for any of these compounds, the acceptance limit for that compound will be set at ±50% of the study true value. The true value is the concentration of the chemical that EPA has determined was in the PE sample.

EPA recognizes that when using multianalyte methods, the data generated by laboratories that are performing well will occasionally exceed the acceptance limits. Therefore, to be certified to perform compliance monitoring using a multianalyte method, laboratories are required to generate acceptable data for at least 80% of the regulated chemicals in the PE sample that are analyzed with the method. If fewer than five compounds are included in the PE sample, data for each of the analytes in that sample must meet the minimum acceptance criteria in order for the laboratory to be certified.

Approval Criteria for Disinfectants and Other Parameters. Today's rule establishes MRDLs for the three disinfectants—chlorine, chloramines, and chlorine dioxide. In addition, EPA has established monitoring requirements for TOC, alkalinity, and bromide; there are no MCLs for these parameters. In previous rules [40 CFR 141.28, .74, and .89], EPA has required that measurements of alkalinity, disinfectant residuals, pH, temperature, and turbidity be made with an approved method and conducted by a party approved (not certified) by the State. In today's rule, EPA requires that samples collected for compliance with today's requirements for alkalinity, bromide, residual disinfectant, and TOC be conducted with approved methods and by a party approved by the State.

Other Laboratory Performance Criteria. For all contaminants and parameters required to be monitored in today's rule, the States may impose other requirements for a laboratory to be

certified or a party to be approved to conduct compliance analyses.

2. Background and Analysis

The laboratory certification and approval requirements that today's rule establishes are unchanged from those proposed by EPA in 1994.

3. Summary of Comments

EPA received few comments on laboratory certification and approval. Commenters requested clarification of the use of the ±50% upper bound and ±15% lower bound, along with the use of statistically derived limits. EPA believes that statistically derived limits provide flexibility to allow laboratory certification standards to reflect improvement in laboratory performance and analytical technologies. As laboratories become more proficient in conducting these analyses, statistically derived acceptance limits may drop. However, to prevent the exclusion of laboratories capable of producing data of sufficient quality for compliance purposes, EPA has established a lower bound for acceptance limits of ±15%. EPA is imposing an upper bound on acceptable performance to establish minimum data quality standards. Results outside of this range have unacceptable accuracy for compliance determinations. These upper and lower bounds were not determined statistically; they are the data quality objectives the Agency has determined as acceptable.

IV. Economic Analysis

Under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the Stage 1 DBPR in a Regulatory Impact Analysis (RIA) and submit the analysis to Office of Management and Budget (OMB) in conjunction with publishing the final rule. EPA has prepared an RIA to comply with the requirements of this Order. This section provides a summary of the information from the RIA for the Stage 1 DBPR (USEPA 1998g).

A. Today's Rule

EPA has estimated that the total annualized cost, for implementing the Stage 1 DBPR is $701 million in 1998 dollars (assuming a 7 percent cost of capital). This estimate includes annualized treatment costs to utilities ($593 million), start-up and annualized monitoring costs to utilities ($91.7 million), and startup and annualized monitoring costs to states ($17.3 million). Annualized treatment costs to utilities includes annual operation and maintenance costs ($362 million) and annualized capital costs assuming 7 percent cost of capital ($230 million). The basis for these estimates, and alternate cost estimates using different cost of capital assumptions are described later in this section. While the benefits of this rule are difficult to quantify because of the uncertainty associated with risks from exposure to DBPs (and the resultant reductions in risk due to the decreased exposure from DBPs), EPA believes that there is a reasonable likelihood that the benefits will exceed the costs. Various approaches for assessing the benefits are considered and described in the benefits and net benefits sections of this preamble.

B. Background

1. Overview of RIA for the Proposed Rule

In the RIA for the 1994 proposed Stage 1 DBPR (EPA, 1994i) EPA estimated the national capital and annualized utility costs (sum of amortized capital and annual operating costs, assuming 10% cost of capital) for all systems at $4.4 billion and $1.04 billion, respectively. The cost and reduction in DBP exposure estimates of the 1994 RIA were derived using a Disinfection Byproduct Regulatory Analysis Model (DBPRAM). The DBPRAM consisted of a collection of analytical models which used Monte Carlo simulation techniques to produce national forecasts of compliance and exposure reductions for different regulatory scenarios. The TWG, representing members of the Reg. Neg. Committee, used the best available information at the time as inputs to the DBPRAM, and for making further adjustments to the model predictions. The Stage 1 DBPR compliance and exposure forecasts were affected by constraints imposed by the 1994 proposed IESWTR option which would have required systems to provide enough disinfection, while not allowing for disinfection credit prior to TOC removal by enhanced coagulation, to achieve a 10_{-4} annual risk of infection from Giardia (EPA, 1994a). The compliance forecast assumed that a substantial number of systems would need to install advanced technologies to meet the Stage 1 DBPR because of needing to achieve the 10_{-4} annual risk level from Giardia while no longer being allowed disinfection credit prior to TOC removal.

Predicted benefits for the proposed Stage 1 DBPR were derived assuming a baseline risk ranging from 1 to 10,000 cancer cases per year (based on analysis of available toxicological and epidemiological data) and assuming reductions in the cancer risks were proportional to reductions in TTHM, HAA5, or TOC levels (predicted from compliance forecasts). Negotiators agreed that the range of possible risks attributed to chlorinated water should consider both toxicological data and epidemiological data, including the Morris et al. (1992) estimates. No consensus, however, could be reached on a single likely risk estimate. Therefore, the predicted benefits for the proposal ranged from one to several thousands cases of cancer being avoided per year after implementation of the Stage 1 DBPR. Despite, the uncertainty in quantifying the benefits from the Stage 1 DBPR, the Reg. Neg. Committee recognized that risks from chlorinated water could be large, and therefore should be reduced. The Reg. Neg. Committee also recommended that the proposed Stage 1 DBPR provided the best means for reducing risks from DBPs until better information become available.

For a more detailed discussion of the cost and benefit analysis of the 1994 proposed DBPR refer to the preamble of the proposed rule (EPA, 1994a) and the RIA for the proposed rule (EPA, 1994i).

2. Factors Affecting Changes to the 1994 RIA

a. Changes in Rule Criteria. Based on the new data reflecting the feasibility of enhanced coagulation, as discussed previously, the enhanced coagulation requirements were modified by decreasing the percent TOC removal requirements by 5 percent for systems with low TOC level waters (i.e., 2–4 mg/L TOC). These new percent TOC removal requirements were used with new source and finished water TOC occurrence data to revise the estimates for the number of systems requiring enhanced coagulation.

The IESWTR was revised from the proposal to allow inactivation credit for disinfection prior to and during stages of treatment for precursor removal. Also, the proposed IESWTR was revised to include disinfection benchmark criteria, in lieu of requiring treatment to an acceptable risk level, to prevent increases in microbial risk while systems complied with the Stage 1 DBPR. These two rule changes were considered in revising the forecasts of compliance and changes in exposure resulting from the Stage 1 DBPR.

b. New Information Affecting DBP Occurrence and Compliance Forecasts. Since the rule was proposed, new sources of data have become available that were used to update the 1994 RIA. The new data includes:

- Updated costs for different treatment technologies (e.g., membranes) used in the DBP Cost and Technology Document, (EPA, 1998k);
- 1996 data from the AWWA Water Industry Data Base on TOC, TTHM and HAA5 occurrence, and disinfection practices;
- Plant schematics of treatment processes for ICR utilities;
- Research data from numerous sources regarding the efficacy of enhanced coagulation for precursor removal and resultant DBP formation (Krasner, 1997; and EPA, 1997b);
- New research results produced in jar tests by TWG members documenting the effect of moving the point of predisinfection under varying conditions (Krasner, 1997 and EPA, 1997b).

This new information has been described in the 1997 DBP NODA (EPA, 1997b). Public comments received in 1997, supported using the above information in revising the decision tree analysis. Discussion on the decision tree changes are in section IV.C of this preamble.

c. New Epidemiology Information. Since the proposal, EPA has completed an reassessment of the Morris et al. (1992) meta-analysis (Poole, 1997). Review of the meta-analysis indicated that the estimate of cancer cases had limited utility for risk assessment purposes for methodological reasons (EPA, 1998l and EPA, 1998m). EPA has decided not to use the Morris et al. (1992) meta-analysis to estimate the potential benefits from the Stage 1 DBPR. EPA has considered new epidemiology studies conducted since the time of proposal and completed an assessment of the potential number of bladder cancer cases that could be attributed to exposure from chlorinated surface waters. Based on this assessment of epidemiological studies, EPA estimates that between 1100–9300 bladder cancer cases per year could be attributed to exposure to chlorinated surface waters (EPA, 1998c). Due to the wide uncertainty in these estimates, the true number of attributable cases could also be zero. The basis for these bladder cancer case estimates and potential reductions in risk resulting from the Stage 1 DBPR is discussed further in the benefits and net benefits sections that follow.

C. Cost Analysis

National cost estimates of compliance with the Stage 1 DBPR were derived from estimates of utility treatment costs, monitoring and reporting costs, and start-up costs. Utility treatment costs were derived using compliance forecasts of technologies to be used and unit costs for the different technologies.

1. Revised Compliance Forecast

The TWG, supporting the M–DBP Advisory Committee, used the 1996 AWWA Water Industry Data Base (WIDB) to reevaluate the compliance decision tree used in the RIA for the 1994 proposal. The WIDB provided occurrence data on TOC level in raw water and finished water, TTHM and HAA5 levels within distribution systems, and information on predisinfection practices.

The above information was used to predict treatment compliance choices that plants would likely make under the Stage 1 DBPR. Table IV–1 illustrates how the compliance forecast changed for large systems using surface water since the time of proposal.

TABLE IV–1.—COMPARISONS OF COMPLIANCE FORECASTS FOR SURFACE WATER SYSTEMS SERVING ≥10,000 POPULATION FROM THE 1994 PROPOSAL AND FINAL RULE

Treatment	1994		1998	
	# systems	% systems	# systems	% systems
(A) No Further Treatment	386	27.7	544	39.0
(B) Chlorine/Chloramines	41	2.9	231	16.6
(C) Enhanced Coagulation + Chloramines	136	9.7	265	19.0
(D) Enhanced Coagulation + Chlorine	600	43.0	265	19.0
(E) Ozone, Chlorine Dioxide, Granular Activated Carbon, Membranes	232	16.6	90	6.5
Total*	1,395	100	1,395	100

*May not add to total due to independent rounding.

Notable is that the percentage of systems predicted to use advanced technologies (ozone, chlorine dioxide, GAC, or membrane) dropped from 17 percent to 6.5 percent since proposal, and the percentage of systems not affected by the rule increased from 28 percent to 39 percent. This shift in predicted compliance choices is mainly attributed to less stringent disinfection requirements under the IESWTR which would reduce the formation of DBPs and reduce the number of systems requiring treatment to meet the Stage 1 DBPR. It also appears that a substantial number of systems may have already made treatment changes to comply with the 1994 proposed rule.

Table IV–2 illustrates how the compliance forecast changed for small systems using surface water since the time of proposal. As for large systems, the percentage of systems predicted to use advanced technologies dropped substantially, from 17 percent to 6.5 percent. This drop in use of advanced technology (i.e., ozone/chloramines and membrane technologies) is attributed to the change in the IESWTR (as described above) from the time of proposal. However, unlike for large systems, the overall percentage of systems predicted to require treatment modifications did not change. A higher percentage of small systems (70 percent) are predicted to be affected than large systems (61 percent) because previously smaller systems did not have to comply with a TTHM standard.

TABLE IV–2.—COMPARISON OF COMPLIANCE DECISION TREE FOR SURFACE WATER SYSTEMS SERVING <10,000 POPULATION FROM THE 1994 PROPOSAL AND FINAL RULE

	1994		1998	
	# systems	% systems	# systems	% systems
No Further Treatment	1,549	30	1,549	30
Number of Affected Systems	3,615	70	3,615	70
Treatment:				
Chlorine/Chloramine	155	3.0	826	16.0
Enhanced Coagulation	2,169	42.0	1,983	38.4
Enhanced Coagulation/Chloramine	465	9.0	465	9.0
Ozone/Chloramine	258	5.0	184	3.6
Enhanced Coagulation+Ozone, Chloramine	258	5.0	0	0
Membranes	310	6.0	157	3.0

Table IV–3 illustrates the compliance forecast for ground water systems. This forecast did not change from the time of proposal. A smaller percentage of small ground water systems are anticipated to need treatment changes (12 percent) than large ground water systems (15 percent) because the use of disinfectants is more prevalent in large versus small ground water systems.

TABLE IV–3.—COMPLIANCE DECISION TREE FOR ALL GROUND WATER SYSTEMS

	Systems <10,000		Systems ≥10,000	
	# systems	% systems	# systems	% systems
No Further Treatment	59,847	88	1,122	85
Percentage of Affected Systems	8,324	12	198	15
Treatment:				
Chlorine/Chloramine	5,403	8	119	9
Ozone/Chloramine	0	0	26	2
Membranes	2,921	4	53	4

2. System Level Unit Costs

Tables IV–4 and IV–5 present the unit cost estimates in 1998 dollars that were utilized for each of the different treatment technologies in each system size category. Unit costs are presented in $ per 1000 gallons which includes operation and maintenance costs and amortized capital costs (using a 7% discount rate and a 20 year amortization period). One dollar per thousand gallons equates to approximately $100 per household per year as an average for communities in the U.S. More detailed information on these unit costs is available from the EPA's Cost and Technology Document (EPA, 1998k).

TABLE IV–4.—SURFACE WATER SYSTEMS COSTS FOR DBP CONTROL TECHNOLOGIES ($/KGAL) AT 7% COST OF CAPITAL

	Population size category											
	25–100	100–500	500–1K	1–3.3K	3.3–10K	10–25K	25–50K	50–75K	75–100K	100K–500K	500K–1M	>1M
Chlorine/Chloramine	0.71	0.19	0.06	0.03	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01
Enhanced Coagulation (EC)	0.15	0.13	0.12	0.11	0.09	0.08	0.07	0.07	0.07	0,07	0.06	0.06
EC/Chloramine	0.87	0.32	0.18	0.14	0.12	0.09	0.08	0.08	0.08	0.07	0.07	0.07
Ozone/Chloramine	12.67	3.21	1.05	0.52	0.38	0.23	0.13	0.10	0.08	0.06	0.04	0.04
EC+Ozone, Chloramine	12.82	3.34	1.17	0.63	0.47	0.30	0.20	0.17	0.15	0.13	0.11	0.10
EC+GAC10	6.24	2.43	1.21	0.81	0.59	0.46	0.37	0.35	0.29	0.24	0.19	0.16
EC+GAC20	14.11	5.87	3.45	2.45	1.87	1.48	1.05	1.00	0.90	0.64	0.48	0.41
Chlorine Dioxide	24.33	5.73	1.65	0.64	0.24	0.11	0.07	0.07	0.06	0.05	0.04	0.04
Membranes	3.40	3.47	3.39	2.65	1.72	0.96	0.96	0.87	0.87	0.87	0.87	0.87

TABLE IV–5.—GROUND WATER SYSTEMS COSTS FOR DBP CONTROL TECHNOLOGIES ($/KGAL) AT 7% COST OF CAPITAL

	Population size category											
	25–100	100–500	500–1K	1–3.3K	3.3–10K	10–25K	25–50K	50–75K	75–100K	100K–500K	500K–1M	>1M
Chlorine/Chloramine	0.72	0.19	0.06	0.03	0.03	0.02	0.01	0.01	0.01	0.01	0.01	0.01
Ozone/Chloramine	12.67	3.21	1.05	0.52	0.38	0.23	0.13	0.10	0.08	0.06	0.04	0.04
Membranes	3.41	3.47	3.39	2.65	1.72	0.96	0.96	0.87	0.87	0.87	0.87	0.87

3. National Costs

Table IV–6 provides a detailed summary of national costs in 1998 dollars under the Stage 1 DBPR for different cost of capital assumptions under a 20 year amortization period. A cost of capital rate of 7 percent was used to calculate the unit costs for the national compliance cost model. This rate represents the standard discount rate preferred by OMB for benefit-cost analyses of government programs and regulations. The 3 percent and 10 percent rates are provided as a sensitivity analysis to show different assumptions about the cost of capital that would affect estimated

costs. The 10 percent rate also provides a link to the 1994 Stage 1 DBPR cost analysis which was based on a 10 percent rate. EPA believes that the cost estimates presented in Table IV–6 are probably within +/−30 percent. Uncertainty around the cost estimates pertain to compliance forecast estimates, unit cost estimates for the different technologies as they may pertain to individual sites, and estimated costs associated with monitoring.

TABLE IV–6.—SUMMARY OF COSTS UNDER THE STAGE 1 DBPR ($000)

Utilities Costs	Surface water systems			Ground water systems			All systems
	Small	Large	Total	Small	Large	Total	
Summary of Costs at 3 Percent Cost of Capital							
Treatment Costs							
Total Capital Costs	242,652	554,564	797,216	997,537	528,539	1,526,076	2,323,292
Annual O&M	23,068	201,308	224,376	83,910	54,243	137,153	362,530
Annualized Capital Costs	16,326	37,161	53,487	67,287	35,618	102,905	156,392
Annual Utility Treatment Costs	39,394	238,469	277,863	151,197	89,861	240,058	518,922
Monitoring and Reporting Cost:							
Start-Up Costs	59	28	87	674	26	700	787
Annual Monitoring	10,867	14,619	25,486	38,803	26,326	65,129	90,615
State Costs:							
Start-Up Costs	.....	.....	.....	.....	.....	.....	2,919
Annual Monitoring	.....	.....	.....	.....	.....	.....	13,243
Total Annual Costs at 3 Percent Cost of Capital	.....	.....	.....	.....	.....	.....	626,486
Summary of Costs at 7 Percent Cost of Capital							
Total Capital Costs	242,652	554,564	797,216	997,537	528,539	1,526,076	2,323,292
Annual O&M	23,068	201,308	224,376	83,910	54,243	137,153	362,530
Annualized Capital Costs	22,786	62,355	85,141	94,403	50,046	144,499	229,590
Annual Utility Treatment Costs	45,855	263,663	309,518	178,313	104,289	282,602	592,120
Monitoring and Reporting Cost:							
Start-Up Costs	82	39	121	946	36	982	1,103
Annual Monitoring	10,867	14,619	25,486	38,803	26,326	65,129	90,615
State Costs:							
Start-Up Costs	.....	.....	.....	.....	.....	.....	4,099
Annual Monitoring	.....	.....	.....	.....	.....	.....	13,243
Total Annual Costs at 7 Percent Cost of Capital	.....	.....	.....	.....	.....	.....	701,180
Summary of Costs at 10 Percent Cost of Capital							
Total Capital costs	242,652	554,564	797,216	997,537	528,539	1,526,076	2,323,292
Annual O&M	23,068	201,308	224,376	83,910	54,243	137,153	362,530
Annualized Capital Costs	28,423	74,639	103,062	117,328	62,522	179,850	282,912
Annual Utility Treatment Costs	51,491	275,947	327,438	201,238	116,765	317,003	645,442
Monitoring and Reporting Cost:							
Start-Up Costs	102	48	150	1,177	45	1,222	1,372
Annual Monitoring	10,867	14,619	25,486	38,803	26,326	65,129	90,615
State Costs:							
Start-Up Costs	.....	.....	.....	.....	.....	.....	5,100
Annual Monitoring	.....	.....	.....	.....	.....	.....	13,243
Total Annual Costs at 10 Percent Cost of Capital	.....	.....	.....	.....	.....	.....	755,772

The total national costs of the final Stage 1 DBPR are less than estimated in the RIA for the proposed rule in 1994. The estimated capital costs of the 1994 proposal in 1998 dollars is $4.97 billion and the total annual cost (assuming a 10 percent cost of capital as was assumed in 1994) is $1.3 billion. The drop in national costs from the 1994 proposal is mainly attributed to the lowering of the number of surface water systems anticipated to need advanced technologies and lower membrane technology costs as described above.

D. Benefits Analysis

1. Exposure Assessment

A large portion of the U.S. population is exposed to DBPs via drinking water. Over 200 million people in the U.S. are served by PWSs which apply a disinfectant (e.g., chlorine) to water in order to provide protection against microbial contaminants. Because of the large number of people potentially exposed to DBPs, there is a substantial concern for any health risks which may be associated with exposure to DBPs.

Several factors are necessary to assess the exposure to DBPs: the size of the population potentially at risk; the method and rate of ingestion; and the concentration of DBPs in drinking

water. Because DBPs are formed in drinking water by the reaction of disinfectants with natural organic and inorganic matter, the population at risk is identified as the population served by drinking water systems that disinfect. The population served by each of four system categories, taken from recent Safe Drinking Water Act Information System data (SDWIS) is estimated in Table IV–7. Based on recent information from SDWIS, it was assumed that all surface water systems disinfect and a portion of ground water systems disinfect (95 percent by population among large systems and 83 percent by population among small systems). Approximately 239 million persons are estimated to be served by water systems that disinfect and are potentially exposed to DBPs. This widespread exposure represents over 88 percent of the total U.S. population (270 million). The route of exposure is through drinking disinfected tap water.

TABLE IV–7.—POPULATION POTENTIALLY EXPOSED TO DBPS

	Population served	% of population receiving disinfected water	Population served by systems that disinfect
Large Surface Water: >10,000 persons	141,297,000	100	141,297,000
Small Surface Water: <10,000 persons	17,232,000	100	17,232,000
Large Ground Water: >10,000 persons	56,074,000	95	53,270,300
Small Ground Water: < 10,000 persons	32,937,000	83	27,337,710
Total			239,137,010

In general, little data are available on the occurrence of DBPs on a national basis. Although there is sufficient occurrence data available for THMs in large water systems to develop a national occurrence distribution for that subset of systems, data are limited for small water systems. Similarly, some occurrence data for HAA5 are available for large surface water systems, but not small surface water and groundwater systems.

2. Baseline Risk Assessment Based on TTHM Toxicological Data

EPA performed a quantitative risk assessment using the dose-response information on THMs. This assessment, however, captures only a portion of the potential risk associated with DBPs in drinking water. It is not possible, given existing toxicological and exposure data, to gauge how much of the total cancer risk associated with the consumption of chlorinated drinking water is posed by TTHMs alone. An assessment of THMs, however, provides some estimation of the potential human risk, albeit limited.

Performing the risk assessment based on TTHM toxicological data requires making several assumptions and extrapolations (from a nonhuman species to humans, from high doses in the laboratory study to lower environmental exposures, and from a nondrinking water route to the relevant route of human exposure). Assumptions are also made about the occurrence of TTHMs and the individual DBPs. EPA estimated the pre-Stage 1 DBPR TTHM concentration levels by calculating a weighted average (based on populations receiving disinfected waters) of TTHM levels among the different system type categories described in Table IV–7. TTHM levels among systems serving greater than 10,000 people were estimated based on average concentrations among systems in AWWA's WIDB. TTHM levels in systems serving less than 10,000 people were estimated through modeling. Modeling consisted of applying TTHM predictive equations to estimates of DBP precursor levels and treatment conditions. The mean weighted average baseline TTHM concentrations among all the system type categories was 44 μg/L.

Occurrence data from an EPA DBP field study indicate that chloroform is the most common THM (in general, about 70 percent of total THMs), with bromoform being the least common (1 percent). Bromodichloromethane has an occurrence of approximately 20 percent of the total THMs, with dibromochloromethane comprising the final 8 percent of the total THMs. In the absence of more detailed occurrence data, these proportions are used to divide the average TTHM concentration into the concentration for the four individual compounds.

Two estimates of risk factors were used to estimate the cancer incidence. The first set of lifetime unit risk factors represent the upper 95 percent confidence limit of the dose-response function. The second estimate of lifetime unit risk is the maximum likelihood estimate used in the 1994 analysis that represents the central tendency of the dose-response function (Bull, 1991). The annual unit risk is calculated by dividing the lifetime risk by a standard assumption of 70 years per lifetime. To calculate the annual incidence of cancer due to consumption of TTHMs in drinking water, the annual drinking water unit risk is multiplied by the number of units, in this case the concentration of TTHMs in μg/L, broken out into individual THMs based on the proportions presented above. Based on these cancer risk estimates derived from laboratory animal studies, the annual 95th percentile upper bound number of cancer cases attributable to TTHMs is approximately 100. This means that there is a 95 percent chance that the annual number of cases are less than or equal to 100. Using the maximum likelihood or ''best'' estimates, the annual number of cancer cases is about 2.

3. Baseline Analysis Based on Epidemiology Data

Epidemiological studies can be used to assess the overall population risk associated with a particular exposure. Since the late 1970s, epidemiological investigations have attempted to assess whether chlorinated drinking water contributes to the incidence of bladder, colon, rectal, and other cancers. Several studies have reported a weak association between bladder cancer and exposure to chlorinated drinking water, but a causal relationship has not been confirmed (Freedman, et al., 1997).

Several cancer epidemiological studies examining the association between exposure to chlorinated surface water and cancer were published subsequent to the 1994 proposed rule and the 1992 meta-analysis. In general, these new studies are better designed than the studies published prior to the 1994 proposal. The new studies include incidence of disease, interviews with the study subjects, and better exposure assessments. More evidence is available

on bladder cancer for a possible association to exposure to chlorinated surface water than other cancer sites. Because of the limited data available for other cancer sites such as colon and rectal cancer, the RIA focuses on bladder cancer.

Based on the best studies, a range of potential risks was developed through the use of the population attributable risk (PAR) concept. Epidemiologists use PAR to quantify the fraction of disease burden in a population (e.g., bladder cancer) that could be eliminated if the exposure (e.g., chlorinated drinking water) was absent. PAR (also referred to as attributable risk, attributable portion, or etiologic fraction) provides a perspective on the potential magnitude of risks associated with various exposures under the assumption of causality. For example, the National Cancer Institute estimates that there will be 54,500 new cases of bladder cancer in 1997. If data from an epidemiological study analyzing the impact of consuming chlorinated drinking water reports a PAR of 1 percent, it can be estimated that 545 (54,500 × .01) bladder cancer cases in 1997 may be attributable to chlorinated drinking water.

Under the Executive Order #12866 that requires EPA to conduct a RIA, EPA has chosen to estimate an upper bound bladder cancer risk range for chlorinated drinking water using the PAR. EPA suggested this approach in the 1998 NODA (EPA, 1998a). While EPA recognizes the limitations of the current epidemiologic data base for making these estimates, the Agency considers the data base reasonable for use in developing an upper bound estimate of bladder cancer risk for use in the RIA. In light of the toxicological evidence, EPA recognizes that the risks from chlorinated drinking water may be considerably lower than those derived from the currently available epidemiological studies. EPA selected studies for inclusion in the quantitative analysis if they contained the pertinent data to perform a PAR calculation and met all three of the following criteria:

1. The study was a population-based, case-control, or cohort study conducted to evaluate the relationship between exposure to chlorinated drinking water and incidence of cancer cases, based on personal interviews; (all finally selected studies were population-based, case-control studies)

2. The study was of high quality and well designed (e.g., adequate sample size, high response rate, adjusted for known confounding factors); and,

3. The study had adequate exposure assessments (e.g., residential histories, actual THM data).

Using the above criteria, five bladder cancer studies were selected for estimating the range of PARs.

- Cantor, et al., 1985;
- McGeehin, et al., 1993;
- King and Marrett, 1996;
- Freedman, et al., 1997; and
- Cantor, et al., 1998.

The PARs from the five bladder cancer studies ranged from 2 percent to 17 percent. These values were derived from measured risks (Odds Ratio and Relative Risk) based on the number of years exposed to chlorinated surface water. Because of the uncertainty in these estimates, it is possible that the PAR could also be zero. The uncertainties associated with these PAR estimates are large due to the common prevalence of both the disease (bladder cancer) and exposure (chlorinated drinking water).

In order to apply these PAR estimates to the U.S. population to estimate the number of bladder cancer cases attributable to DBPs in drinking water, a number of assumptions must be made. These include: (1) that the study populations selected for each of the cancer epidemiology studies are reflective of the entire population that develops bladder cancer; (2) that the percentage of those cancer cases in the studies exposed to chlorinated drinking water are reflective of the bladder cancer cases in the U.S.; (3) that DBPs were the only carcinogens in these chlorinated surface waters; and (4) that the relationship between DBPs in chlorinated drinking water exposure and bladder cancer is causal.

The last of these assumptions is perhaps the most open to question. As noted in the March 1998 NODA, the results of the studies are inconsistent. In light of these concerns, the Agency agrees that causality between exposure to chlorinated water and bladder cancer has not been established and that the number of cases attributable to such exposures could be zero.

Based on the estimate of 54,500 new bladder cancer cases per year nationally, as projected by the National Cancer Institute for 1997, the numbers of possible bladder cancer cases per year potentially associated with exposures to DBPs in chlorinated drinking water estimated from the five studies range from 1,100 (0.02 × 54,500) to 9,300 (.17 × 54,500) cases. As noted above, due to the uncertainty in these estimates, the number of cases could also be zero. In making these estimates it is necessary to assume that these bladder cancer cases are attributed to DBPs in chlorinated surface water, even though the studies examined the relationship between chlorinated surface water and bladder cancer. This derived range is not accompanied by confidence intervals (C.Is), but the C.Is. are likely to be very wide. EPA believes that the mean risk estimates from each of the five studies provides a reasonable estimate of the potential range of risk suggested by the different epidemiological studies. Table IV–8 contains a summary of the risk estimates from the 1994 draft RIA and the estimates derived from the more recent analysis.

A related analysis based on odds ratios was conducted to derive a range of plausible estimates for cancer epidemiologic studies (EPA, 1998n). This analysis was also based on bladder cancer studies (the five studies cited above in addition to Doyle *et al.* 1997). For the purpose of this exercise, the annual U.S. expected number of 47,000 bladder cancers cited by Morris et al.(1992) was used to calculate estimates of the cancers prevented. The number of cancers attributable to DBP exposure was estimated not to exceed 2,200–9,900 per year and could include zero. As would be expected from related analysis performed in the same data, this range is similar to the 1,100–9300 PAR range. EPA has used the 1100–9300 PAR range for the RIA.

TABLE IV–8.—NUMBER OF CANCER CASES ATTRIBUTABLE TO DBPS: COMPARISON OF ESTIMATES IN 1994 AND 1998

	1994 estimates	1998 estimates
Number of New Bladder Cancer Cases/Year	Approx. 50,000	54,500.
Number of Estimated Deaths Due to Bladder Cancer/Year	Did not state	12,500.
Attributable to DBPs in Drinking Water		
Data Source	>15 studies	5 studies that meet specific criteria.
Causality	No	No.
Percent Attributable to DBPs	Did not state	2% to 17%.

TABLE IV–8.—NUMBER OF CANCER CASES ATTRIBUTABLE TO DBPS: COMPARISON OF ESTIMATES IN 1994 AND 1998—Continued

	1994 estimates	1998 estimates
Number of Cancer Cases Attributable to DBPs:		
Estimated Using Toxicological Data	Less than 1*	Zero to 100.**
Estimated Using Epidemiological Data	Over 10,000***	Zero to 9,300.****

* Based on maximum likelihood estimates of risk from THMs.
** Based on IRIS 95th percent C.I. estimates of risk from THMs.
*** Indicates rectal and bladder cancer cases.
**** Indicates only bladder cancer cases.

The current benefits analysis is structured in roughly the same manner as that presented in the 1994 RIA. The baseline cancer risks could lie anywhere from zero to 100 cases per year based on toxicological data; and zero to 9,300 cases per year based on epidemiological data. Consequently, the task is to assess the economic benefit of the final Stage 1 DBPR in the face of this broad range of possible risk.

4. Exposure Reduction Analysis

EPA predicted exposure reductions due to the current Stage 1 DBPR relative to the present baseline. EPA used the concentration of TTHMs as a marker to measure the exposure to the range of DBPs because data are available on the baseline occurrence and formation of TTHMs. There are limited data on the total mix of byproducts in drinking water. Therefore, the reduction in TTHMs is assumed to reflect the reduction in exposure to all DBPs. To determine the change in exposure, it is necessary to estimate the pre-Stage 1 baseline average TTHM concentration and the post Stage 1 average TTHM concentration. The difference in the pre- and post-Stage 1 TTHM concentrations reflect the potential reduction in TTHMs and thus in DBPs.

As described previously, the estimated pre-Stage 1 TTHM weighted average concentration is 44 μg/L for all system sizes and types of systems. The post Stage 1 TTHM concentrations for each system category were estimated based on the technology compliance forecasts previously discussed and estimated reductions in TTHM levels depending upon technology. The post-Stage 1 TTHM weighted average concentration is estimated at 33 μg/L. This represents a 24 percent reduction in TTHM levels resulting from the Stage 1 DBPR. Further details of the above analysis is described in the RIA for the Stage 1 DBPR (USEPA, 1998g).

5. Monetization of Health Endpoints

The range of potential benefits from the Stage 1 DBPR can be estimated by applying the monetary values for fatal and nonfatal bladder cancer cases with the estimate of the number of bladder cancer cases reduced by the rule. The following assumptions are used to estimate the range of potential benefits:

- An estimate of the number of bladder cancer cases attributable to DPBs in drinking water ranging from 0 to 9,300 annually.
- A 24 percent reduction in exposure to TTHMs due to the Stage 1 DBPR (75 percent CI of 19 to 30 percent) will result in an equivalent reduction in bladder cancer cases
- A value per statistical life saved for fatal bladder cancers represented by a distribution with a mean of $5.6 million
- A willingness to pay to avoid a nonfatal case of bladder cancer represented by a distribution with a mean of $587,500

Using the low end of the risk range of 0 bladder cancer cases attributable to DBPs results in a benefits estimate of $0. To calculate the high end of the range, the 9,300 estimate of attributable cases is multiplied by the percent reduction in exposure to derive the number of bladder cancer cases reduced (9,300 × .24 = 2,232 bladder cancer cases reduced). This assumes a linear relationship between reduction in TTHMs concentrations and reduction in cancer risk (e.g., 24 percent reduction in TTHMs concentration is associated with a 24 percent reduction in cancer risk). Assuming 23 percent of the bladder cancer cases end in fatality and 77 percent are nonfatal, the number of fatal bladder cancer cases reduced is 513 (2,232 × .23) and the number of nonfatal bladder cancer cases is 1,719 (2,232 × .77). Based on the valuation distributions described above, the estimate of benefits at the mean associated with reducing these bladder cancer cases is approximately $4 billion. It should be noted that these estimates do not include potential benefits from reducing other health effects (e.g, colon/rectal cancer and reproductive endpoints) that cannot be quantified at this time. As a result, EPA believes that the potential benefits discussed in today's rule may be a substantial underestimate of potential benefits that will be realized as a consequence of today's action. While the low end of the range cannot extend below $0, it is possible that the high end of the range could extend beyond $4 billion if the other reductions in risk could be quantified and monetized. No discount factor has been applied to these valuations, although there is likely to be a time lag between compliance with the rule and the realization of benefits.

Given this wide range of potential benefits and the uncertainty involved in estimating the risk attributable to DBPs, EPA undertook five different approaches to assessing the net benefits of the Stage 1 DBPR. These approaches are described in the net benefits section and should be considered both individually and in the aggregate.

E. Net Benefits Analysis

The potential economic benefits of the Stage 1 DBPR derive from the increased level of public health protection and associated decreased level of risk. The quantification of the benefits resulting from DBP control is complicated by the uncertainty in the understanding of the health risks. Epidemiological studies, referred to previously, suggest an association between bladder cancer and exposure to chlorinated surface water; however, these risks are uncertain. The lowest estimate in the selected epidemiological studies of the number of new bladder cancer cases per year attributable to chlorinated surface water is 1,100 cases, while the highest is 9,300 cases. EPA recognizes that while these risks may be real, they also could be zero. Assessment of risks based only on toxicological data for THMs, indicate a much lower risk (2 cancer cases per year at the most likely estimate, to about 100 cases per year using the 95 percent confidence level upper bound), but THMs represent only a few of the many DBPs in drinking water.

EPA explored several alternative approaches for assessing the benefits of the Stage 1 DBPR: Overlap of Benefit and Cost Estimates; Minimizing Total Social Losses; Breakeven Analysis;

Household Costs; and Decision-Analytic Model. A summary of the analysis of each approach is presented below. More detailed descriptions are described in the RIA (USEPA, 1998g).

Overlap of Benefit and Cost Estimates. One method to characterize net benefits is to compare the relative ranges of benefits and costs. Conceptually, an overlap analysis tests whether there is enough of an overlap between the range of benefits and the range of costs for there to be a reasonable likelihood that benefits will exceed costs. In a theoretical case where the high end of the range of benefits estimates does not overlap the low end of the range of cost estimates, a rule would be difficult to justify based on traditional benefit-cost rationale.

For the Stage 1 DBPR, the overlap analysis (Figures IV–1a and IV–1b) show that there is substantial overlap in the estimates of benefits and costs. The range of quantified benefits extends from zero to over $4 billion. The zero end of the range of estimated benefits represents the possibility that there is essentially no health benefit from reducing exposure to DBPs. The other end of the range assumes there are 9,300 bladder cancer cases per year attributable to DBPs and there is a 24 percent annual reduction in exposure with the promulgation of the rule, resulting in avoidance of 2,232 cases. Assuming that number of avoided cases, approximately 513 would have been fatalities and would result in a cost savings of approximately $3 billion (each avoided fatality results in a cost savings of $5.6 million). Additionally, 1,719 non-fatal cases avoided would result in a cost savings of approximately $1 billion (each avoided non-fatal case results in a cost savings of $0.6 million). The sum of the cost savings is approximately $4 billion. The high end of the benefits range could potentially be higher if other health damages are avoided. The range of cost estimates is significantly smaller, ranging from $500 million to $900 million annually. Although these cost estimates have uncertainty, the degree of uncertainty is of little consequence to the decisions being made given the scale of the uncertainty for the benefits.

Figure IV–1b, on the other hand, indicates that while the quantified benefits could exceed the costs, there is the possibility that there could be negative net benefits if there were no health benefits.

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Figure IV–1a Overlap of Estimated Benefits and Costs of the Stage 1 DBPR

Figure IV–1b Overlap of the Ranges of the Estimated Benefits and Costs of the Stage 1 DBPR

Figure IV-1a Overlap of Estimated Benefits and Costs of the Stage 1 DBPR

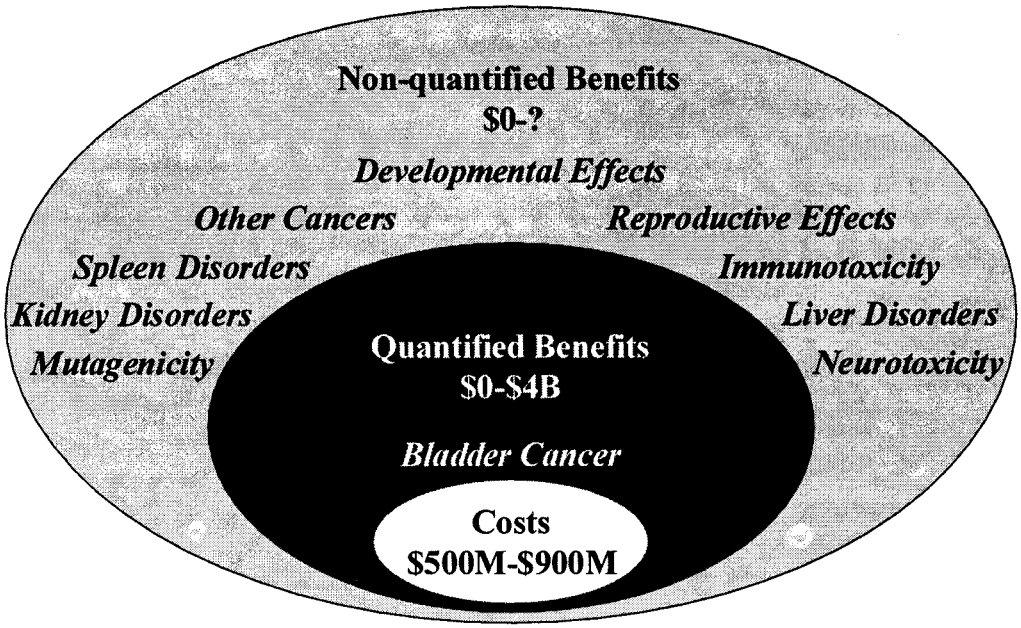
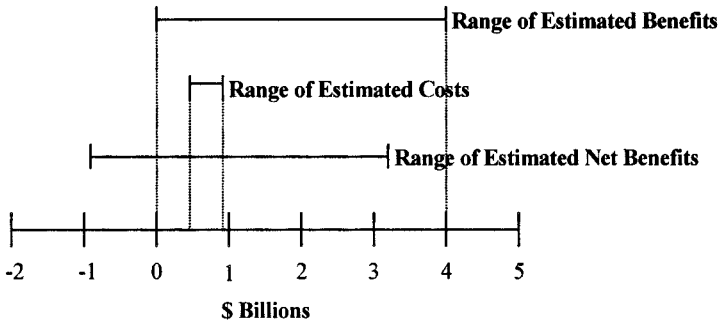


Figure IV-1b Overlap of the Ranges of the Estimated Benefits and Costs of the Stage 1 DBPR



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Minimizing Total Social Losses Analysis. Minimizing Total Social Losses analysis, sometimes called ''minimizing regrets'' analysis, is a decision-aiding tool that is suited for use in situations where it is impossible to pin down the exact nature and extent of a risk. The basic premise of Minimizing Total Social Losses analysis is to estimate total social costs for policy alternatives over a range of plausible risk scenarios. The actual, or ''true'' risk is unknowable, so instead this analysis asks what range and level of risks could be true, and then evaluates the total costs to society if particular risk levels within that range turned out to be the ''true'' value. Total social costs include both the cost to implement the policy option, plus costs related to residual (i.e., remaining) health damages at each risk level after implementation of the policy option.

Under this analysis the ''total social costs'' (water treatment costs plus costs of health damages still remaining after treatment) are calculated for three regulatory alternatives (No Action, Stage 1, and Strong Intervention—otherwise known as the proposed Stage 2 requirements of the 1994 proposal) across a range of risk scenarios (< 1; 100; 1,000; 2,500; 5,000; 7,500; and 10,000 attributable bladder cancer cases annually). Total social costs for each regulatory alternative for different risk assumptions are presented in Table IV–9. The results indicate that the Stage 1 DBPR has the least social cost among the three alternatives analyzed across the range of risks from 2,500 through 7,500 attributable bladder cancer cases annually.

Total ''social loss'' for each risk scenario are also indicated in Table IV–9. The ''social loss'' is the cost to society of making a wrong choice among the regulatory alternatives. It is computed as the difference between the total social cost (water treatment cost plus remaining health damages) of an alternative at a given risk scenario and the total social cost of the best alternative (least total social cost alternative for that risk scenario). The regulatory alternatives across the different risk levels can also be compared to see which alternative minimizes the maximum potential loss. The best alternative, by this ''mini-max'' criteria, would be the one in which the upper bound of potential losses is smallest.

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TABLE IV-9

Stage 1 DBPR Minimizing Maximum Loss Analysis (Billions of Dollars, 1998 Dollars)

	Risk Scenarios						
	<1 Cancer Case	100 Cancer Cases	1,000 Cancer Cases	2,500 Cancer Cases	5,000 Cancer Cases	7,500 Cancer Cases	10,000 Cancer Cases
No Action							
Cost of DBP Rule Option	$0	$0	$0	$0	$0	$0	$0
Residual Health Costs [1]	$0	$0.176	$1.755	$4.388	$8.776	$13.164	$17.552
Total Excess Social Losses	$0	$0.176	$1.755	$4.388	$8.776	$13.164	$17.552
Excess Social Losses	***$0***	***$0***	***$0***	***$0.352***	***$1.405***	***$2.458***	***$4.129***
Stage 1							
Cost of DBP Rule Option	$0.701	$0.701	$0.701	$0.701	$0.701	$0.702	$0.701
Residual Health Cost [1,2]	$0	$0.131	$1.335	$3.335	$6.670	$10.005	$13.340
Total Social Costs	$0.701	$0.832	$2.036	$4.036	$7.371	$10.706	$14.041
Excess Social Losses	***$0.701***	***$0.656***	***$0.281***	***$0***	***$0***	***$0***	***$0.617***
Strong Intervention (RegNeg Stage II Placeholder)							
Cost of DBP Rule Option	$2.892	$2.892	$2.892	$2.892	$2.892	$2.892	$2.892
Residual Health Cost [1,3]	$0	$0.106	$1.053	$2.633	$5.266	$7.899	$10.531
Total Social Costs	$2.892	$2.998	$3.945	$5.525	$8.158	$10.791	$13.423
Excess Social Losses	***$2.892***	***$2.823***	***$2.190***	***$1.489***	***$0.787***	***$0.085***	***$0***

1 Mean values from Crystal Ball Simulation **2** Assumes 24 percent reduction in exposure **3** Assumes 40 percent reduction in exposure

Gray shading represents maximum excess social loss for each alternative action (row).

Under the Stage 1 DBPR alternative, the worst loss that could happen would occur if the lowest end of the risk range is true. This would result in total social losses of $0.7 billion per year. It is concluded that the maximum potential loss of the Stage 1 alternative is smaller than that of No Action ($4.1 billion) by a factor of 6 and smaller than that of Strong Intervention ($2.9 billion) by a factor of 4. Thus, the Stage 1 DBPR is the best of the 3 alternatives at minimizing the maximum social loss.

The 1994 Reg. Neg. and 1997 M–DBP Advisory Committees implicitly applied this type of ''minimizing maximum loss'' framework when developing and evaluating the DBP regulatory options. In the face of large uncertainty regarding risk from DBPs, they decided that a moderate response, relying on the more cost-effective of the available treatment methods was appropriate as an interim step until more information on risk becomes available.

Break Even Analysis. Breakeven analysis represents another approach to assessing the benefits of the Stage 1 DBPR given the scientific uncertainties. Breakeven is a standard benchmark of cost effectiveness and economic efficiency, and is essentially the point where the benefits of the Stage 1 DBPR are equal to the costs. Normally, the benefits and costs of an option are calculated separately and then compared to assess whether and by what amount benefits exceed costs. In the case of the Stage 1 DBPR, independently estimating benefits is difficult, if not impossible, because of the 10,000-fold uncertainty surrounding the risk. Instead, the breakeven analysis works backwards from those variables that are less uncertain. In this case, implementation costs for the rule and the monetary value associated with the health endpoints are used to calculate what baseline risk and risk reduction estimates are needed in order for the benefits, as measured in avoided health damages associated with bladder cancer, to equal the costs.

Two important concepts for this analysis are the cost of illness measure and the willingness-to-pay measure. The cost of illness measure includes medical costs and lost wages associated with being unable to work as a result of illness. In comparison, willingness-to-pay measures how much one would pay to reduce the risk of having all the discomfort and costs associated with nonfatal cancer if such an option existed. The main difference between these two methods is that willingness-to-pay incorporates pain and suffering, as well as changes in behavior into the valuation, while cost of illness does not. EPA has estimated the cost of a non-fatal case of bladder cancer at $121,000 using the cost of illness method, and at $587,500 using the willingness-to-pay approach.

Assuming an annual cost of $701 million and assumptions about the monetary value of preventing both fatal and nonfatal bladder cancer cases, the Stage 1 DBPR would need to reduce 438 bladder cancer cases per year using the willingness-to-pay measure for nonfatal cancers or 574 cases per year using the cost of illness measure. If exposure is reduced by 24 percent, the baseline number of bladder cancer cases attributable to DBPs in chlorinated drinking water required to break even would need to range from 1,820 to 2,390 new cases annually. Although these values are well above the range indicated by existing toxicological data for THMs alone, they fall within the attributable risk range suggested by the epidemiological studies.

Household Cost Analysis. A fourth approach for assessing the net benefits of the Stage 1 DBPR is to calculate the costs per household for the rule. Household costs provide a common sense test of benefit/cost relationships and are another useful benchmark for comparing the willingness-to-pay to reduce the possible risk posed by DBPs in drinking water. It is essentially a household level breakeven analysis. It works backwards from the cost to ask whether the implied amount of benefits (willingness-to-pay) needed to cover costs is a plausible amount.

About 115 million households are located in service areas of systems affected by the Stage 1 DBPR. Of these households, 71 million (62 percent) are served by large surface water systems. Approximately 4.2 million (4 percent) are served by small surface water systems. Large ground water systems served 24 million households (21 percent) and small ground water systems serve 15.7 million households (14 percent).

All of the households served by systems affected by the Stage 1 DBPR will incur some additional costs (e.g., monitoring costs), even if the system does not have to change treatment to comply with the proposed rule. The costs calculated below include both monitoring and treatment costs.

The cumulative distribution of household costs for all systems and by each system type is displayed in Figures IV–2a, IV–2b, IV–2c. The distributions show that the large percentage of households will incur small additional costs, with a small portion of systems facing higher costs. At the highest end of the distribution, approximately 1,400 households served by surface water systems in the 25–100 size range switching to membrane technology will face an average annual cost increase of $400 per year ($33 per month).

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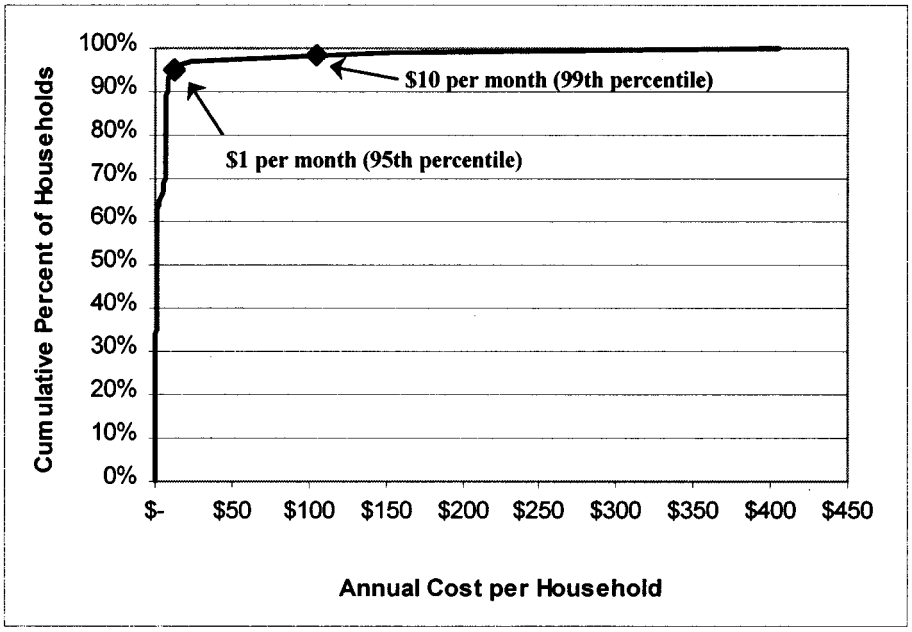
Figure IV-2a

Cumulative Distribution of Annual Household Costs under the Stage 1 DBPR



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The households have been sorted into three cost categories for the ease of comparison (Table IV–10). The first category includes households with a cost increase of less than $12 per year, less than $1 per month. The second category contains households with costs greater than $12 per year, but less than $120 per year ($10 per month). The third category includes households with cost increases greater than $120 per year to $400 per year ($33 per month).

Across all system categories (see Figure IV–2a), 95 percent of the households (110.1 million) fall within the first category and will incur less than $1 per month additional costs due to the Stage 1 DBPR. An additional 4 percent (4.4 million) are in the second category at between $1 and $10 per month cost increase and 1 percent (1.0 million) are in the highest category ($10–$33.40 per month).

For households served by large surface water systems (Figure IV–2b), 98 percent will incur less than $1 per month, 2 percent will incur between $1 and $10 per month, and 0.03 percent will incur greater than $10 per month. The highest cost ($125 annually, $10.40 monthly) is faced by households served by systems in the 10,000 to 25,000 size range implementing membrane technology.

For households served by small surface water systems (Figure IV–2c), 71 percent will incur less than $1 per month, 28 percent will incur between $1 and $10 per month, and 1 percent will incur greater than $10 per month. The highest cost ($400 annually, $33 monthly) is faced by households served by systems in the 25–100 size range implementing membrane technology.

For households served by large ground water systems (Figure IV–2b), 95 percent will incur less than $1 per month, 4 percent will incur between $1 and $10 per month, and 1 percent will incur greater than $10 per month. The highest cost ($125 annually, $10.40 monthly) is faced by households served by systems in the 10,000 to 25,000 size range implementing membrane technology.

For households served by small ground water systems (Figure IV–2c), 91 percent will incur less than $1 per month, 5 percent will incur between $1 and $10 per month, and 4 percent will incur greater than $10 per month. The highest cost ($357 annually, $29.75 monthly) is faced by households served by systems in the 25–100 size range implementing membrane technology.

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Table IV-10

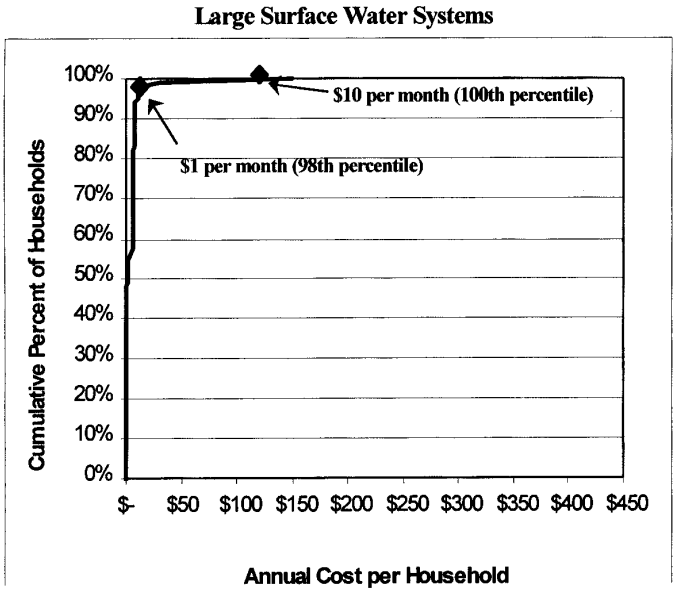
Summary of the Number of Households and Percentage of Total Households in Each Cost Category

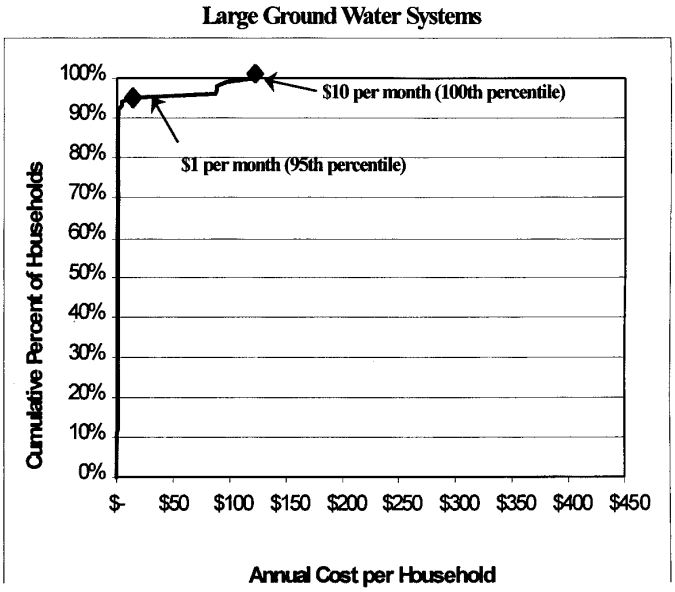
	All Systems		$0 - $12 per Year Cost/Household		$12.01 - $120 per Year Cost/Household		$120.01 - $400 per Year Cost/Household	
	# Households	% Total	# Households	% Total	# Households	% Total	# Households	% Total
Total	115,490,000	100%	110,093,000	95%	4,387,000	4%	1,011,000	1%
Large Surface Water	71,378,000	61.8%	69,870,000	60%	1,489,000	1%	20,000	0.02%
Small Surface Water	4,267,000	3.7%	3,009,000	3%	1,204,000	1%	54,000	0.05%
Large Ground Water	24,174,000	20.9%	22,969,000	20%	939,000	0.8%	266,000	0.2%
Small Ground Water	15,671,000	13.6%	14,245,000	12%	755,000	0.7%	671,000	1%

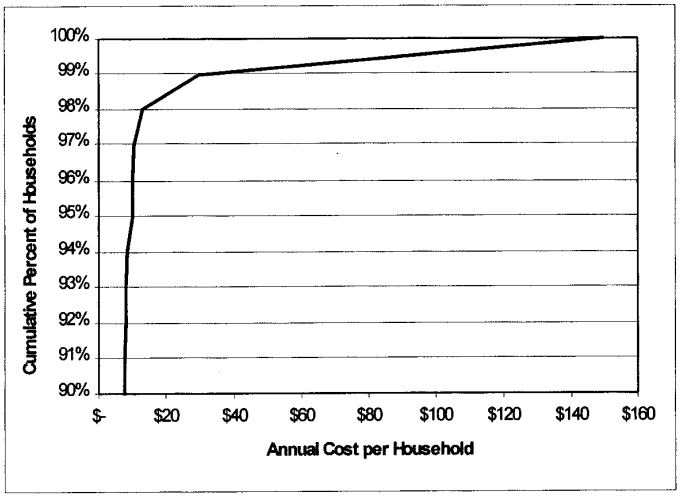
Summary of the Number of Households and Percentage of Households in Each Cost Category by System Type

	All Systems		$0 - $12 per Year Cost/Household		$12.01 - $120 per Year Cost/Household		$120.01 - $400 per Year Cost/Household	
	# Households	% System Category	# Households	% System Category	# Households	% System Category	# Households	% System Category
Total	115,490,000	100%	110,093,000	95%	4,387,000	4%	1,011,000	1%
Large Surface Water	71,378,000	100%	69,870,000	98%	1,489,000	2%	20,000	0.03%
Small Surface Water	4,267,000	100%	3,009,000	71%	1,204,000	28%	54,000	1%
Large Ground Water	24,174,000	100%	22,969,000	95%	939,000	4%	266,000	1%
Small Ground Water	15,671,000	100%	14,245,000	91%	755,000	5%	671,000	4%

Figure IV-2b: Cumulative Distribution of Annual Costs per Household for Large Surface and Ground Water Systems







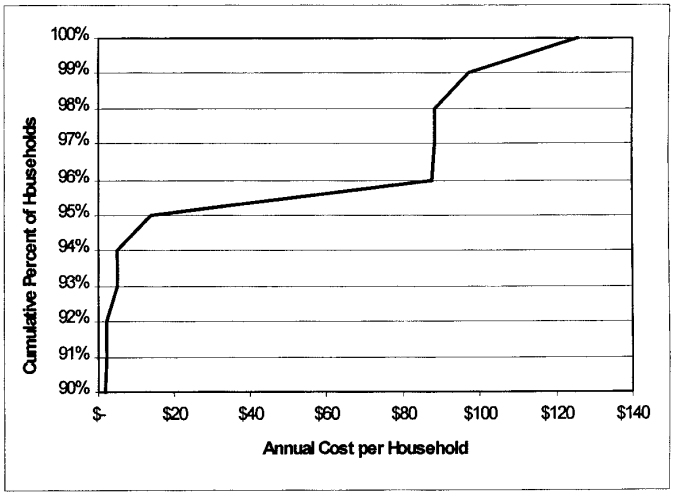
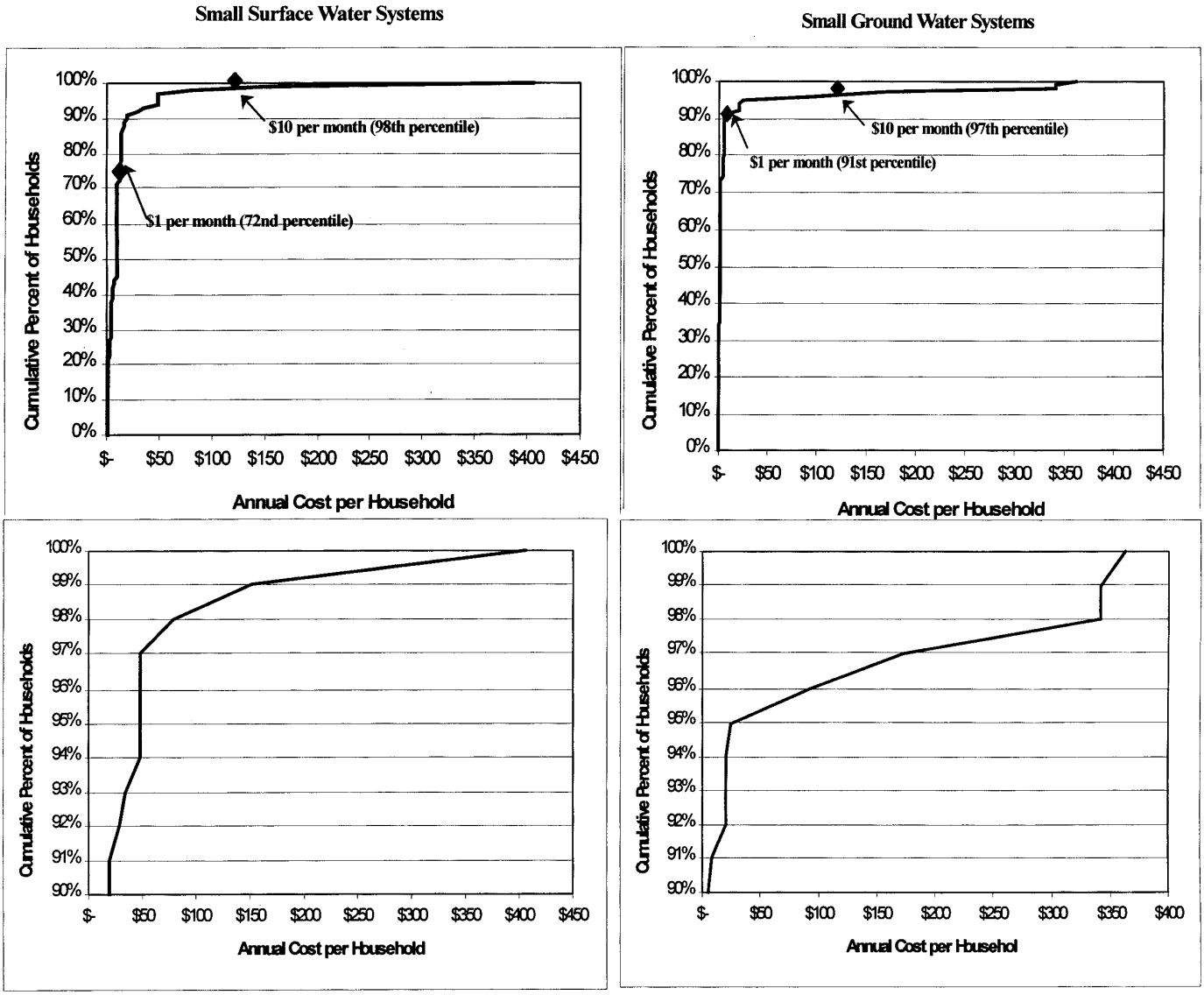


Figure IV-2c Cumulative Distribution of Annual Costs per Household for Small Surface and Ground Water Systems



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In the small proportion of systems where household costs are shown to be much greater—up to several hundreds of dollars per year—these results are driven by the assumption that membrane technologies will be the selected treatment, as noted above. Additionally, two points must be made: (1) a number of these systems may find less expensive means of compliance (e.g., selection of alternative source water, purchased water, or consolidation with other systems); and (2) if these systems do install membranes, they may receive additional water quality and/or compliance benefits beyond those associated with DBPs. For example, because membranes are so effective, systems that install membranes are likely to incur lower compliance costs for future rulemakings.

Given the uncertain nature of the risks associated with DBPs, household costs provide a common sense estimate of willingness-to-pay to reduce the risks: Would the average household (95 percent of households) be willing to pay less than $1 per month ($12 per year) to reduce the potential risks posed by DBPs?

Willingness to pay studies are not available to directly answer this question. Taking the $1 per month figure as a measure of implied public health benefit at the household level, it is useful to ask what benefits can be identified that could balance a $1 per month expenditure. First, it is entirely possible that there is much more than a dollar-a-month's worth of tangible health benefit based on reduced risk of bladder cancer alone. Second, the broad exposure to DBPs and the possible health effects involved offer the possibility that there are significant additional health benefits of a tangible nature. However, the agency recognizes that in the small percentage of situations where the costs per household is between $120 to $400 per year, this may indeed be a difficult financial burden to meet (e.g., may exceed household willingness-to-pay).

Finally, the preventive weighing and balancing of public health protection also provides a margin of safety—a hedge against uncertainties. Recent survey research conducted in the drinking water field provides compelling empirical evidence that the number one priority of water system customers is the safety of their water. Although definitive economic research has not been performed to investigate the extent of household willingness-to-pay for such a margin of safety, there is strong evidence from conventional customer survey research implying a demand for this benefit.

Decision Analytical model. The RIA also discusses a fifth type of analysis in which probability functions are used to model the uncertainty surrounding three variables (rule cost, exposure reduction, and attributable bladder cancer risk) in order to derive a probability distribution function for annual net benefit of the Stage I rule. Because there is little actual data on these probability functions, this approach should be considered illustrative only. It is not discussed further here, but is discussed in Chapter 6 of the RIA for the Stage 1 DBPR (EPA, 1998g).

While any one of the above analytical approaches by itself may not make a definitive case for the benefit-cost effectiveness for the Stage 1 DBPR, taken collectively EPA believes they indicate that the Stage 1 DBPR benefits to society will exceed the costs. The monetized benefits in the five alternatives represent only a portion of total potential benefits. Benefits associated with other cancer sites (rectal and colon) and other health endpoints (such as developmental and reproductive effects) could not be quantified at this time, and while they could be nil, they also could be quite large. Based on a careful weighing of the projected costs against the potential quantified and non-quantified benefits, EPA has determined that the benefits of the rule justify its costs.

F. Summary of Comments

Many commenters expressed concern about the wide range of benefits given the high national cost of the rule. EPA has revised the benefits analysis; and while the associated uncertainties remain large, EPA believes the benefits of the Stage 1 DBPR justify its costs.

Other commenters expressed concern with using the data from Morris *et al.* (1992) for quantifying benefits. They believed that the studies used in the meta-analysis were different in design and thus not appropriate to use in meta-analysis. In addition the commenters believed that potential confounding factors or bias may not have been adequately controlled in the selected studies. Others believed there was utility in using the meta-analysis to provide a perspective on the potential cancer risks. Several commenters were supportive of the Poole (1997) evaluation of the Morris *et al.* (1992) meta-analysis stating that they concurred that the Morris analysis should not be used for estimating benefits for the Stage 1 DBPR. Other commenters suggested a better use of the resources used to complete the Poole report would have been to complete a new meta-analysis using the more recent studies that have come out since the Morris *et al.* (1992) meta-analysis and that the Poole evaluation did not advance the science in this area. Several commenters were critical of the PAR analysis (described in EPA, 1998a) used to characterize the potential baseline bladder cancer cases per year that could be attributable to exposure to chlorinated drinking water. They present several arguments including: questioning whether such an analysis is warranted given the inconsistencies in the studies used to complete the analysis; stating that the use of the term upper bound of any suggested risk of cancer is inappropriate because this does not include the potential risks from other cancer sites such as colon and rectal; using the assumption of causality is not warranted given the inconsistencies in the studies used to complete the PAR analysis; and the PAR analysis should include a lower bound estimate of zero.

EPA agrees that the use of the Morris *et al.* (1992) meta-analysis for estimating benefits is not appropriate for the reasons cited by commenters (e.g., studies of different designs and discussed in more detail in the 1998 DBP NODA). EPA is currently considering whether a new meta-analysis that uses the most recent epidemiology studies would be useful for the Stage 2 rulemaking. The Poole (1997) report considered a meta analysis of the available data. Poole used several techniques to evaluate the data and included several new studies that were available at the time of his analysis. Poole concluded that the cancer epidemiology data considered in his evaluation should not be combined into a single summary estimated and that the data had limited utility for risk assessment purposes. More recent studies by Cantor *et al.* (1998), Doyle *et al.* (1997) and Freedman *et al.* (1997) were not available at the time of his evaluation.

EPA understands commenters concerns with the PAR analysis, especially concerns with assuming ''causality'' in the PAR evaluation when it is stated in other sections of the preamble that EPA does not believe causality has been established. Even though causality has not been established, EPA is required to estimate the potential impacts of major regulations such as the DBP Stage 1 rule. The Agency believes it is appropriate to conduct the PAR analysis as described in the 1998 DBP NODA (EPA, 1998a), to provide estimates of the

potential risk that may need to be reduced. EPA agrees that the use of the term ''upper bound of any suggested risk'' is not appropriate because there are other potential risks that have not been quantified that may contribute to the overall risk estimates. In addition, EPA agrees that the estimates of the potential cancer cases should include zero as this is a possibility given the uncertainties in the data. EPA agrees that several assumptions are made in the analysis regarding the national extrapolation of the results and that there is insufficient information at this time to validate these assumptions. However, given the need to develop national estimates of risk, EPA believes it is appropriate to make these assumptions in order to provide a perspective on the potential risks from exposure to chlorinated surface waters.

Commenters expressed concerns with the high costs associated with systems that must adopt alternative advanced technologies, especially for small systems. Since the 1994 proposal, the projected national costs for the Stage 1 DBPR have dropped significantly (as discussed above). This is mainly due to the revised compliance forecast and lower membrane technology costs. In the revised compliance forecast, fewer systems using surface water will need advanced technologies to comply. This shift to lesser use of advanced technologies to comply with the Stage 1 DBPR also pertains to small systems (those serving less than 10,000 people).

Commenters expressed concern for the high costs associated with the Stage 2 DBPR and whether EPA would obtain enough information to adequately understand the risks that might be avoided to justify such a rule. EPA agrees that additional health effects information is needed before reproposing the Stage 2 DBPR and will address this issue in the next round of FACA deliberations. Based on new data generated through research, EPA will reevaluate the Stage 2 regulations and re-propose, as appropriate.

V. Other Requirements

A. Regulatory Flexibility Act

1. Today's Rule

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis.

Throughout the 1992–93 negotiated rulemaking process for the Stage 1 DBPR and IESWTR and in the July 1994 proposals for these rules, a small PWS was defined as a system serving fewer than 10,000 persons. This definition reflects the fact that the original 1979 standard for total trihalomethanes applied only to systems serving at least 10,000 people. The definition thus recognizes that baseline conditions from which systems serving fewer than 10,000 people will approach disinfection byproduct control and simultaneous control of microbial pathogens is different than that for systems serving 10,000 or more persons. EPA again discussed this approach to the definition of a small system for these rules in the 1998 DBP NODA (EPA, 1998a). EPA is continuing to define ''small system'' for purposes of this rule and the IESWTR as a system which serves fewer than 10,000 people.

The Agency has since proposed and taken comment on its intent to define ''small entity'' as a public water system that serves 10,000 or fewer persons for purposes of its regulatory flexibility assessments under the RFA for all future drinking water regulations. (See Consumer Confidence Reports Rule, 63 FR 7620, Feb. 13, 1998.) In that proposal, the Agency discussed the basis for its decision to use this definition and to use a single definition of small public water system whether the system was a ''small business'', ''small nonprofit organization'', or ''small governmental jurisdiction.'' EPA also consulted with the Small Business Administration on the use of this definition as it relates to small businesses. Subsequently, the Agency has used this definition in developing its regulations under the Safe Drinking Water Act. This approach is virtually identical to the approach used in the Stage 1 DBPR and IESWTR. Since, EPA is not able to certify that the final Stage 1 DBPR will not have a significant economic impact on a substantial number of small entities, EPA has completed a final RFA and will publish a small entity compliance guidance to help small entities comply with this regulation.

2. Background and Analysis

The Regulatory Flexibility Act requires EPA to address the following when completing a final RFA: (1) state succinctly the objectives of, and legal basis for, the final rule; (2) summarize public comments on the initial RFA, the Agency's assessment of those comments, and any changes to the rule in response to the comments; (3) describe, and where feasible, estimate the number of small entities to which the final rule will apply; (4) describe the projected reporting, record keeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the type of professional skills necessary for preparation of reports or records; and (5) describe the steps the Agency has taken to minimize the impact on small entities, including a statement of the reasons for selecting the chosen option and for rejecting other options which would alter the impact on small entities. EPA has considered and addressed all the above requirements in the Regulatory Impact Analysis (RIA) for the Stage 1 DBPR (EPA 1998g). The following is a summary of the RFA.

The first requirement is discussed in section I of today's rule. The second, third and fifth requirements are summarized below. The fourth requirement is discussed in V.B (Paperwork Reduction Act) and the Information Collection Requirement.

Number of Small Entities Affected. EPA estimates that 69,491 groundwater systems will be affected by the Stage 1 DBPR, with 68,171 (98%) of these systems serving less than 10,000 persons. Of the 68,171 small systems affected, EPA estimates that 8,323 (12%) will have to modify treatment to comply with the Stage 1 DBPR. Of these, 5,403 systems (8%) will use chloramines to comply and 2,921 systems (4.3%) will use membranes to comply. Use of these technologies by small groundwater systems will result in total capital costs of $998 million and an annualized treatment cost of $180 million.

EPA estimates that 6,560 surface water systems will be affected by the Stage 1 DBPR, with 5,165 (79%) of these systems serving less than 10,000 persons. It is estimated that 3,616 (70%) of these small systems will have to modify treatment to comply with the Stage 1 DBPR and 3,459 (67%) of these systems will use a combination of enhanced coagulation, chloramines, and ozone, while another 157 systems (3%) will use membranes. Use of these technologies by small surface water systems will result in total capital costs of $243 million and an annualized treatment cost of $46 million.

EPA has included several provisions which will reduce the economic burden of compliance for these small systems. These requirements, discussed in greater detail in the RIA (EPA, 1998g), include:

—Less routine monitoring. Small systems are required to monitor less frequently for such contaminants as TTHMs and HAA5. Also, ground water systems (the large majority of small systems) are required to monitor less frequently than Subpart H systems (surface water systems and groundwater under the direct influence of surface water) of the same size.

—Extended compliance dates. Systems that use only ground water not under the direct influence of surface water serving fewer than 10,000 people have 60 months from promulgation of this rule to comply. This is in contrast to large Subpart H systems which have 36 months to comply. These extended compliance dates will allow smaller systems to learn from the experience of larger systems on how to most cost effectively comply with the Stage 1 DBPR. In addition, larger systems will generate a significant amount of treatment and cost data from the ICR and in their efforts to achieve compliance with the Stage 1 requirements. EPA intends to summarize this information and make it available through guidance manuals (i.e., the Small Entities Guidance Manual). EPA believes this information will assist smaller systems in achieving compliance with the Stage 1 DBPR.

3. Summary of Comments

Several commenters expressed concern with the significant economic burden that the Stage 1 DBPR would place on small systems. Other commenters suggested more flexibility be given for small systems and that a longer compliance period for small systems should be included in the final Stage 1 DBPR. Several commenters suggested small systems should not be included in the final Stage 1 DBPR because the costs for implementing the rule would exceed the potential benefits for these systems.

EPA understands commenters' concerns with the potential significant economic burden on small systems. Because of this potential significant impact, EPA has provided several requirements which will reduce the burden on these systems. These requirements which are discussed above and also in greater detail in the RIA (EPA, 1998g) include: (1) less routine monitoring; and (2) extended compliance dates. EPA also believes small systems can reduce their economic burden by; (1) consolidation with larger systems; (2) using money from the State revolving fund loans; and (3) using variances and exemptions when needed. EPA considered an option in the development of the final rule for large systems to have MCLs of 80 ug/L for TTHMs and 60 ug/L for HAAs and for small systems to have a simple TTHM standard of 100 ug/L. This option was rejected because allowing small systems to comply with a different MCL level would not adequately protect the health of the population served by these systems. EPA did not consider excluding small systems from the Stage 1 DBPR, because these systems do not currently have any standards for DBPs and the Agency believed there was a public health concern that needed to be addressed. For a more detailed description of the alternatives considered in the development of the final rule see the final RIA (EPA, 1998g) or the final Unfunded Mandates Reform Act Analysis for the Stage 1 DBPR (EPA, 1998o).

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2040–0204.

The information collected as a result of this rule will allow the States and the EPA to evaluate PWS compliance with the rule. For the first three years after promulgation of the Stage 1 DBPR, the major information requirements pertain to preparation for monitoring activities, and for compliance tracking. Responses to the request for information are mandatory (Part 141). The information collected is not confidential.

EPA is required to estimate the burden on PWS for complying with the final rule. 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.

EPA estimates that the annual burden on PWS and States for reporting and recordkeeping will be 314,471 hours. This is based on an estimate that there will be 4,631 respondents on average per year who will need to provide about 9,449 responses and that the average response will take 33 hours. The annual labor cost is estimated to be about $12 million. In the first 3 years after promulgation of the rule, only labor costs are incurred. The costs are incurred for the following activities: reading and understanding the rule; planning; and training.

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. EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553 (b)(B) of the Administrative Procedures Act (5 U.S.C. 553 (b) (B)) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

C. Unfunded Mandates Reform Act

1. Summary of UMRA Requirements

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 UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final

rule an explanation on 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 notification to 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.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, and the private sector in any one year. Accordingly, EPA has prepared, under section 202 of the UMRA, a written statement addressing the following areas: (1) authorizing legislation; (2) cost-benefit analysis including an analysis of the extent to which the costs to State, local and Tribal governments will be paid for by the federal government; (3) estimates of future compliance costs and disproportionate budgetary effects; (4) macro-economic effects; and (5) a summary of EPA's consultation with State, local, and Tribal governments, and a summary of their concerns, and a summary of EPA's evaluation of their concerns. A more detailed description of this analysis is presented in EPA's Unfunded Mandates Reform Act Analysis for the Stage 1 DBP Rule (EPA, 1998o) which is included in the docket for this rule.

a. Authorizing Legislation. Today's rule is promulgated pursuant to Section 1412(b)(2) of the 1996 amendments to the SDWA; paragraph C of this section establishes a statutory deadline of November 1998 to promulgate this rule. This rule supersedes the TTHM Rule (EPA, 1979). In addition, the Stage 1 DBP rule is closely integrated with the IESWTR, which also has a statutory deadline of November 1998.

b. Cost Benefit Analysis. Section IV discusses the cost and benefits associated with the Stage 1 DBP rule. Also, the EPA's Regulatory Impact Analysis of the Stage 1 Disinfectants/Disinfection Byproducts Rule (EPA, 1998g) contains a detailed cost benefit analysis. Today's rule is expected to have a total annualized cost of approximately $701 million using a 7 percent cost of capital. The analysis includes both qualitative and monetized benefits for improvements to health and safety. Because of scientific uncertainty regarding the exposure assessment and the risk assessment for DBPs, the Agency has used five analytical approaches to assess the benefits of the Stage 1 DBP. These analyses were based on the quantification of bladder cancer health damages avoided. However, this rule may also reduce colon and rectal cancers, as well as decrease adverse reproductive and developmental effects. This would further increase the benefits of this rule.

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments in complying with this rule. The Federal government provides funding to States that have primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision Grants program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program. For example, SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State will have considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program.

c. Estimates of Future Compliance Costs and Disproportionate Budgetary Effects. To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates, indicated above and discussed in more detail in Section IV of this rule, accurately characterize future compliance costs of the rule.

In regard to the disproportionate impacts, EPA considered available data sources in analyzing the disproportionate impacts upon geographic or social segments of the nation or industry. This analysis was difficult because impacts will most likely depend on a system's source water characteristics and this data is not available for all systems. However, it should be noted that the rule uniformly protects the health of all drinking water system users regardless of the size or type of system. Further analysis revealed that no geographic or social segment patterns were likely for this rule. One observation is that the historical pattern of development in this country led most large cities to be developed near rivers and other bodies of water useful for power, transportation, and drinking water. To the extent that this rule affects surface water, it in most ways reflects the distribution of population and geography of the nation. No rationale for disproportionate impacts by geography or social segment was identified. This analysis, therefore, developed three other measures: reviewing the impacts on small systems versus large systems; reviewing the costs to public versus private water systems; and reviewing the household costs of the final rule.

First, the national impacts on small systems (those serving fewer than 10,000 people) versus large systems (those serving 10,000 people or more) is indicated in Table V–1. The higher cost to the small ground water systems is mostly attributable to the large number of these types of systems (i.e. there are 68,171 small ground water systems, 1,320 large ground water systems, 5,165 small surface water systems, and 1,395 large surface water surface water systems).

TABLE V–1.—ANNUAL COST OF COMPLIANCE FOR SMALL AND LARGE SYSTEMS ($000)*

	Small systems (population < 10,000)	Large systems (population ≥ 10,000)
Surface Water Systems (All)	$56,804	$278,321

TABLE V–1.—ANNUAL COST OF COMPLIANCE FOR SMALL AND LARGE SYSTEMS ($000)*—Continued

	Small systems (population < 10,000)	Large systems (population ≥ 10,000)
Ground Water System (All)	218,062	130,651
Total	274,866	408,972

* Costs calculated at a 7 percent cost of capital and include one time start-up costs.

The second measure of disproportionate impact evaluated is the relative total costs to public versus private water systems, by size. EPA believes the implementation of the rule affects both public and private water systems equally, with the variance in total cost by system size merely a function of the number of affected systems.

The third measure, household costs, can also be used to gauge the impact of a regulation and to determine whether there are disproportionately high impacts in particular segments of the population. A detailed analysis of household cost impacts by system size and system type are presented in Section IV.E. In summary, for large surface water systems EPA estimates that 98 percent of households will incur costs of less than $1 per month while 0.3 percent of households will incur costs greater than $10 per month. For large groundwater systems, EPA estimates that 95 percent of households will incur costs of less than $1 per month while 1.0 percent of households will incur costs greater than $10 per month. For small surface water systems EPA estimates the 71 percent of households will incur costs of less than $1 per month while 1 percent of households will incur costs of greater than $10 per month. For small groundwater systems EPA estimates that 91 percent of households will incur costs of less than $1 per month while 4 percent of households will incur costs of greater than $10 per month.

The household analysis tends to overestimate the costs per household because of the structure and assumptions of the methodology. For example, the highest per-household cost would be incurred in a system using membrane technology. These systems, conversely, might seek less costly alternatives such as point-of-use devices, selection of alternative water sources, or connecting into a larger regional water system. The overall effect is that costs are higher in smaller systems, and a higher percentage of those systems are publicly owned. Smaller systems, however, represent a larger portion of systems that are not in compliance with existing regulations. EPA believes that smaller systems incurring the highest household costs may also incur the highest reduction in risk. This is because smaller systems have not had to previously comply with a TTHMs standard of 100 ug/L. In the RIA, EPA estimates that on average, small systems will achieve about twice as much reduction in risk as achieved by larger systems (EPA,1998g).

Based on the analysis above, EPA does not believe there will be disproportionate impacts on small systems, public versus private systems, or generally by household. A more detailed description of this analysis is presented in the EPA's Unfunded Mandates Reform Act Analysis for the Stage 1 DBP Rule (EPA,1998o).

d. Macro-economic Effects. As required under UMRA Section 202, EPA is required to estimate the potential macro-economic effects of the regulation. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1997, real GDP was $7,188 billion so a rule would have to cost at least $18 billion to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the Stage 1 DBPR should be negligible based on the fact that the total annual costs are about $701 million per year (at a 7 percent cost of capital) and the costs are not expected to be highly focused on a particular geographic region or sector.

e. Summary of EPA's Consultation with State, Local, and Tribal Governments and Their Concerns. Under UMRA section 202, EPA is to provide a summary of its consultation with elected representatives (or their designated authorized employees) of affected State, local and Tribal governments in this rulemaking. Although this rule was proposed before UMRA became a statutory requirement, EPA initiated consultations with governmental entities and the private sector affected by this rule through various means. This included participation on a Regulatory Negotiation Committee chartered under the Federal Advisory Committee Act (FACA) in 1992–93 that included stakeholders representing State and local governments, public health organizations, public water systems, elected officials, consumer groups, and environmental groups.

After the amendments to SDWA in 1996, the Agency initiated a second FACA process, similarly involving a broad range of stakeholders, and held meetings during 1997 to address the expedited deadline for promulgation of the Stage 1 DBPR in November 1998. EPA established the M–DBP Advisory Committee to collect, share, and analyze new data reviewed since the earlier Reg. Neg. process and also to build a consensus on the regulatory implications of this new information. The M–DBP Advisory Committee established a technical working group to assist them with the many scientific issues surrounding this rule. The Committee included representatives from organizations such as the National League of Cities, the National Association of City and County Health Officials, the Association of Metropolitan Water Agencies, the Association of State Drinking Water Administrators, and the National Association of Water Companies. In addition, the Agency invited the Native American Water Association to participate in the FACA process to develop this rule. Although they eventually decided not to take part, the Association continued to be informed of meetings and developments through a stakeholders mailing list.

Stakeholders who participated in the FACA processes, as well as all other interested members of the public, were invited to comment on the proposed rule and NODAs. Also, as part of the Agency's Communication Strategy, EPA sent copies of the proposed rule and NODAs to many stakeholders, including six tribal associations.

In addition, the Agency notified governmental entities and the private

sector of opportunities to provide input on this Stage 1 DBPR in the **Federal Register** on July 29, 1994 (59 FR 38668—EPA, 1994A), November 3, 1997 (62 FR 59485—EPA, 1997b), and on March 31, 1998 (63 FR 15974—EPA, 1998a). Additionally, EPA extended the comment period for the March 31, 1998 NODA and announced a public meeting to address new information. EPA received approximately 213 written comments on the July 29, 1994 notice, approximately 57 written comments on the November 3, 1997 notice, and approximately 41 written comments on the March 31, 1998 notice. Of the 213 comments received concerning the 1994 proposed rule, 11% were from States and 41% were from local governments. Also, one comment on the 1994 proposal was from a tribal group that represented 43 tribes. Of the 57 comments received concerning the 1997 Notice of Data Availability, 18% were from States and 37% were from local governments. Of the 41 comments received on the 1998 Notice of Data Availability prior to the close of the comment period, 5% were from States and 15% were from local governments.

The public docket for this rulemaking contains all comments received by the Agency and provides details about the nature of State, local, and tribal government's concerns. State and local governments raised several concerns including: the need for the Stage 1 DBPR; the high costs of the rule in relation to the uncertain benefits; the belief that not allowing predisinfection credit would increase the microbial risk; and the need for flexibility in implementing the Stage 1 DPBR and IESWTR to insure the rules are implemented simultaneously. The one tribal comment noted that compliance would come at a cost of diverting funds away from other important drinking water needs such as maintaining drinking water infrastructure.

EPA understands the State, local, and tribal governments concerns with the costs of the rule and the need to provide additional public health protection for the expenditure. The Agency believes the final Stage 1 DPBR will provide public health benefits to individuals by reducing their exposures to DBPs, while not requiring excessive capital expenditures. As discussed above, the majority of households will incur additional costs of less than $1 per month. As discussed in section III.E, the final rule maintains the existing predisinfection credit. Finally, in the 1997 DBP NODA (EPA, 1997b), EPA requested comment on four alternative schedules for complying with the Stage 1 DBPR. Most State and local commenters preferred the option which provides the maximum flexibility allowed under the SDWA for systems to comply with the Stage 1 DBPR, and this is the option EPA selected for the final rule.

f. Regulatory Alternatives Considered. As required under Section 205 of the UMRA, EPA considered several regulatory alternatives developed by the Reg Neg Committee and M–DBP Advisory Committee and suggested by stakeholders.

The Reg Neg Committee considered several options including a proposed TTHMs MCL of 80 µg/L and HAA5 MCL of 60 µg/L for large systems (and a simple standard of 100 µg/l for small systems). Another option called for the use of precursor removal technology to reduce the level of total organic carbon with alternative levels ranging from 4.0 to 0.5. Other options evaluated included a 80 µg/L for TTHMs, 60 µg/L for HAA5, and 4.0 for TOC. Finally, an option was evaluated of a 80 µg/L for TTHMs, 60 µg/L for HAA5, and 5.0 for TOC. The final consensus included a combination of MCLs which would be equal for all system size categories and a target TOC level. Allowing small systems to comply with a different MCL levels was rejected because the rule would not adequately protect the health of the population served by these systems. A more detailed description of these alternatives is discussed in the document Unfunded Mandates Reform Act Analysis for the Stage 1 DBPR Rule which can be found in the docket (EPA, 1998o).

Other regulatory alternatives were considered by the M–DBP Advisory Committee and these alternatives had the overall effect of reducing the cost of the final rule. For example, the M–DBP Advisory Committee recommended maintaining the predisinfection credit after reviewing data which suggested that many systems could probably meet the proposed MCLs for DBPs while maintaining current disinfection practices. This decision was important because systems would have had to incur large capital costs to remain in compliance with disinfection requirements if predisinfection credits were disallowed. Thus by allowing predisinfection, the overall cost of the rule was lowered.

Also, the Committee recommended exempting systems for the enhanced coagulation requirements based on their raw water quality. For example, systems with raw-water TOC of less than or equal to 2.0 mg/L and raw-water SUVA of less than or equal to 2.0 L/mg-m would be exempt from the enhanced coagulation requirements. This exclusion was intended to promote cost-effective enhanced coagulation (i.e., obtaining efficiencies of TOC removal without excessive sludge production and associated costs).

In conclusion, EPA believes that the alternative selected for the Stage 1 DBPR is the most cost-effective option that achieves the objectives of the rule. For a complete discussion of this issue see EPA's Regulatory Impact Analysis of the Stage 1 Disinfectants/Disinfection Byproducts Rule (EPA,1998g).

3. Impacts on Small Governments

The 1994 Stage 1 DBPR proposal was done without the benefit of the UMRA requirements. However, in preparation for the final rule, EPA conducted analysis on small government impacts and included small government officials or their designated representatives in the rule making process. The FACA processes gave a variety of stakeholders, including small governments, the opportunity for timely and meaningful participation in the regulatory development process. Representatives of small government organizations were on both the Reg. Neg. Committee and the M–DBP Advisory Committee and their representatives attended public stakeholder meetings. Groups such as the National Association of City and County Health Officials and the National League of Cities participated in the rulemaking process. Through such participation and exchange, EPA notified potentially affected small governments of requirements under consideration and provided officials of affected small governments with an opportunity to have meaningful and timely input into the development of regulatory proposals.

In addition, EPA will educate, inform, and advise small systems including those run by small government about DBPR requirements. One of the most important components of this process is the Small Entity Compliance Guide, as required by the Small Business Regulatory Enforcement Fairness Act of 1996. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the DBPR.

D. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical

standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards.

EPA's process for selecting the analytical test methods is consistent with section 12(d) of the NTTAA. EPA performed literature searches to identify analytical methods from industry, academia, voluntary consensus standards bodies, and other parties that could be used to measure disinfectants, DBPs, and other parameters. In addition, EPA's selection of the methods benefited from the recommendations of an Advisory Committee established under the FACA Act to assist the Agency with the Stage 1 DBPR. The Committee made available additional technical experts who were well-versed in both existing analytical methods and new developments in the field.

The results of these efforts form the basis for the analytical methods in today's rule which includes: eight methods for measuring different DBPs, of which five are EPA methods and three are voluntary consensus standards; nine methods for measuring disinfectants, all of which are voluntary consensus standards; three voluntary consensus methods for measuring TOC; two EPA methods for measuring bromide; one voluntary consensus method for measuring UV_{254}, and both governmental and voluntary consensus methods for measuring alkalinity. Where applicable voluntary consensus standards were not approved, this was due to their inability to meet the data quality objectives (e.g. accuracy, sensitivity, quality control procedures) necessary for demonstration of compliance with the relevant requirement.

In the 1997 NODA, EPA requested comment on voluntary consensus standards that had not been addressed and which should be considered for addition to the list of approved analytical methods in the final rule. No additional consensus methods were suggested by commenters.

E. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 41344—EPA, 1993c) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have an annual effect on the economy of $100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders.

Two aspects of today's rule comply with the Environmental Justice Executive Order which requires the Agency to consider environmental justice issues in the rulemaking and to consult with Environmental Justice (EJ) stakeholders. They can be classified as follows: (1) the overall nature of the rule, and (2) the convening of a stakeholder meeting specifically to address environmental justice issues. The Stage 1 DBPR applies to community water systems and nontransient noncommunity water systems that treat their water with a chemical disinfectant for either primary or residual treatment. Consequently, the health protection benefits this rule provides are equal across all income and minority groups within these communities.

Finally, as part of EPA's responsibilities to comply with E.O. 12898, the Agency held a stakeholder meeting on March 12, 1998 to address various components of pending drinking water regulations; and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, state, tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 meeting were:

- Solicit ideas from EJ stakeholders on known issues concerning current drinking water regulatory efforts;
- Identify key issues of concern to EJ stakeholders; and
- Receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

Overall, EPA believes this rule will equally protect the health of all minority and low-income populations served by systems regulated under this rule from exposure to DBPs.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule initiated after April 21, 1997, or proposed after April 21, 1998, that (1) is determined to be ''economically significant'' as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final Stage 1 DBPR is not subject to the Executive Order because EPA published a notice of proposed rulemaking before April 21, 1998.

However, EPA's policy since November 1, 1995, is to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process including the setting of standards to protect public health and the environment.

EPA's Office of Water has historically considered risks to sensitive populations (including fetuses, infants, and children) in establishing drinking water assessments, advisories or other guidance, and standards (EPA, 1989c and EPA, 1991). The disinfection of public drinking water supplies to prevent waterborne disease is the most successful public health program in U.S. history. However, numerous chemical byproducts (DBPs) result from the reaction of chlorine and other disinfectants with naturally occurring organic and inorganic material in source water, and these may have potential health risks. Thus, maximizing health protection for sensitive subpopulations requires balancing risks to achieve the recognized benefits of controlling waterborne pathogens while minimizing risk of potential DBP toxicity. Human experience shows that waterborne disease from pathogens in drinking water is a major concern for children and other subgroups (elderly, immune compromised, pregnant women) because of their greater vulnerabilities (Gerba et al., 1996). Based on animal studies, there is also a concern for potential risks posed by DBPs to children and pregnant women (EPA, 1994a; EPA, 1998a).

In developing this regulation, risks to sensitive subpopulations (including fetuses and children) were taken into account in the assessments of disinfectants and disinfection byproducts. A description of the data available for evaluating risks to children and the conclusions drawn can be found in the public docket for this rulemaking (EPA, 1998h). In addition, the Agency has evaluated alternative regulatory options and selected the option that will provide the greatest benefits for all people including children. See the regulatory impact analysis for a complete discussion of the different options considered. It should also be noted that the IESTWR, which accompanies this final rule, provides better controls of pathogens and achieves the goal of increasing the protection of children.

H. Consultations With the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services

In accordance with section 1412 (d) and (e) of the Act, the Agency submitted the proposed Stage 1 DBP rule to the Science Advisory Board, National Drinking Water Advisory Council (NDWAC), and the Secretary of Health and Human Services for their review. EPA has evaluated comments received from these organizations and considered them in developing the final Stage 1 DBP rule.

I. 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, or EPA consults with 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.''

EPA has concluded that this rule will create a mandate on State, local, and tribal governments and that the Federal government will not provide all of the funds necessary to pay the direct costs incurred by the State, local, and tribal governments in complying with the mandate. In developing this rule, EPA consulted with State and local governments to enable them to provide meaningful and timely input in the development of this rule. EPA also invited the Native American Water Association to participate in the FACA process to develop this rule, but they decided not to take part in the deliberations.

As described in Section V.C.2.e, EPA held extensive meetings with a variety of State and local representatives, who provided meaningful and timely input in the development of the proposed rule. State and local representatives were also part of the FACA committees involved in the development of this rule. Summaries of the meetings have been included in the public docket for this rulemaking. See section V.C.2.e for summaries of the extent of EPA's consultation with State, local, and tribal governments; the nature of the government concerns; and EPA's position supporting the need to issue this rule.

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 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.''

EPA has concluded that this rule will significantly affect communities of Indian tribal governments. It will also impose substantial direct compliance costs on such communities, and the Federal government will not provide all the funds necessary to pay the direct costs incurred by the tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of tribal governments pursuant to both Executive Order 12875 and Executive Order 13084. EPA's consultation, the nature of the governments' concerns, and EPA's position supporting the need for this rule are discussed above in the preamble section that addresses compliance with Executive Order 12875. Specifically in developing this rule, the Agency invited the Native American Water Association to participate in the FACA process to develop this rule. Although they eventually decided not to take part, the Association continued to be informed of meetings and developments through a stakeholders mailing list. As described in Section V.C.2.e of the discussion on

UMRA, EPA held extensive meetings that provided the opportunity for meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public docket for this rulemaking.

K. 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 rule is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 16, 1999.

L. Likely Effect of Compliance With the Stage 1 DBPR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. The following analysis has been performed to fulfill this statutory obligation.

Overall water system capacity is defined in EPA guidance (EPA 816–R–98–006) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: technical, managerial, and financial.

Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. A water system's technical capacity can be determined by examining key issues and questions, including:

- Source water adequacy. Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
- Infrastructure adequacy. Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
- Technical knowledge and implementation. Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?

Managerial capacity is the ability of a water system to conduct its affairs in a manner enabling the system to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities.

Managerial capacity can be assessed through key issues and questions, including:

- Ownership accountability. Are the system owner(s) clearly identified? Can they be held accountable for the system?
- Staffing and organization. Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?
- Effective external linkages. Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?

Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements.

Financial capacity can be assessed through key issues and questions, including:

- Revenue sufficiency. Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
- Credit worthiness. Is the system financially healthy? Does it have access to capital through public or private sources?
- Fiscal management and controls. Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

There are 76,051 systems affected by this rule. Of these, 12,998 will have to modify their treatment process and undertake disinfectant and DBP monitoring and reporting. Some of this smaller group may also be required to do DBP precursor monitoring and reporting. The other 63,063 systems will need to do disinfectant and DBP monitoring and reporting, but will not need to modify their treatment process. Some of this larger group may also be required to do DBP precursor monitoring and reporting.

Systems not modifying treatment are not generally expected to require significantly increased technical, financial, or managerial capacity to comply with these new requirements. Certainly some individual facilities may have weaknesses in one or more of these areas but overall, systems should have or be able to obtain the capacity needed for these activities.

Systems needing to modify treatment will employ one or more of a variety of steps. The steps expected to be employed by 50% or more of subpart H systems and by eight percent or more of ground water systems covered by the rule include a combination of low cost alternatives, including switching to chloramines for residual disinfection, moving the point of disinfectant application, and improving precursor removal. EPA estimates that less than seven percent of systems in any category will resort to higher cost alternatives, such as switching to ozone or chloramines for primary disinfection or using GAC or membranes for precursor removal. These higher cost alternatives may also provide other treatment benefits, so the cost may be somewhat offset by eliminating the need for technologies to remove other contaminants. Some of these systems may choose nontreatment alternatives such as consolidation with another system or changing to a higher quality water source.

Furthermore, there are a number of actions that are expected to be taken disproportionately by smaller sized systems (that is to say, a greater percentage of smaller sized systems will undertake than will larger sized systems). These steps include increased plant staffing and additional staff training to understand process control strategy. Small systems will be required to do this since larger systems have already undertaken these changes to

some extent for compliance with the 1979 TTHM rule.

For many systems serving less than 10,000 persons which need to make treatment modifications, an enhancement of technical, financial, and managerial capacity may likely be needed. As the preceding paragraph makes clear, these systems will be making structural improvements and enhancing laboratory and staff capacity. Larger sized systems have typically already made these improvements as part of normal operations. Meeting the requirements of the Stage 1 DBPR will require operating at a higher level of sophistication and in a better state of repair than some plants serving less than 10,000 people have considered acceptable in the past.

Certainly there will be exceptions in systems serving both below 10,000 persons and above. Some larger plants will doubtless find their technical, managerial, and financial capacity taxed by the new requirements. Likewise, some plants serving less than 10,000 persons will already have more than adequate technical, financial, and managerial capacity to meet these requirements. However, in general, the systems serving less than 10,000 persons needing to make treatment modifications will be the ones most needing to enhance their capacity.

VI. References

1. APHA. 1992. Standard Methods for the Examination of Water and Wastewater, 18th Edition. American Public Health Association, Washington, DC.
2. APHA. 1995. Standard Methods for the Examination of Water and Wastewater, 19th Edition. American Public Health Association, Washington DC.
3. APHA. 1996. Standard Methods for the Examination of Water and Wastewater, 19th Edition, Supplement. American Public Health Association, Washington DC.
4. ASTM. 1993. Methods D–1067–88B, D–2035–80. Annual Book of ASTM Standards. Vol. 11.01, American Society for Testing and Materials.
5. ASTM. 1994. Methods D–1067–92B. Annual Book of ASTM Standards. Vol. 11.01, American Society for Testing and Materials.
6. ASTM. 1996. Methods D–1253–86. Annual Book of ASTM Standards. Vol. 11.01, American Society for Testing and Materials.
7. Bove, F.J., et al. 1995. Public Drinking Water Contamination and Birth Outcomes. Amer. J. Epidemiol., 141(9), 850–862.
8. Bull, R.J. and Kopfler, F.C. 1991. Health Effects of Disinfectants and Disinfection Byproducts. Prepared for the American Water Works Research Foundation.
9. Cantor K. P., Hoover R., Hartge P., et al. 1985. Drinking Water Source and Bladder Cancer: A Case-Control Study. In Jolley R.L., Bull R.J., Davis W.P., et al. (eds), Water Chlorination: Chemistry, Environmental Impact and Health Effects, Vol. 5. Lewis Publishers, Inc., Chelsea, MI pp 145–152.
10. Cantor K.P., Hoover R., Hartge P. et al. 1987. Bladder Cancer, Drinking Water Source and Tap Water Consumption: A Case Control Study. JNCI; 79:1269–79.
11. Cantor K.P., Lunch C.F., Hildesheim M., Dosemeci M., Lubin J., Alavanja M., Craun G.F.. 1998. Drinking Water Source and Chlorination Byproducts. I. Risk of Bladder Cancer. Epidemiology; 9:21–28.
12. Chowdhury, Z. 1997. Presentation to Technical Work Group January, 1997. Cincinnati, OH.
13. Clark, S.C., J. Wiginton, and J.T. Musgrove. 1994. Enhanced Lime Softening: Is Your TOC Removal Maxed Out? AWWA Enhanced Coagulation Workshop, December 1994.
14. CMA. 1996. Sodium Chlorite: Drinking Water Rat Two-Generation Reproductive Toxicity Study. Chemical Manufacturers Association. Quintiles Report Ref. CMA/17/96.
15. CMA. 1998. Letter to Michael Cox, U.S. EPA, OGWDW. From Marian K. Stanley, Chemical Manufacturers Association. Regarding the two-generation reproduction/developmental neurotoxicity study with sodium chlorite. January 26, 1998. 20 pp.
16. DeAngelo, A. B., Daniel, F. B., Most, B. M. and G. R. Olsen. 1997. The Failure of Monochloroacetic Acid and Trichloroacetic Acid Administered in the Drinking Water to Produce Liver Cancer in Male F344/N rats. J. Toxicol. Environ. Health (in press).
17. DeAngelo A. B., George M. H., Kilburn S. R., Moore T. M., Wolf D. C. 1998. Carcinogenicity of Potassium Bromate Administered in the Drinking Water to Make B6C3F1 Mice and F344/N Rats, Toxicologic Pathology vol.26, No.4 (in press).
18. Doyle T. J., Sheng W., Cerhan J. R., Hong C. P., Sellers T. A., Kushi, L. H., Folsom A. R. 1997. The Association of Drinking Water Source and Chlorination By-products with Cancer Incidence Among Postmenopausal Women in Iowa: A Prospective Cohort Study. American Journal of Public Health. 87:7.
19. Edwards, M. 1997. Predicting DOC Removal During Enhanced Coagulation. Jour. AWWA (89:5:78).
20. Edzwald, J. K., and J. E. Van Benschoten. 1990. Aluminum Coagulation of Natural Organic Matter. Proc. Fourth Int'l Gothenburg Symposium on Chemical Treatment, Madrid, Spain (Oct. 1990).
21. Federal Focus. 1996. Principles for Evaluating Epidemiological Data in Regulatory Risk Assessment. Developed By An Expert Panel at a Conference in London, England October 1995. Appendix B: The ''Bradford Hill'' or ''Surgeon General's'' Criteria for Judging the Causal Significance of an Exposure-Effect Association Indicated by an Epidemiological Study or Studies. August 1996. Federal Focus, Inc. Washington, DC.
22. Freedman M., Cantor K. P., Lee N. L., Chen L. S., Lei H. H., Ruhl C. E., and Wang S. S. 1997. Bladder cancer and drinking water: a population-based case-control study in Washington County, Maryland (United States). Cancer Causes and Control. 8, pp 738–744.
23. Gerba, CP., J.B Rose, and C.N Haas. 1996. Sensitive Populations: Who is at the Greatest Risk. Int. J. Food and Microbiology. 30:113–123.
24. Heywood R., Sortwell R.J., Noel PRB, Street AE, Prentice DE, Roe FJC, Wadsworth PF, Worden AN, Van Abbe NJ. 1979. Safety Evaluation of Toothpaste Containing Chloroform. III. Long-term Study in Beagle Dogs. J. Environ. Pathol. Toxicol. 2:835–851.
25. Hildesheim M.E., Cantor K.P., Lynch C.F., Dosemeci M., Lubin J., Alavanja M., and Craun G.F. 1998. Drinking Water Source and Chlorination Byproducts: Risk of Colon and Rectal Cancers. Epidemiology. 9:1, pp: 29–35.
26. ILSI. 1997. An Evaluation of EPA's Proposed Guidelines for Carcinogen Risk Assessment Using Chloroform and Dichloroacetate as Case Studies: Report of an Expert Panel. International Life Sciences Institute, Health and Environmental Sciences Institute November, 1997.
27. Jorgenson T.A., Meierhenry E.F., Rushbrook C.J. Bull RJ, Robinson M. 1985. Carcinogenicity of Chloroform in Drinking Water to Male Osborne-Mendel Rats and Female $B6C3F_1$ Mice. Fundam. Appl. Toxicol. 5:760–769.
28. Kanitz, S. et al. 1996. Association Between Drinking Water Disinfection and Somatic Parameters at Birth. Environ. Health Perspectives, 104(5), 516–520.
29. Kaplan, L.A. 1992. Comparison of High Temperature and Persulfate Oxidation Methods for Determination of Dissolved Organic Carbon in Freshwaters. Limnol. Oceanogr. 37 (5): 1119–25.
30. King, W. D. and L. D. Marrett. 1996. Case-Control Study of Water Source and Bladder Cancer. Cancer Causes and Control, 7:596–604.
31. Klotz, J. B. and Pyrch, L. A. 1998. A Case-Control Study of Neural Tube Defects and Drinking Water Contaminants. New Jersey Department of Health and Senior Services.
32. Krasner, Stuart. April 1997. Issue Paper on Enhanced Coagulation to the M-DBP Advisory Committee.

33. Kurokawa et al. 1986a. Dose-response Studies on the Carcinogenicity of Potassium Bromate in F344 Rats after Long-term Oral Administration. J. Natl. Cancer Inst. 77:977–982.
34. Kurokawa et al. 1986b. Long-term *in vitro* Carcinogenicity Tests of Potassium Bromate, Sodium Hypochlorite and Sodium Chlorite Conducted in Japan. Environ. Health Perspect. 69:221–236.
35. McGeehin, M.A. et al. 1993. Case-Control Study of Bladder Cancer and Water Disinfection Methods in Colorado. Am. J. Epidemiology, 138:492–501.
36. Mobley, S. A., D. H. Taylor, R. D. Laurie, and R. J. Pfohl. 1990. Chlorine dioxide depresses T3 uptake and delays development of locomotor activity in young rats. In: Water Chlorination: Chemistry, Environmental Impact and Health Effects. Vol 6. Lolley, Condie, Johnson, Katz, Mattice and Jacobs, ed. lewis Publ., Inc. Chelsea MI., pp 347–360.
37. Morris, R. D. et al. 1992. Chlorination, Chlorination By-products, and Cancer: A Meta-Analysis. American Journal of Public Health, 82(7): 955–963.
38. Moser, G. September 9, 1997. Letter to Yogi Patel, U.S. EPA, OW. Regarding the Neurodevelopment Section of the CMA Study of Chlorite.
39. NTP. 1985. National Toxicology Program. Toxicology and carcinogenesis studies of chlorodibromomethane in F344/N rats and B6C3F_1 mice (gavage studies). Tech. Rep. Ser. No. 282.
40. NTP. 1987. National Toxicology Program. Toxicity and carcinogenesis studies of bromodichloromethane in F344/N rats and B6C3F_1 mice (gavage studies). Technical Report Series No. 321.
41. NTP. 1989. National Toxicology Program. Toxicology and carcinogenesis studies of bromoform in F344/N rats and B6C3F_1 mice (gavage studies). Tech. Rep. Ser. No. 350.
42. NTP. 1990. National Toxicology Program. NTP Technical Report on the Toxicology and Carcinogenesis studies of chlorinated and chloraminated water in F344/N rats and B6C3F_1 mice (drinking water studies). NTP TR 392, National Institutes of Health, 474pp.
43. Orme, J. D.H. Taylor, R.D. Laurie, and R.J. Bull. 1985. Effects of Chlorine Dioxide on Thyroid Function in Neonatal Rats. J. Tox. and Environ. Health. 15:315–322.
44. OSTP. 1985. Chemical Carcinogens; A Review of the Science and Its Associated Principles, February 1985. Presented in Risk Analysis: A guide to Principles and Methods for Analyzing Health and Environmental Risks. Appendix G. **Federal Register**, March 14, 1985. Pages 10371–10442.
45. Owen, D. M.; Amy, G. L. and Z. K. Chowdhury. 1993. Characterization of Natural Organic Matter and Its Relationship to Treatability. AWWA Research Foundation & AWWA, Denver, CO.
46. Poole, C. 1997. Analytical Meta-Analysis of Epidemiological Studies of Chlorinated Drinking Water and Cancer: Quantitative Review and Reanalysis of the Work Published by Morris et al., Am J Public Health 1992:82:955–963. National Center for Environmental Assessment, Office of Research and Development, September 30, 1997.
47. Randtke, S. J.; Hoehn, R. C.; Knocke, W. R.; Dietrich, A. M.; Long, B. W.; and N. A. Wang. 1994. Comprehensive Assessment of DBP Precursor Removal by Enhanced Coagulation and Softening. Proc. AWWA Ann. Conf. (Water Quality), New York, NY, pp. 737–777.
48. Reif, J. S. et al. 1996. Reproductive and Developmental Effects of Disinfection By-products in Drinking Water. Environmental Health Prospectives. 104(10):1056–1061.
49. Sanders, V.M., B.M. Kauffman, K.L. White, K.A. Douglas, D.W. Barnes, L.E. Sain, T.J. Bradshaw, J.F. Borzelleca and A.E. Munson. 1982. Toxicology of chloral hydrate in the mouse. Environ. Health Perspect. 44:137–146.
50. Savitz, D. A., Andrews, K. W. and L. M. Pastore. 1995. Drinking Water and Pregnancy Outcome in Central North Carolina: Source, Amount, and Trihalomethane levels. Environ. Health Perspectives. 103(6), 592–596.
51. Shorney, H. L., Randtke, S. J., Hargette, P. H., Mann, P. D., Hoehn, R.C., Knocke, W. R., Dietrich, A. M. and B. W. Long. 1996. The Influence of Raw Water Quality on Enhanced Coagulation and Softening for the Removal of NOM and DBP Formation Potential, Proceedings 1996 AWWA Annual Conference, Toronto, Ontario, Canada.
52. Singer, P. C., Harrington, G. W., Thompson, J. D. and M. C. White. 1995. Enhanced Coagulation and Enhanced Softening for the Removal of Disinfection By-Product Precursors: An Evaluation. Report prepared for the AWWA Government Affairs Office, Washington, DC, by the Dept. of Environmental Sciences and Engineering, UNC, Chapel Hill, NC.
53. Singer, P. C., Harrington, G. W., Thompson, J. and M. White. 1996. Enhanced Coagulation and Enhanced Softening for the Removal of Disinfection By-Product Precursors: An Evaluation, Report to AWWA Disinfectants/ Disinfection By-Products Technical Advisory Workgroup of the Water Utility Council, December 1996.
54. Smith, M.K., Randall, J.L., Read, E.J., and Stober, J.A. 1989. Teratogenic activity of trichloroacetic acid in the rat. Teratology 40:445–451.
55. Summers, R.S., G. Solarik, V.A. Hatcher, R.S. Isabel, and J.F. Stile. 1997. Analyzing the Impacts of Predisinfection Through Jar Testing, Proceedings, AWWA Water Quality Technology Conference, Denver, CO.
56. Tseng, T. and M. Edwards. 1997. Considerations in Optimizing Coagulation. Proc. 1996 AWWA Water Qual. Technol. Conf., Boston, Mass.
57. U.S. EPA. 1979. National Interim Primary Drinking Water Regulations; Control of Trihalomethanes in Drinking Water. Fed. Reg., 44:231:68624. (November 29, 1979)
58. U.S. EPA. 1983. EPA Method 310.1. Methods of Chemical Analysis of Water and Wastes. Envir. Monitoring Systems Laboratory, Cincinnati, OH. EPA 600/4–79–020. 460 pp.
59. U.S. EPA. 1986. Guidelines for Carcinogen Risk Assessment, Fed. Reg. 51(185):33992–34003. EPA/600/8–87/045. NTIS PB88–123997.
60. U.S. EPA. 1987. Drinking Water Regulations; Public Notification; Final Rule. Federal Register. Vol. 52, No. 208, Wednesday, Oct. 28, 1987—Part II. pp. 41534–41550.
61. U.S. EPA. 1988. EPA Method 502.2. Methods for the Determination of Organic Compounds in Drinking Water. EPA 600/4–88–039. PB91–231480. Revised July 1991.
62. U.S. EPA. 1989a. National Primary Drinking Water Regulations; Filtration, Disinfection; Turbidity, Giardia lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Final Rule. Part II. Fed. Reg., 54:124:27486. (June 29, 1989)
63. U.S. EPA 1989b. National Primary Drinking Water Regulations; Total Coliforms (Including Fecal Coliform and E. Coli); Final Rule. Fed. Reg., 54:124:27544. (June 29, 1989)
64. U.S. EPA. 1989c. Review of Environmental Contaminants and Toxicology. USEPA. Office of Drinking Water Health Advisories, Volume 106. 225pp.
65. U.S. EPA. 1990. EPA Methods 551, 552. Methods for the Determination of Organic Compounds in Drinking Water—Supplement I. EPA 600/4–90–020. PB91–146027.
66 U.S. EPA. 1991. National Primary Drinking Water Regulations: Final Rule. Fed, reg., 56:20, January 30, 1991 3526–3597.
67. U.S. EPA. 1992. EPA Methods 524.2, 552.1. Methods for the Determination of Organic Compounds in Drinking Water—Supplement II. EPA 600/R–92/129. PB92–207703.
68. U.S. EPA. 1993a. Draft Drinking Water Health Criteria Document for Bromate. Office of Science and Technology, Office of Water. Sep. 30, 1993.
69. U.S. EPA. 1993b. EPA Method 300.0. The Determination of Inorganic Anions by Ion Chromatography in the Manual ''Methods for the Determination of Inorganic Substances in Environmental Samples,'' EPA/600/R/93/100. NTIS, PB94120821.
70. U.S. EPA. 1993c. Executive Order 12866: Regulatory Planning and Review. **Federal Register**. Vol. 58, No. 190. October 4, 1993. 51735–51744.
71. U.S. EPA/ILSI. 1993. A Review of Evidence on Reproductive and Developmental Effects of Disinfection By-Products in Drinking Water. Washington: U.S. Environmental Protection Agency and International Life Sciences Institute.

72. U.S. EPA. 1994a. National Primary Drinking Water Regulations; Disinfectants and Disinfection Byproducts; Proposed Rule. Fed. Reg., 59:145:38668. (July 29, 1994).
73. U.S. EPA. 1994b. National Primary Drinking Water Regulations; Enhanced Surface Water Treatment Requirements; Proposed Rule. Fed. Reg., 59:145:38832. (July 29, 1994).
74. U.S. EPA. 1994c. National Primary Drinking Water Regulations; Monitoring Requirements for Public Drinking Water Supplies; Proposed Rule. Fed. Reg., 59:28:6332. (February 10, 1994).
75. U.S. EPA. 1994d. Final Draft Drinking Water Health Criteria Document for Chlorine Dioxide, Chlorite and Chlorate. Office of Science and Technology, Office of Water. March 31, 1994.
76. U.S. EPA. 1994e. Draft Drinking Water Health Criteria Document for Chlorine, Hypochlorous Acid and Hypochlorite Ion. Office of Science and Technology, Office of Water.
77. U.S. EPA. 1994f. Health and Ecological Criteria Div., OST. Final Draft for the Drinking Water Criteria Document on Trihalomethanes. Apr. 8. 1994.
78. U.S. EPA. 1994g. Draft Drinking Water Health Criteria Document for Chlorinated Acetic Acids/Alcohols/ Aldehydes and Ketones. Office of Science and Technology, Office of Water.
79. U.S. EPA. 1994h. Draft Drinking Water Health Criteria Document for Chloramines. Office of Science and Technology, Office of Water.
80. U.S. Environmental Protection Agency. 1994i. Regulatory Impact Analysis of Proposed Disinfectant/Disinfection Byproduct Regulations. Washington, DC. EPA–68–C3–0368.
81. U.S. EPA. 1995. Methods for the Determination of Organic Compounds in Drinking Water. Supplement III. EPA–600/R–95/131. NTIS, PB95261616.
82. U.S. EPA. 1996a. National Primary Drinking Water Regulations: Monitoring Requirements for Public Drinking Water Supplies; Final Rule. Fed. Reg., 61:94:24354. (May 14, 1996)
83. U.S. EPA. 1996b. Proposed Guidelines for Carcinogen Risk Assessment. U.S. EPA, April 23, 1996.
84. U.S. EPA. 1997a. National Primary Drinking Water Regulations; Interim Enhanced Surface Water Treatment Rule; Notice of Data Availability; Proposed Rule. Fed. Reg., 62 (No. 212): 59486–59557. (November 3, 1997).
85. U.S. EPA. 1997b. National Primary Drinking Water Regulations; Disinfectants and Disinfection Byproducts; Notice of Data Availability; Proposed Rule. Fed. Reg., 62 (No. 212): 59388–59484. (November 3, 1997).
86. U.S. EPA. 1997c. Summaries of New Health Effects Data. Office of Science and Technology, Office of Water. October 1997.
87. U.S. EPA. 1997d. External Peer Review of CMA Study –2– Generation, EPA Contract No. 68–C7–0002, Work Assignment B–14, The Cadmus Group, Inc., October 9, 1997.
88. U.S. EPA. 1997e. Method 300.1. Determination of Inorganic Anions in Drinking Water by Ion Chromatography. Revision 1.0. USEPA National Exposure Research Laboratory, Cincinnati OH.
89. U.S. EPA. 1997f. Performance Based Measurement System. Notice of Intent. Federal Register, October 6, 1997. Vol. 62, No. 193., 52098–52100.
90. U.S. EPA. 1997g. Manual for the Certification of Laboratories Analyzing Drinking Water, Fourth Edition, Office of Water Resource Center (RC–4100), EPA 815–B–97–001. March 1997.
91. U.S. EPA. 1998a. National Primary Drinking Water Regulations; Disinfectants and Disinfection Byproducts; Notice of Data Availability; Proposed Rule. Fed. Reg., 63 (No. 61): 15606–15692. (March 31, 1998).
92. U.S. EPA. 1998b. Dichloroacetic acid: Carcinogenicity Identification Characterization Summary. National Center for Environmental Assessment—Washington Office. Office of Research and Development. March 1998. EPA 815–B–98–010. PB 99–111387.
93. U.S. EPA. 1998c. Quantification of Bladder Cancer Risk from Exposure to Chlorinated Surface Water. Office of Science and Technology, Office of Water. November 9, 1998.
94. U.S. EPA. 1998d. Health Risk Assessment/Characterization of the Drinking Water Disinfection Byproduct Chlorine Dioxide and the Degradation Byproduct Chlorite. Office of Science and Technology, Office of Water. October 15, 1998. EPA 815–B–98–008. PB 99–111361.
95. U.S. EPA. 1998e. Health Risk Assessment/Characterization of the Drinking Water Disinfection Byproduct Bromate. Office of Science and Technology, Office of Water. September 30, 1998. EPA 815–B–98–007. PB 99–111353.
96. U.S. EPA. 1998f. Panel Report and Recommendation for Conducting Epidemiological Research on Possible Reproductive and Developmental Effects of Exposure to Disinfected Drinking Water. Office of Research and Development. February 12, 1998.
97. U.S. EPA. 1998g. Regulatory Impact Analysis of Final Disinfectant/ Disinfection By-Products Regulations. Washington, D.C. EPA Number 815–B–98–002. PB 99–111304.
98. U.S. EPA. 1998h. Health Risks to Fetuses, Infants, and Children (final Stage 1 DBP Rule). Office of Science and Technology. Office of Water. November 19, 1998. EPA 815–B–98–009. PB 99–111379.
99. U.S. EPA. 1998i. Revisions to State Primacy Requirements To Implement Safe Drinking Water Act Amendments: Final Rule. **Federal Register**, Tuesday, April 28, 1998, Vol. 63, No.81, 23362–23368.
100. U.S. EPA. 1998j. Revision of Existing Variance and Exemption Regulations to Comply with Requirements of the Safe Drinking Water Act; Final Rule. **Federal Register**, Vol 63, No. 157. Friday, Aug. 14, 1998. pp. 43833–43851.
101. U.S. EPA. 1998k. Cost and Technology Document for Controlling Disinfectants and Disinfection Byproducts. Office of Ground Water and Drinking Water. Washington, DC. EPA 815–R–98–014. PB 99–111486.
102. U.S. EPA. 1998l. Synthesis of the Peer-Review of Meta-analysis of Epidemiologic Data on Risks of Cancer from Chlorinated Drinking Water. National Center for Environmental Assessment, Office of Research and Development, February 16, 1998.
103. U.S. EPA. 1998m. NCEA Position Paper Regarding Risk Assessment Use of the Results from the Published Study: Morris et al. Am J Public Health 1992;82:955–963. National Center for Environmental Assessment, Office of Research and Development, October 7, 1997.
104. U.S. EPA. 1998n. A Suggested Approach for Using the Current Epidemiologic Literature to Estimate the Possible Cancer Risk from Water Chlorination, for the Purposes of the Regulatory Impact Analysis. ORD, National Center for Environmental Assessment. August 27, 1998.
105. U.S. EPA. 1998o. Unfunded Mandates Reform Act Analysis for the Stage 1 Disinfectant and Disinfection Byproduct Rule. Office of Groundwater and Drinking Water.
106. U.S. EPA. 1998p. Health Risk Assessment/Characterization of the Drinking Water Disinfection Byproduct Chloroform. Office of Science and Technology, Office of Water. November 4, 1998. EPA 815–B–98–006. PB 99–111346.
107. U.S. EPA. 1998q. Small System Compliance Technology List for the Stage 1 DBP Rule. Office of Groundwater and Drinking Water. EPA 815–R–98–017. PB 99–111510.
108. U.S. EPA. 1998r. Technologies and Costs for Point-of-Entry (POE) and Point-of-Use (POU) Devices for Control of Disinfection Byproducts. Office of Groundwater and Drinking Water. EPA 815–R–98–016. PB 99–111502.
109. U.S. EPA. 1998s. National-Level Affordability Criteria Under the 1996 Amendments to the Safe Drinking Water Act. Office of Groundwater and Drinking Water. August 19, 1998.
110. U.S. EPA. 1998t. Variance Technology Findings for Contaminants Regulated Before 1996. Office of Water. September 1998. EPA 815–R–98–003.
111. U.S. EPA. 1998u. Occurrence Assessment for Disinfectants and Disinfection Byproducts in Public Drinking Water Supplies. Office of Groundwater and Drinking Water. EPA 815–B–98–004. November 13, 1998. PB 99–111320.
112. USGS. 1989. Method I–1030–85. Techniques of Water Resources Investigations of the U.S. Geological Survey. Book 5, Chapter A–1, 3rd ed., U.S. Government Printing Office.
113. Waller K., Swan S. H., DeLorenze G., Hopkins B., 1998. Trihalomethanes in drinking water and spontaneous abortion. Epidemiology. 9(2):134–140.

114. White, M. C., Thompson, D., Harrington, G. W., and P.S. Singer. 1997. Evaluating Criteria for Enhanced Coagulation Compliance. *AWWA*, 89:5:64.
115. Xie, Yuefeng. 1995. Effects of Sodium Chloride on DBP Analytical Results, Extended Abstract, Division of Environmental Chemistry, American Chemical Society Annual Conference, Chicago, IL, Aug. 21–26, 1995.

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Parts 141 and 142

Analytical methods, Drinking water, Environmental protection, Incorporation by reference, Intergovernmental relations, Public utilities, Reporting and recordkeeping requirements, Utilities, Water supply.

Dated: November 30, 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 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding under the indicated heading: the new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.130–141.132	2040–0204
141.134–141.135	2040–0204
* * * * *	

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by adding the following definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

* * * * *

Enhanced coagulation means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

* * * * *

Enhanced softening means the improved removal of disinfection byproduct precursors by precipitative softening.

* * * * *

GAC10 means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

* * * * *

Haloacetic acids (five) (HAA5) mean the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

* * * * *

Maximum residual disinfectant level (MRDL) means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels under Section 1412 of the Safe Drinking Water Act. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in § 141.65, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

* * * * *

Maximum residual disinfectant level goal (MRDLG) means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

* * * * *

Subpart H systems means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to the requirements of subpart H of this part.

* * * * *

SUVA means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

* * * * *

Total Organic Carbon (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

* * * * *

5. Section 141.12 is revised to read as follows:

§ 141.12 Maximum contaminant levels for total trihalomethanes.

The maximum contaminant level of 0.10 mg/L for total trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform)) applies to subpart H community water systems which serve a population of 10,000 people or more until December 16, 2001. This level applies to community water systems that use only ground water not under the direct influence of surface water and serve a population of 10,000 people or more until December

16, 2003. Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to § 141.30. After December 16, 2003, this section is no longer applicable.

6. Section 141.30 is amended by revising the the first sentences in paragraphs (d) and (f) and adding paragraph (h) to read as follows:

§ 141.30 Total trihalomethanes sampling, analytical and other requirements.

* * * * *

(d) Compliance with § 141.12 shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (b)(1) or (2) of this section. * * *

* * * * *

(f) Before a community water system makes any significant modifications to its existing treatment process for the purposes of achieving compliance with § 141.12, such system must submit and obtain State approval of a detailed plan setting forth its proposed modification and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modification. * * *

* * * * *

(h) The requirements in paragraphs (a) through (g) of this section apply to subpart H community water systems which serve a population of 10,000 or more until December 16, 2001. The requirements in paragraphs (a) through (g) of this section apply to community water systems which use only ground water not under the direct influence of surface water that add a disinfectant (oxidant) in any part of the treatment process and serve a population of 10,000 or more until December 16, 2003. After December 16, 2003, this section is no longer applicable.

7. Section 141.32 is amended by revising the heading in paragraph (a) introductory text, the first sentence of paragraph (a)(1)(iii) introductory text, and the first sentence of paragraph (c), and adding paragraphs (a)(1)(iii)(E) and (e) (76) through (81), to read as follows:

§ 141.32 Public notification.

* * * * *

(a) *Maximum contaminant levels (MCLs), maximum residual disinfectant levels (MRDLs).* * * *

(1) * * *

(iii) For violations of the MCLs of contaminants or MRDLs of disinfectants that may pose an acute risk to human health, by furnishing a copy of the notice to the radio and television stations serving the area served by the public water system as soon as possible but in no case later than 72 hours after the violation. ***

* * * * *

(E) Violation of the MRDL for chlorine dioxide as defined in § 141.65 and determined according to § 141.133(c)(2).

* * * * *

(c) * * * The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any maximum contaminant level, or any maximum residual disinfectant level, or any treatment technique requirement, or any variance or exemption schedule to all new billing units or new hookups prior to or at the time service begins.

* * * * *

(e) * * *

(76) *Chlorine.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine is a health concern at certain levels of exposure. Chlorine is added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and is also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chlorine has been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chlorine to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chlorine.

(77) *Chloramines.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chloramines are a health concern at certain levels of exposure. Chloramines are added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and are also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chloramines have been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chloramines to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chloramines.

(78) *Chlorine dioxide.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine dioxide is a health concern at certain levels of exposure. Chlorine dioxide is used in water treatment to kill bacteria and other disease-causing microorganisms and can be used to control tastes and odors. Disinfection is required for surface water systems. However, at high doses, chlorine dioxide-treated drinking water has been shown to affect blood in laboratory animals. Also, high levels of chlorine dioxide given to laboratory animals in drinking water have been shown to cause neurological effects on the developing nervous system. These neurodevelopmental effects may occur as a result of a short-term excessive chlorine dioxide exposure. To protect against such potentially harmful exposures, EPA requires chlorine dioxide monitoring at the treatment plant, where disinfection occurs, and at representative points in the distribution system serving water users. EPA has set a drinking water standard for chlorine dioxide to protect against the risk of these adverse effects.

Note: In addition to the language in this introductory text of paragraph (e)(78), systems must include either the language in paragraph (e)(78)(i) or (e)(78)(ii) of this section. Systems with a violation at the treatment plant, but not in the distribution system, are required to use the language in paragraph (e)(78)(i) of this section and treat the violation as a nonacute violation. Systems with a violation in the distribution system are required to use the language in paragraph (e)(78)(ii) of this section and treat the violation as an acute violation.

(i) The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

(ii) The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including pregnant women, infants, and young children, may be especially susceptible to adverse effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceedances are rectified. Local

and State health authorities are the best sources for information concerning alternate drinking water.

(79) *Disinfection byproducts and treatment technique for DBPs.* The United States Environmental Protection Agency (EPA) sets drinking water standards and requires the disinfection of drinking water. However, when used in the treatment of drinking water, disinfectants react with naturally-occurring organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA has determined that a number of DBPs are a health concern at certain levels of exposure. Certain DBPs, including some trihalomethanes (THMs) and some haloacetic acids (HAAs), have been shown to cause cancer in laboratory animals. Other DBPs have been shown to affect the liver and the nervous system, and cause reproductive or developmental effects in laboratory animals. Exposure to certain DBPs may produce similar effects in people. EPA has set standards to limit exposure to THMs, HAAs, and other DBPs.

(80) *Bromate.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that bromate is a health concern at certain levels of exposure. Bromate is formed as a byproduct of ozone disinfection of drinking water. Ozone reacts with naturally occurring bromide in the water to form bromate. Bromate has been shown to produce cancer in rats. EPA has set a drinking water standard to limit exposure to bromate.

(81) *Chlorite.* The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorite is a health concern at certain levels of exposure. Chlorite is formed from the breakdown of chlorine dioxide, a drinking water disinfectant. Chlorite in drinking water has been shown to affect blood and the developing nervous system. EPA has set a drinking water standard for chlorite to protect against these effects. Drinking water which meets this standard is associated with little to none of these risks and should be considered safe with respect to chlorite.

* * * * *

8. Subpart F is amended by revising the subpart heading and adding §§ 141.53 and 141.54 to read as follows:

Subpart F—Maximum Contaminant Level Goals and Maximum Residual Disinfectant Level Goals

* * * * *

§ 141.53—Maximum contaminant level goals for disinfection byproducts.

MCLGs for the following disinfection byproducts are as indicated:

Disinfection byproduct	MCLG (mg/L)
Chloroform	Zero
Bromodichloromethane	Zero
Bromoform	Zero
Bromate	Zero
Dichloroacetic acid	Zero
Trichloroacetic acid	0.3
Chlorite	0.8
Dibromochloromethane	0.06

§ 141.54 Maximum residual disinfectant level goals for disinfectants.

MRDLGs for disinfectants are as follows:

Disinfectant residual	MRDLG(mg/L)
Chlorine	4 (as Cl_2).
Chloramines	4 (as Cl_2).
Chlorine dioxide	0.8 (as ClO_2)

9. Subpart G is amended by revising the subpart heading and adding §§ 141.64 and 141.65 to read as follows:

Subpart G—National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels and Maximum Residual Disinfectant Levels

* * * * *

§ 141.64 Maximum contaminant levels for disinfection byproducts.

(a) The maximum contaminant levels (MCLs) for disinfection byproducts are as follows:

Disinfection byproduct	MCL (mg/L)
Total trihalomethanes (TTHM)	0.080
Haloacetic acids (five) (HAA5)	0.060
Bromate	0.010
Chlorite	1.0

(b) *Compliance dates.* (1) *CWSs and NTNCWSs.* Subpart H systems serving 10,000 or more persons must comply with this section beginning December 16, 2001. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this section beginning December 16, 2003.

(2) A system that is installing GAC or membrane technology to comply with this section may apply to the State for an extension of up to 24 months past the dates in paragraphs (b)(1) of this section, but not beyond December 16, 2003. In granting the extension, States must set a schedule for compliance and may specify any interim measures that the system must take. Failure to meet the schedule or interim treatment requirements constitutes a violation of a National Primary Drinking Water Regulation.

(c) The Administrator, pursuant to Section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for disinfection byproducts identified in paragraph (a) of this section:

Disinfection byproduct	Best available technology
TTHM	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant
HAA5	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant.
Bromate	Control of ozone treatment process to reduce production of bromate.
Chlorite	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

§ 141.65 Maximum residual disinfectant levels.

(a) Maximum residual disinfectant levels (MRDLs) are as follows:

Disinfectant residual	MRDL (mg/L)
Chlorine	4.0 (as Cl_2).
Chloramines	4.0 (as Cl_2).
Chlorine dioxide	0.8 (as ClO_2).

(b) Compliance dates.

(1) CWSs and NTNCWSs. Subpart H systems serving 10,000 or more persons must comply with this section beginning December 16, 2001. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this subpart beginning December 16, 2003.

(2) Transient NCWSs. Subpart H systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with the chlorine dioxide MRDL beginning December 16, 2001. Subpart H systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with the

chlorine dioxide MRDL beginning December 16, 2003.

(c) The Administrator, pursuant to Section 1412 of the Act, hereby identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum residual disinfectant levels identified in paragraph (a) of this section: control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels.

10. A new subpart L is added to read as follows:

Subpart L—Disinfectant Residuals, Disinfection Byproducts, and Disinfection Byproduct Precursors

§ 141.130 General requirements.

(a) The requirements of this subpart L constitute national primary drinking water regulations.

(1) The regulations in this subpart establish criteria under which community water systems (CWSs) and nontransient, noncommunity water systems (NTNCWSs) which add a chemical disinfectant to the water in any part of the drinking water treatment process must modify their practices to meet MCLs and MRDLs in §§ 141.64 and 141.65, respectively, and must meet the treatment technique requirements for disinfection byproduct precursors in § 141.135.

(2) The regulations in this subpart establish criteria under which transient NCWSs that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the MRDL for chlorine dioxide in § 141.65.

(3) EPA has established MCLs for TTHM and HAA5 and treatment technique requirements for disinfection byproduct precursors to limit the levels of known and unknown disinfection byproducts which may have adverse health effects. These disinfection byproducts may include chloroform; bromodichloromethane; dibromochloromethane; bromoform; dichloroacetic acid; and trichloroacetic acid.

(b) *Compliance dates.* (1) *CWSs and NTNCWSs.* Unless otherwise noted, systems must comply with the requirements of this subpart as follows. Subpart H systems serving 10,000 or more persons must comply with this subpart beginning December 16, 2001. Subpart H systems serving fewer than 10,000 persons and systems using only ground water not under the direct influence of surface water must comply with this subpart beginning December 16, 2003.

(2) *Transient NCWSs.* Subpart H systems serving 10,000 or more persons and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide and chlorite in this subpart beginning December 16, 2001. Subpart H systems serving fewer than 10,000 persons and using chlorine dioxide as a disinfectant or oxidant and systems using only ground water not under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide and chlorite in this subpart beginning December 16, 2003.

(c) Each CWS and NTNCWS regulated under paragraph (a) of this section must be operated by qualified personnel who meet the requirements specified by the State and are included in a State register of qualified operators.

(d) *Control of disinfectant residuals.* Notwithstanding the MRDLs in § 141.65, systems may increase residual disinfectant levels in the distribution system of chlorine or chloramines (but not chlorine dioxide) to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

§ 141.131 Analytical requirements.

(a) *General.* (1) Systems must use only the analytical method(s) specified in this section, or otherwise approved by EPA for monitoring under this subpart, to demonstrate compliance with the requirements of this subpart. These methods are effective for compliance monitoring February 16, 1999.

(2) The following documents are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street, SW, Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington DC. EPA Method 552.1 is in *Methods for the Determination of Organic Compounds in Drinking Water-Supplement II,* USEPA, August 1992, EPA/600/R–92/129 (available through National Information Technical Service (NTIS), PB92–207703). EPA Methods 502.2, 524.2, 551.1, and 552.2 are in *Methods for the Determination of Organic Compounds in Drinking Water-Supplement III,* USEPA, August 1995, EPA/600/R–95/131. (available through NTIS, PB95–261616). EPA Method 300.0 is in *Methods for the Determination of Inorganic Substances in Environmental Samples,* USEPA, August 1993, EPA/600/R–93/100. (available through NTIS, PB94–121811). EPA Method 300.1 is titled *USEPA Method 300.1, Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0,* USEPA, 1997, EPA/600/R–98/118 (available through NTIS, PB98-169196); also available from: Chemical Exposure Research Branch, Microbiological & Chemical Exposure Assessment Research Division, National Exposure Research Laboratory, U.S. Environmental Protection Agency, Cincinnati, OH 45268, Fax Number: 513–569–7757, Phone number: 513–569–7586. Standard Methods 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-ClO_2 D, 4500-ClO_2 E, 6251 B, and 5910 B shall be followed in accordance with *Standard Methods for the Examination of Water and Wastewater, 19th Edition,* American Public Health Association, 1995; copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. Standard Methods 5310 B, 5310 C, and 5310 D shall be followed in accordance with the *Supplement to the 19th Edition of Standard Methods for the Examination of Water and Wastewater,* American Public Health Association, 1996; copies may be obtained from the American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005. ASTM Method D 1253–86 shall be followed in accordance with the *Annual Book of ASTM Standards,* Volume 11.01, American Society for Testing and Materials, 1996 edition; copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428.

(b) *Disinfection byproducts.* (1) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table:

APPROVED METHODS FOR DISINFECTION BYPRODUCT COMPLIANCE MONITORING

Methodology [2]	EPA method	Standard method	Byproduct measured [1]			
			TTHM	HAA5	Chlorite [4]	Bromate
P&T/GC/EICD & PID	[3]502.2		X			
P&T/GC/MS	524.2		X			
LLE/GC/ECD	551.1		X			
LLE/GC/ECD		6251 B		X		
SPE/GC/ECD	552.1			X		
LLE/GC/ECD	552.2			X		
Amperometric Titration		4500-ClO_2 E			X	
IC	300.0				X	
IC	300.1				X	X

[1] X indicates method is approved for measuring specified disinfection byproduct.
[2] P&T = purge and trap; GC = gas chromatography; ElCD = electrolytic conductivity detector; PID = photoionization detector; MS = mass spectrometer; LLE = liquid/liquid extraction; ECD = electron capture detector; SPE = solid phase extractor; IC = ion chromatography.
[3] If TTHMs are the only analytes being measured in the sample, then a PID is not required.
[4] Amperometric titration may be used for routine daily monitoring of chlorite at the entrance to the distribution system, as prescribed in § 141.132(b)(2)(i)(A). Ion chromatography must be used for routine monthly monitoring of chlorite and additional monitoring of chlorite in the distribution system, as prescribed in § 141.132(b)(2)(i)(B) and (b)(2)(ii).

(2) Analysis under this section for disinfection byproducts must be conducted by laboratories that have received certification by EPA or the State. To receive certification to conduct analyses for the contaminants in § 141.64(a), the laboratory must carry out annual analyses of performance evaluation (PE) samples approved by EPA or the State. In these analyses of PE samples, the laboratory must achieve quantitative results within the acceptance limit on a minimum of 80% of the analytes included in each PE sample. The acceptance limit is defined as the 95% confidence interval calculated around the mean of the PE study data between a maximum and minimum acceptance limit of +/−50% and +/−15% of the study mean.

(c) *Disinfectant residuals.* (1) Systems must measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table:

APPROVED METHODS FOR DISINFECTANT RESIDUAL COMPLIANCE MONITORING

Methodology	Standard method	ASTM method	Residual Measured [1]			
			Free chlorine	Combined chlorine	Total chlorine	Chlorine dioxide
Amperometric Titration	4500-Cl D	D 1253–86	X	X	X	
Low Level Amperometric Titration	4500-Cl E				X	
DPD Ferrous Titrimetric	4500-Cl F		X	X	X	
DPD Colorimetric	4500-Cl G		X	X	X	
Syringaldazin e (FACTS)	4500-Cl H		X			
Iodometric Electrode	4500-Cl I				X	
DPD	4500-ClO_2 D					X
Amperometric Method II	4500-ClO_2 E					X

[1] X indicates method is approved for measuring specified disinfectant residual.

(2) If approved by the State, systems may also measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using DPD colorimetric test kits.

(3) A party approved by EPA or the State must measure residual disinfectant concentration.

(d) *Additional analytical methods.* Systems required to analyze parameters not included in paragraphs (b) and (c) of this section must use the following methods. A party approved by EPA or the State must measure these parameters.

(1) *Alkalinity.* All methods allowed in § 141.89(a) for measuring alkalinity.

(2) *Bromide.* EPA Method 300.0 or EPA Method 300.1.

(3) *Total Organic Carbon (TOC).* Standard Method 5310 B (High-Temperature Combustion Method) or Standard Method 5310 C (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method 5310 D (Wet-Oxidation Method). TOC samples may not be filtered prior to analysis. TOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 24 hours. Acidified TOC samples must be analyzed within 28 days.

(4) *Specific Ultraviolet Absorbance (SUVA).* SUVA is equal to the UV absorption at 254nm (UV_{254}) (measured in m^{-1} divided by the dissolved organic carbon (DOC) concentration (measured as mg/L). In order to determine SUVA, it is necessary to separately measure UV_{254} and DOC. When determining SUVA, systems must use the methods stipulated in paragraph (d)(4)(i) of this section to measure DOC and the method stipulated in paragraph (d)(4)(ii) of this section to measure UV_{254}. SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. DOC and UV_{254} samples used to determine a SUVA value must be taken at the same time and at the same location.

(i) Dissolved Organic Carbon (DOC). Standard Method 5310 B (High-Temperature Combustion Method) or Standard Method 5310 C (Persulfate-Ultraviolet or Heated-Persulfate Oxidation Method) or Standard Method

5310 D (Wet-Oxidation Method). Prior to analysis, DOC samples must be filtered through a 0.45 µm pore-diameter filter. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet the following criteria: DOC < 0.5 mg/L. DOC samples must be filtered through the 0.45 µm pore-diameter filter prior to acidification. DOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 48 hours. Acidified DOC samples must be analyzed within 28 days.

(ii) Ultraviolet Absorption at 254 nm (UV_{254}). Method 5910 B (Ultraviolet Absorption Method). UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV_{254} samples must be filtered through a 0.45 µm pore-diameter filter. The pH of UV_{254} samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

(5) *pH.* All methods allowed in § 141.23(k)(1) for measuring pH.

§ 141.132 Monitoring requirements.

(a) *General requirements.* (1) Systems must take all samples during normal operating conditions.

(2) Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with State approval in accordance with criteria developed under § 142.16(f)(5) of this chapter.

(3) Failure to monitor in accordance with the monitoring plan required under paragraph (f) of this section is a monitoring violation.

(4) Failure to monitor will be treated as a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MCLs or MRDLs.

(5) Systems may use only data collected under the provisions of this subpart or subpart M of this part to qualify for reduced monitoring.

(b) *Monitoring requirements for disinfection byproducts.* (1) *TTHMs and HAA5.* (i) *Routine monitoring.* Systems must monitor at the frequency indicated in the following table:

ROUTINE MONITORING FREQUENCY FOR TTHM AND HAA5

Type of system	Minimum monitoring frequency	Sample location in the distribution system
Subpart H system serving at least 10,000 persons.	Four water samples per quarter per treatment plant.	At least 25 percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.[1]
Subpart H system serving from 500 to 9,999 persons.	One water sample per quarter per treatment plant.	Locations representing maximum residence time.[1]
Subpart H system serving fewer than 500 persons.	One sample per year per treatment plant during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in paragraph (c) of this section.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons.	One water sample per quarter per treatment plant[2].	Locations representing maximum residence time.[1]
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	One sample per year per treatment plant[2] during month of warmest water temperature.	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets criteria in paragraph (c) of this section for reduced monitoring.

[1] If a system elects to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2] Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with State approval in accordance with criteria developed under § 142.16(f)(5) of this chapter.

(ii) Systems may reduce monitoring, except as otherwise provided, in accordance with the following table:

Reduced Monitoring Frequency for TTHM and HAA5

If you are a . . .	You may reduce monitoring if you have monitored at least one year and your . . .	To this level
Subpart H system serving at least 10,000 persons which has a source water annual average TOC level, before any treatment, ≤4.0 mg/L.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L.	One sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
Subpart H system serving from 500 to 9,999 persons which has a source water annual average TOC level, before any treatment, ≤4.0 mg/L.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L.	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature. NOTE: Any Subpart H system serving fewer than 500 persons may not reduce its monitoring to less than one sample per treatment plant per year.
System using only ground water not under direct influence of surface water using chemical disinfectant and serving at least 10,000 persons.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L.	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature
System using only ground water not under direct influence of surface water using chemical disinfectant and serving fewer than 10,000 persons.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L for two consecutive years OR TTHM annual average ≤0.020 mg/L and HAA5 annual average ≤0.015 mg/L for one year.	One sample per treatment plant per three year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

(iii) Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is no more than 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively. Systems that do not meet these levels must resume monitoring at the frequency identified in paragraph (b)(1)(i) of this section in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L and 0.045 mg/L for TTHMs and HAA5, respectively.

(iv) The State may return a system to routine monitoring at the State's discretion.

(2) *Chlorite.* Community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

(i) *Routine monitoring.* (A) *Daily monitoring.* Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by paragraph (b)(2)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(B) *Monthly monitoring.* Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted under paragraph (b)(2)(ii) of this section to meet the requirement for monitoring in this paragraph.

(ii) *Additional monitoring.* On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) *Reduced monitoring.* (A) Chlorite monitoring at the entrance to the distribution system required by paragraph (b)(2)(i)(A) of this section may not be reduced.

(B) Chlorite monitoring in the distribution system required by paragraph (b)(2)(i)(B) of this section may be reduced to one three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under paragraph (b)(2)(i)(B) of this section has exceeded the chlorite MCL and the system has not been required to conduct monitoring under paragraph (b)(2)(ii) of this section. The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under paragraph (b)(2)(i)(B) of this section exceeds the chlorite MCL or the system is required to conduct monitoring under paragraph (b)(2)(ii) of this section, at which time the system must revert to routine monitoring.

(3) *Bromate.* (i) *Routine monitoring.* Community and nontransient noncommunity systems using ozone, for disinfection or oxidation, must take one sample per month for each treatment plant in the system using ozone. Systems must take samples monthly at the entrance to the distribution system while the ozonation system is operating under normal conditions.

(ii) *Reduced monitoring.* Systems required to analyze for bromate may reduce monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is equal to or greater than 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is ≥0.05 mg/L, the system must resume routine monitoring

required by paragraph (b)(3)(i) of this section.

(c) *Monitoring requirements for disinfectant residuals.* (1) *Chlorine and chloramines.* (i) *Routine monitoring.* Systems must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in § 141.21. Subpart H systems may use the results of residual disinfectant concentration sampling conducted under § 141.74(b)(6)(i) for unfiltered systems or § 141.74(c)(3)(i) for systems which filter, in lieu of taking separate samples.

(ii) *Reduced monitoring.* Monitoring may not be reduced.

(2) *Chlorine dioxide.* (i) *Routine monitoring.* Community, nontransient noncommunity, and transient noncommunity water systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by paragraph (c)(2)(ii) of this section, in addition to the sample required at the entrance to the distribution system.

(ii) *Additional monitoring.* On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples. If chlorine dioxide or chloramines are used to maintain a disinfectant residual in the distribution system, or if chlorine is used to maintain a disinfectant residual in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours. If chlorine is used to maintain a disinfectant residual in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

(iii) *Reduced monitoring.* Chlorine dioxide monitoring may not be reduced.

(d) *Monitoring requirements for disinfection byproduct precursors (DBPP).* (1) *Routine monitoring.* Subpart H systems which use conventional filtration treatment (as defined in § 141.2) must monitor each treatment plant for TOC no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this paragraph (d)(1) must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time as the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired sample and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) *Reduced monitoring.* Subpart H systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, may reduce monitoring for both TOC and alkalinity to one paired sample and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC ≥2.0 mg/L.

(e) *Bromide.* Systems required to analyze for bromate may reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(f) *Monitoring plans.* Each system required to monitor under this subpart must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the State and the general public no later than 30 days following the applicable compliance dates in § 141.130(b). All Subpart H systems serving more than 3300 people must submit a copy of the monitoring plan to the State no later than the date of the first report required under § 141.134. The State may also require the plan to be submitted by any other system. After review, the State may require changes in any plan elements. The plan must include at least the following elements.

(1) Specific locations and schedules for collecting samples for any parameters included in this subpart.

(2) How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.

(3) If approved for monitoring as a consecutive system, or if providing water to a consecutive system, under the provisions of § 141.29, the sampling plan must reflect the entire distribution system.

§ 141.133 Compliance requirements.

(a) *General requirements.* (1) Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average. Where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

(2) All samples taken and analyzed under the provisions of this subpart must be included in determining compliance, even if that number is greater than the minimum required.

(3) If, during the first year of monitoring under § 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(b) *Disinfection byproducts.* (1) *TTHMs and HAA5.* (i) For systems monitoring quarterly, compliance with MCLs in § 141.64 must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by § 141.132(b)(1). If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134. If a PWS fails to complete four consecutive quarters' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(ii) For systems monitoring less frequently than quarterly, compliance must be based on an average of samples taken that year under the provisions of § 141.132(b)(1). If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant.

(iii) Systems on a reduced monitoring schedule whose annual average exceeds the MCL will revert to routine monitoring immediately. These systems

will not be considered in violation of the MCL until they have completed one year of routine monitoring.

(2). *Bromate.* Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by § 141.132(b)(3). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134. If a PWS fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(3) *Chlorite.* Compliance must be based on an arithmetic average of each three sample set taken in the distribution system as prescribed by § 141.132(b)(2)(i)(B) and § 141.132(b)(2)(ii). If the arithmetic average of any three sample set exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134.

(c) *Disinfectant residuals.* (1) *Chlorine and chloramines.* (i) Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under § 141.132(c)(1). If the average of quarterly averages covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public pursuant to § 141.32, in addition to reporting to the State pursuant to § 141.134.

(ii) In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to § 141.134 must clearly indicate which residual disinfectant was analyzed for each sample.

(2) *Chlorine dioxide.* (i) *Acute violations.* Compliance must be based on consecutive daily samples collected by the system under § 141.132(c)(2). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one (or more) of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute health risks in § 141.32(a)(1)(iii)(E). Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system must notify the public of the violation in accordance with the provisions for acute violations under § 141.32(a)(1)(iii)(E).

(ii) *Nonacute violations.* Compliance must be based on consecutive daily samples collected by the system under § 141.132(c)(2). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and must take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and will notify the public pursuant to the procedures for nonacute health risks in § 141.32(e)(78). Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system must notify the public of the violation in accordance with the provisions for nonacute violations under § 141.32(e)(78).

(d) *Disinfection byproduct precursors (DBPP).* Compliance must be determined as specified by § 141.135(b). Systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period, and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in § 141.135(b)(2) and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to § 141.135(b)(3) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date.

§ 141.134 Reporting and recordkeeping requirements.

(a) Systems required to sample quarterly or more frequently must report to the State within 10 days after the end of each quarter in which samples were collected, notwithstanding the provisions of § 141.31. Systems required to sample less frequently than quarterly must report to the State within 10 days after the end of each monitoring period in which samples were collected.

(b) *Disinfection byproducts.* Systems must report the information specified in the following table:

If you are a...	You must report...[1]
System monitoring for TTHM and HAA5 under the requirements of §§ 141.132(b) on a quarterly or more frequent basis.	(1) The number of samples taken during the last quarter. (2) The location, date, and result of each sample taken during the last quarter. (3) The arithmetic average of all samples taken in the last quarter. (4) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters. (5) Whether the MCL was exceeded.
System monitoring for TTHMs and HAA5 under the requirements of §§ 141.132(b) less frequently than quarterly (but at least annually).	(1) The number of samples taken during the last year. (2) The location, date, and result of each sample taken during the last quarter. (3) The arithmetic average of all samples taken over the last year. (4) Whether the MCL was exceeded.
System monitoring for TTHMs and HAA5 under the requirements of § 141.132(b) less frequently than annually.	(1) The location, date, and result of the last sample taken. (2) Whether the MCL was exceeded.

If you are a...	You must report...[1]
System monitoring for chlorite under the requirements of § 141.132(b) ..	(1) The number of samples taken each month for the last 3 months. (2) The location, date, and result of each sample taken during the last quarter. (3) For each month in the reporting period, the arithmetic average of all samples taken in the month. (4) Whether the MCL was exceeded, and in which month it was exceeded.
System monitoring for bromate under the requirements of § 141.132(b)	(1) The number of samples taken during the last quarter. (2) The location, date, and result of each sample taken during the last quarter. (3) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. (4) Whether the MCL was exceeded.

(c) *Disinfectants.* Systems must report the information specified in the following table:

If you are a...	You must report...[1]
System monitoring for chlorine or chloramines under the requirements of § 141.132(c).	(1) The number of samples taken during each month of the last quarter. (2) The monthly arithmetic average of all samples taken in each month for the last 12 months. (3) The arithmetic average of all monthly averages for the last 12 months. (4) Whether the MRDL was exceeded.
System monitoring for chlorine dioxide under the requirements of § 141.132(c).	(1) The dates, results, and locations of samples taken during the last quarter. (2) Whether the MRDL was exceeded. (3) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

[1] The State may choose to perform calculations and determine whether the MRDL was exceeded, in lieu of having the system report that information.

(d) *Disinfection byproduct precursors and enhanced coagulation or enhanced softening.* Systems must report the information specified in the following table:

If you are a . . .	You must report . . .[1]
System monitoring monthly or quarterly for TOC under the requirements of § 141.132(d) and required to meet the enhanced coagulation or enhanced softening requirements in § 141.135(b)(2) or (3).	(1) The number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter. (2) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. (3) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. (4) Calculations for determining compliance with the TOC percent removal requirements, as provided in § 141.135(c)(1). (5) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in § 141.135(b) for the last four quarters.
System monitoring monthly or quarterly for TOC under the requirements of § 141.132(d) and meeting one or more of the alternative compliance criteria in § 141.135(a)(2) or (3).	(1) The alternative compliance criterion that the system is using. (2) The number of paired samples taken during the last quarter. (3) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. (4) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in §§ 141.135(a)(2)(i) or (iii) or of treated water TOC for systems meeting the criterion in § 141.135(a)(2)(ii).

If you are a . . .	You must report . . .[1]
	(5) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in § 141.135(a)(2)(v) or of treated water SUVA for systems meeting the criterion in § 141.135(a)(2)(vi). (6) The running annual average of source water alkalinity for systems meeting the criterion in § 141.135(a)(2)(iii) and of treated water alkalinity for systems meeting the criterion in § 141.135(a)(3)(i). (7) The running annual average for both TTHM and HAA5 for systems meeting the criterion in § 141.135(a)(2)(iii) or (iv). (8) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in § 141.135(a)(3)(ii). (9) Whether the system is in compliance with the particular alternative compliance criterion in § 141.135(a)(2) or (3).

[1] The State may choose to perform calculations and determine whether the treatment technique was met, in lieu of having the system report that information.

§ 141.135 Treatment technique for control of disinfection byproduct (DBP) precursors.

(a) *Applicability.* (1) Subpart H systems using conventional filtration treatment (as defined in § 141.2) must operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph (b) of this section unless the system meets at least one of the alternative compliance criteria listed in paragraph (a)(2) or (a)(3) of this section.

(2) *Alternative compliance criteria for enhanced coagulation and enhanced softening systems.* Subpart H systems using conventional filtration treatment may use the alternative compliance criteria in paragraphs (a)(2)(i) through (vi) of this section to comply with this section in lieu of complying with paragraph (b) of this section. Systems must still comply with monitoring requirements in § 141.132(d).

(i) The system's source water TOC level, measured according to § 141.131(d)(3), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(ii) The system's treated water TOC level, measured according to § 141.131(d)(3), is less than 2.0 mg/L, calculated quarterly as a running annual average.

(iii) The system's source water TOC level, measured as required by § 141.131(d)(3), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to § 141.131(d)(1), is greater than 60 mg/L (as $CaCO_3$), calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in § 141.130(b), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in § 141.130(b) to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the State for approval not later than the effective date for compliance in § 141.130(b). These technologies must be installed and operating not later than June 16, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a violation of National Primary Drinking Water Regulations.

(iv) The TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

(v) The system's source water SUVA, prior to any treatment and measured monthly according to § 141.131(d)(4), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(vi) The system's finished water SUVA, measured monthly according to § 141.131(d)(4), is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(3) *Additional alternative compliance criteria for softening systems.* Systems practicing enhanced softening that cannot achieve the TOC removals required by paragraph (b)(2) of this section may use the alternative compliance criteria in paragraphs (a)(3)(i) and (ii) of this section in lieu of complying with paragraph (b) of this section. Systems must still comply with monitoring requirements in § 141.132(d).

(i) Softening that results in lowering the treated water alkalinity to less than 60 mg/L (as $CaCO_3$), measured monthly according to § 141.131(d)(1) and calculated quarterly as a running annual average.

(ii) Softening that results in removing at least 10 mg/L of magnesium hardness (as $CaCO_3$), measured monthly and calculated quarterly as an annual running average.

(b) *Enhanced coagulation and enhanced softening performance requirements.* (1) Systems must achieve the percent reduction of TOC specified in paragraph (b)(2) of this section between the source water and the combined filter effluent, unless the State approves a system's request for alternate minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section.

(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with § 141.131(d). Systems practicing softening are required to meet the Step 1 TOC reductions in the far-right column (Source water alkalinity >120 mg/L) for the specified source water TOC:

STEP 1 REQUIRED REMOVAL OF TOC BY ENHANCED COAGULATION AND ENHANCED SOFTENING FOR SUBPART H SYSTEMS USING CONVENTIONAL TREATMENT [1, 2]

Source-water TOC, mg/L	Source-water alkalinity, mg/L as $CaCO_3$		
	0–60 (percent)	≤60–120 (percent)	>120 [3] (percent)
>2.0–4.0	35.0	25.0	15.0
>4.0–8.0	45.0	35.0	25.0
>8.0	50.0	40.0	30.0

[1] Systems meeting at least one of the conditions in paragraph (a)(2)(i)–(vi) of this section are not required to operate with enhanced coagulation.
[2] Softening systems meeting one of the alternative compliance criteria in paragraph (a)(3) of this section are not required to operate with enhanced softening.
[3] Systems practicing softening must meet the TOC removal requirements in this column.

(3) Subpart H conventional treatment systems that cannot achieve the Step 1 TOC removals required by paragraph (b)(2) of this section due to water quality parameters or operational constraints must apply to the State, within three months of failure to achieve the TOC removals required by paragraph (b)(2) of this section, for approval of alternative minimum TOC (Step 2) removal requirements submitted by the system. If the State approves the alternative minimum TOC removal (Step 2) requirements, the State may make those requirements retroactive for the purposes of determining compliance. Until the State approves the alternate minimum TOC removal (Step 2) requirements, the system must meet the Step 1 TOC removals contained in paragraph (b)(2) of this section.

(4) *Alternate minimum TOC removal (Step 2) requirements.* Applications made to the State by enhanced coagulation systems for approval of alternative minimum TOC removal (Step 2) requirements under paragraph (b)(3) of this section must include, as a minimum, results of bench- or pilot-scale testing conducted under paragraph (b)(4)(i) of this section and used to determine the alternate enhanced coagulation level.

(i) *Alternate enhanced coagulation level is defined as* coagulation at a coagulant dose and pH as determined by the method described in paragraphs (b)(4)(i) through (v) of this section such that an incremental addition of 10 mg/L of alum (as aluminum) (or equivalent amount of ferric salt) results in a TOC removal of ≤ 0.3 mg/L. The percent removal of TOC at this point on the ''TOC removal versus coagulant dose'' curve is then defined as the minimum TOC removal required for the system. Once approved by the State, this minimum requirement supersedes the minimum TOC removal required by the table in paragraph (b)(2) of this section. This requirement will be effective until such time as the State approves a new value based on the results of a new bench- and pilot-scale test. Failure to achieve State-set alternative minimum TOC removal levels is a violation of National Primary Drinking Water Regulations.

(ii) Bench- or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (as aluminum) (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

ENHANCED COAGULATION STEP 2 TARGET pH

Alkalinity (mg/L as $CaCO_3$)	Target pH
0–60	5.5
>60–120	6.3
>120–240	7.0
>240	7.5

(iii) For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (as aluminum) (or equivalant addition of iron coagulant) is reached.

(iv) The system may operate at any coagulant dose or pH necessary (consistent with other NPDWRs) to achieve the minimum TOC percent removal approved under paragraph (b)(3) of this section.

(v) If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose (as aluminum) at all dosages of alum (or equivalant addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the State for a waiver of enhanced coagulation requirements.

(c) *Compliance calculations.* (1) Subpart H systems other than those identified in paragraph (a)(2) or (a)(3) of this section must comply with requirements contained in paragraph (b)(2) of this section. Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

(i) Determine actual monthly TOC percent removal, equal to:

(1—(treated water TOC/source water TOC)) × 100

(ii) Determine the required monthly TOC percent removal (from either the table in paragraph (b)(2) of this section or from paragraph (b)(3) of this section).

(iii) Divide the value in paragraph (c)(1)(i) of this section by the value in paragraph (c)(1)(ii) of this section.

(iv) Add together the results of paragraph (c)(1)(iii) of this section for the last 12 months and divide by 12.

(v) If the value calculated in paragraph (c)(1)(iv) of this section is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(2) Systems may use the provisions in paragraphs (c)(2)(i) through (v) of this section in lieu of the calculations in paragraph (c)(1)(i) through (v) of this section to determine compliance with TOC percent removal requirements.

(i) In any month that the system's treated or source water TOC level, measured according to § 141.131(d)(3), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (c)(1)(iii) of this section) when calculating compliance under the provisions of paragraph (c)(1) of this section.

(ii) In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness (as $CaCO_3$), the system may assign a

monthly value of 1.0 (in lieu of the value calculated in paragraph (c)(1)(iii) of this section) when calculating compliance under the provisions of paragraph (c)(1) of this section.

(iii) In any month that the system's source water SUVA, prior to any treatment and measured according to § 141.131(d)(4), is ≤2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (c)(1)(iii) of this section) when calculating compliance under the provisions of paragraph (c)(1) of this section.

(iv) In any month that the system's finished water SUVA, measured according to § 141.131(d)(4), is ≤2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (c)(1)(iii) of this section) when calculating compliance under the provisions of paragraph (c)(1) of this section.

(v) In any month that a system practicing enhanced softening lowers alkalinity below 60 mg/L (as $CaCO_3$), the system may assign a monthly value of 1.0 (in lieu of the value calculated in paragraph (c)(1)(iii) of this section) when calculating compliance under the provisions of paragraph (c)(1) of this section.

(3) Subpart H systems using conventional treatment may also comply with the requirements of this section by meeting the criteria in paragraph (a)(2) or (3) of this section.

(d) *Treatment technique requirements for DBP precursors.* The Administrator identifies the following as treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems: For Subpart H systems using conventional treatment, enhanced coagulation or enhanced softening.

11. Section 141.154 is amended by adding paragraph (e) to read as follows:

§ 141.154 Required additional health information.

* * * * *

(e) Community water systems that detect TTHM above 0.080 mg/l, but below the MCL in § 141.12, as an annual average, monitored and calculated under the provisions of § 141.30, must include health effects language prescribed by paragraph (73) of appendix C to subpart O.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

12. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g-1, 300g-2 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

13. Section 142.14 is amended by adding new paragraphs (d)(12), (d)(13), (d)(14), (d)(15), and (d)(16) to read as follows.

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(12) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR part 141, subpart L for the control of disinfectants and disinfection byproducts. These records must also include interim measures toward installation.

(i) States must keep records of systems that are installing GAC or membrane technology in accordance with § 141.64(b)(2) of this chapter. These records must include the date by which the system is required to have completed installation.

(ii) States must keep records of systems that are required, by the State, to meet alternative minimum TOC removal requirements or for whom the State has determined that the source water is not amenable to enhanced coagulation in accordance with § 141.135(b)(3) and (4) of this chapter, respectively. These records must include the alternative limits and rationale for establishing the alternative limits.

(iii) States must keep records of subpart H systems using conventional treatment meeting any of the alternative compliance criteria in § 141.135(a)(2) or (3) of this chapter.

(iv) States must keep a register of qualified operators that have met the State requirements developed under § 142.16(f)(2).

(13) Records of systems with multiple wells considered to be one treatment plant in accordance with § 141.132(a)(2) of this chapter and § 142.16(f)(5).

(14) Monitoring plans for subpart H systems serving more than 3,300 persons in accordance with § 141.132(f) of this chapter.

(15) List of laboratories approved for analyses in accordance with § 141.131(b) of this chapter.

(16) List of systems required to monitor for disinfectants and disinfection byproducts in accordance with part 141, subpart L of this chapter. The list must indicate what disinfectants and DBPs, other than chlorine, TTHM, and HAA5, if any, are measured.

* * * * *

14. Section 142.16 is amended by adding paragraph (h) to read as follows.

§ 142.16 Special primacy requirements.

* * * * *

(h) *Requirements for States to adopt 40 CFR part 141, subpart L.* In addition to the general primacy requirements elsewhere in this part, including the requirement that State regulations be at least as stringent as federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart L, must contain a description of how the State will accomplish the following program requirements:

(1) Section 141.64(b)(2) of this chapter (interim treatment requirements). Determine any interim treatment requirements for those systems electing to install GAC or membrane filtration and granted additional time to comply with § 141.64 of this chapter.

(2) Section 141.130(c) of this chapter (qualification of operators). Qualify operators of public water systems subject to 40 CFR part 141, subpart L. Qualification requirements established for operators of systems subject to 40 CFR part 141, subpart H—Filtration and Disinfection may be used in whole or in part to establish operator qualification requirements for meeting 40 CFR part 141, subpart L requirements if the State determines that the 40 CFR part 141, subpart H requirements are appropriate and applicable for meeting subpart L requirements.

(3) Section 141.131(c)(2) of this chapter (DPD colorimetric test kits). Approve DPD colorimetric test kits for free and total chlorine measurements. State approval granted under § 141.74(a)(2) of this chapter for the use of DPD colorimetric test kits for free chlorine testing is acceptable for the use of DPD test kits in measuring free chlorine residuals as required in 40 CFR part 141, subpart L.

(4) Sections 141.131(c)(3) and (d) of this chapter (State approval of parties to conduct analyses). Approve parties to conduct pH, bromide, alkalinity, and residual disinfectant concentration measurements. The State's process for approving parties performing water quality measurements for systems subject to 40 CFR part 141, subpart H requirements in paragraph (b)(2)(i)(D) of this section may be used for approving parties measuring water quality parameters for systems subject to subpart L requirements, if the State determines the process is appropriate and applicable.

(5) Section 141.132(a)(2) of this chapter (multiple wells as a single source). Define the criteria to use to determine if multiple wells are being drawn from a single aquifer and therefore be considered a single source for compliance with monitoring requirements.

(6) Approve alternate minimum TOC removal (Step 2) requirements, as allowed under the provisions of § 141.135(b) of this chapter.

[FR Doc. 98–32887 Filed 12–15–98; 8:45 am]
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Federal Register

Wednesday
December 16, 1998

Part V

Environmental Protection Agency

40 CFR Parts 9, 141, and 142
National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 141, and 142

[WH–FRL–6199–9]

RIN 2040–AC91

National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is finalizing the Interim Enhanced Surface Water Treatment Rule (IESWTR). The purposes of the IESWTR are to: Improve control of microbial pathogens, including specifically the protozoan *Cryptosporidium*, in drinking water; and address risk trade-offs with disinfection byproducts. Key provisions established in today's final IESWTR include: A Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium;* 2-log *Cryptosporidium* removal requirements for systems that filter; strengthened combined filter effluent turbidity performance standards and individual filter turbidity provisions; disinfection benchmark provisions to assure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct standards; inclusion of *Cryptosporidium* in the definition of ground water under the direct influence of surface water (GWUDI) and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; and sanitary surveys for all surface water systems regardless of size. The IESWTR builds upon the treatment technique requirements of the Surface Water Treatment Rule.

EPA believes that implementation of the IESWTR will significantly reduce the level of *Cryptosporidium* in finished drinking water supplies through improvements in filtration. The Agency estimates that the likelihood of endemic illness from *Cryptosporidium* will decrease by 110,000 to 463,000 cases annually. The Agency believes that the rule will also reduce the likelihood of the occurrence of outbreaks of cryptosporidiosis by providing a larger margin of safety against such outbreaks for some systems. In addition, the filtration provisions of the rule are expected to increase the level of protection from exposure to other pathogens (i.e., *Giardia* or other waterborne bacterial or viral pathogens).

The IESWTR applies to public water systems that use surface water or GWUDI and serve 10,000 or more people. The rule also requires primacy States to conduct sanitary surveys for all surface water and GWUDI systems regardless of size.

EFFECTIVE DATE: This regulation is effective February 16, 1999. Compliance dates for specific components of the rule are discussed in the Supplementary Information section.

ADDRESSES: Public comments, the comment/response document, applicable **Federal Register** notices, other major supporting documents, and a copy of the index to the public docket for this rulemaking are available for review at EPA's Drinking Water Docket: 401 M Street, SW., Rm. EB57, Washington, DC 20460 from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION, CONTACT: For general information contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Elizabeth Corr or Paul S. Berger, Ph.D. (Microbiology), Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460; telephone (202) 260–8907 (Corr) or (202) 260–3039 (Berger). For Regional contacts see Supplementary Information.

SUPPLEMENTARY INFORMATION: This regulation is effective 60 days after publication of FR document for purposes of the Administrative Procedures Act and the Congressional Review Act. Compliance dates for specific components of the rule are discussed below. Solely for judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Time December 30, 1998 as provided in 40 CFR 23.7.

Regulated entities. Entities potentially regulated by the IESWTR are public water systems that use surface water or ground water under the direct influence of surface water and serve at least 10,000 people. (States are required to carry out sanitary surveys for all surface water and GWUDI systems including those that serve less than 10,000 people.) Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Public Water Systems (PWSs) that use surface water or ground water under the direct influence of surface water and serve at least 10,000 people
State, Local, Tribal or Federal Governments	PWSs that use surface water or ground water under the direct influence of surface water and serve at least 10,000 people.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the IESWTR. This table lists the types of entities that EPA is now aware could potentially be regulated by the rule. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in subpart H (§ 141.70(a)—systems subject to the Surface Water Treatment Rule) and subpart P (§ 141.170(a)—subpart H systems that serve 10,000 or more people) of the final rule. If you have questions regarding the applicability of the IESWTR to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Regional Contacts

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IX. Bruce Macler, Water Supply Section, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1884
X. Wendy Marshall, Drinking Water Unit, 1200 Sixth Avenue (OW–136), Seattle, WA 98101, (206) 553–1890

List of Abbreviations Used in This Document

ASCE: American Society of Civil Engineers
ASDWA: Association of State Drinking Water Administrators
ASTM: American Society for Testing and Materials
AWWA: American Water Works Association
AWWARF: American Water Works Association Research Foundation
°C: Degrees Centigrade
CCP: Composite Correction Program
CDC: Centers for Disease Control
CFE: Combined Filter Effluent
CFR: Code of Federal Regulations
CPE: Comprehensive Performance Evaluation
CT: The Residual Concentration of Disinfectant (mg/L) Multiplied by the Contact Time (in minutes)
CTA: Comprehensive Technical Assistance
DBPs: Disinfection Byproducts
DBPR: Disinfectants/Disinfection Byproducts Rule
ESWTR: Enhanced Surface Water Treatment Rule
FACA: Federal Advisory Committee Act
GAC: Granular Activated Carbon
GAO: Government Accounting Office
GWUDI: Ground Water Under the Direct Influence of Surface Water
HAA5: Haloacetic acids (Monochloroacetic, Dichloroacetic, Trichloroacetic, Monobromoacetic and Dibromoacetic Acids)
HPC: Heterotropic Plate Count
hrs: Hours
ICR: Information Collection Rule
IESWTR: Interim Enhanced Surface Water Treatment Rule
IFA: Individual Filter Assessment
Log Inactivation: Logarithm of (N_0/N_T)
Log: Logarithm (common, base 10)
LTESWTR: Long Term Enhanced Surface Water Treatment Rule
LT1: Long Term 1 Enhanced Surface Water Treatment Rule
MCL: Maximum Contaminant Level
MCLG: Maximum Contaminant Level Goal
M–DBP: Microbial and Disinfectants/Disinfection Byproducts
MPA: Microscopic Particulate Analysis
NODA: Notice of Data Availability
NPDWR: National Primary Drinking Water Regulation
N_T: The Concentration of Surviving Microorganisms at Time T
NTTAA: National Technology Transfer and Advancement Act
NTU: Nephelometric Turbidity Unit
PE: Performance Evaluation
PWS: Public Water System
Reg. Neg.: Regulatory Negotiation
RIA: Regulatory Impact Analysis
RFA: Regulatory Flexibility Act
RSD: Relative Standard Deviation
SAB: Science Advisory Board
SDWA: Safe Drinking Water Act
SWTR: Surface Water Treatment Rule
TC: Total Coliforms
TCR: Total Coliform Rule
TTHM: Total Trihalomethanes
TWG: Technical Work Group
UMRA: Unfunded Mandates Reform Act
x log removal: Reduction to $1/10^x$ of original concentration

Table of Contents

I. Background

A. Statutory Requirements and Legal Authority

The Safe Drinking Water Act (SDWA or the Act), as amended in 1986,

requires USEPA to publish a ''maximum contaminant level goal'' (MCLG) for each contaminant which, in the judgement of the USEPA Administrator, ''may have any adverse effect on the health of persons and which is known or anticipated to occur in public water systems'' (Section 1412(b)(3)(A)). MCLGs are to be set at a level at which ''no known or anticipated adverse effect on the health of persons occur and which allows an adequate margin of safety'' (Section 1412(b)(4)).

The Act was amended in August 1996. As a result of these Amendments, several of these provisions were renumbered and augmented with additional language. Other sections were added establishing new drinking water requirements. These modifications are outlined below.

The Act also requires that at the same time USEPA publishes an MCLG, which is a non-enforceable health goal, it also must publish a National Primary Drinking Water Regulation (NPDWR) that specifies either a maximum contaminant level (MCL) or treatment technique (Sections 1401(l) and 1412(a)(3)). USEPA is authorized to promulgate a NPDWR ''that requires the use of a treatment technique in lieu of establishing a MCL,'' if the Agency finds that ''it is not economically or technologically feasible to ascertain the level of the contaminant'' EPA's general authority to set a maximum contaminant level goal (MCLG) and National Primary Drinking Water Regulation (NPDWR) applies to contaminants that may ''have an adverse effect on the health of persons,'' that are ''known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern,'' and for which ''in the sole judgement of the Administrator, regulation of such contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems'' (SDWA Section 1412(b)(1)(A)).

The amendments, also require EPA, when proposing a NPDWR that includes an MCL or treatment technique, to publish and seek public comment on an analysis of health risk reduction and cost impacts. In addition, EPA is required to take into consideration the effects of contaminants upon sensitive subpopulations (i.e. infants, children, pregnant women, the elderly, and individuals with a history of serious illness), and other relevant factors. (Section 1412 (b)(3)(C)).

The amendments established a number of regulatory deadlines, including schedules for a Stage 1 Disinfection Byproduct Rule (DBPR), an Interim Enhanced Surface Water Treatment Rule (IESWTR), a Long Term Final Enhanced Surface Water Treatment Rule (LTESWTR) affecting Public Water Systems (PWSs) that serve under 10,000 people, and a Stage 2 DBPR (Section 1412(b)(2)(C)). The Act as amended also requires EPA to promulgate regulations to address filter backwash (Section 1412(b)(14)) and to promulgate regulations specifying criteria for requiring disinfection ''as necessary'' for ground water systems.

Finally, as part of the 1996 SDWA Amendments, recordkeeping requirements were modified to apply to every person who is subject to a requirement of this title or who is a grantee (Section 1445(a)(1)(A)). Such persons are required to establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation.

B. Regulatory History

1. Existing Regulations

Surface Water Treatment Rule (SWTR)

Under the Surface Water Treatment Rule (SWTR) (54 FR 27486, June 29, 1989) (EPA, 1989b), EPA set maximum contaminant level goals of zero for *Giardia lamblia*, viruses, and *Legionella;* and promulgated National Primary Drinking Water Regulations for all PWSs using surface water sources or ground water sources under the direct influence of surface water. The SWTR includes treatment technique requirements for filtered and unfiltered systems that are intended to protect against the adverse health effects of exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogenic organisms. Briefly, those requirements include (1) requirements for maintenance of a disinfectant residual in the distribution system; (2) removal and/or inactivation of 3 log (99.9%) for *Giardia* and 4 log (99.99%) for viruses; (3) combined filter effluent turbidity performance standard of 5 NTU as a maximum and 0.5 NTU at the 95th percentile monthly, based on 4-hour monitoring for treatment plants using conventional treatment or direct filtration (with separate standards for other filtration technologies); and (4) watershed protection and other requirements for unfiltered systems.

Total Coliform Rule (TCR)

The Total Coliform Rule (TCR) (54 FR 27544, June 29, 1989) applies to all public water systems (EPA, 1989c). This regulation sets compliance with the Maximum Contaminant Level (MCL) for total coliforms (TC) as follows. For systems that collect 40 or more samples per month, no more than 5.0% of the samples may be TC-positive; for those that collect fewer than 40 samples, no more than one sample may be TC-positive. In addition, if two consecutive samples in the system are TC-positive, and one is also fecal coliform or *E. coli*-positive, then this is defined as an acute violation of the MCL. If a system exceeds the MCL, it must notify the public using mandatory language developed by the EPA. The required monitoring frequency for a system depends on the number of people served and ranges from 480 samples per month for the largest systems to once annually for certain of the smallest systems. All systems must have a written plan identifying where samples are to be collected.

If a system has a TC-positive sample, it must test that sample for the presence of fecal coliforms or *E. coli.* The system must also collect a set of repeat samples, and analyze for TC (and fecal coliform or *E. coli* if necessary) within 24 hours of being notified of a TC-positive sample.

The TCR also requires an on-site inspection (referred to as a sanitary survey) every 5 years for each system that collects fewer than five samples per month. (This requirement is extended to every10 years for non-community systems using only protected and disinfected ground water.)

Total Trihalomethane (TTHM) Rule

In November 1979 (44 FR 68624) (EPA, 1979) EPA set an interim MCL for total trihalomethanes (TTHM) of 0.10 mg/L as an annual average. Compliance is defined on the basis of a running annual average of quarterly averages of all samples. The value for each sample is the sum of the measured concentrations of chloroform, bromodichloromethane, dibromochloromethane and bromoform.

The interim TTHM standard only applies to community water systems using surface water and/or ground water serving at least 10,000 people that add a disinfectant to the drinking water during any part of the treatment process. At their discretion, States may extend coverage to smaller PWSs; however, most States have not exercised this option.

Information Collection Rule (ICR)

The Information Collection Rule (ICR) is a monitoring and data reporting rule that was promulgated on May 14, 1996 (61 FR 24354) (EPA, 1996b). The purpose of the ICR is to collect occurrence and treatment information to

help evaluate the need for possible changes to the current SWTR and existing microbial treatment practices, and to help evaluate the need for future regulation for disinfectants and disinfection byproducts (DBPs). The ICR will provide EPA with additional information on the national occurrence in drinking water of (1) chemical byproducts that form when disinfectants used for microbial control react with naturally occurring compounds already present in source water and (2) disease-causing microorganisms, including *Cryptosporidium, Giardia,* and viruses. The ICR will also provide engineering data on how PWSs currently control for such contaminants. This information is being collected because the 1992 Regulatory Negotiating (Reg. Neg.) Committee on microbial pathogens and disinfectants and DBPs concluded that additional information was needed to assess the potential health problem created by the presence of DBPs and pathogens in drinking water and to assess the extent and severity of risk in order to make sound regulatory and public health decisions. The ICR will also provide information to support regulatory impact analyses for various regulatory options, and to help develop monitoring strategies for cost-effectively implementing regulations.

The ICR pertains to large public water systems serving populations of at least 100,000; a more limited set of ICR requirements pertain to ground water systems serving between 50,000 and 100,000 people. About 300 PWSs operating 500 treatment plants are involved with the extensive ICR data collection. Under the ICR, these PWSs monitor for water quality factors affecting DBP formation and DBPs within the treatment plant and in the distribution system monthly for 18 months. In addition, PWSs must provide operating data and a description of their treatment plant design and surface water systems must monitor for bacteria, viruses, and protozoa. Finally, a subset of PWSs must perform treatment studies, using either granular activated carbon (GAC) or membrane processes, to evaluate DBP precursor removal and control of DBPs. Monitoring for treatment study applicability began in September 1996. The remaining occurrence monitoring began in July 1997.

One initial intent of the ICR was to collect pathogen occurrence data and other information for use in developing the Interim Enhanced Surface Water Treatment Rule (IESWTR) and to estimate national costs for various treatment options. However, because of delays in promulgating the ICR and technical difficulties associated with laboratory approval and review of facility sampling plans, ICR monitoring did not begin until July 1, 1997, which was later than originally anticipated. As a result of this delay and the new statutory deadlines for promulgating the Stage 1 DBPR and IESWTR in November of 1998 (resulting from the 1996 SDWA amendments), ICR data were not available in time to support these rules. In place of the ICR data, the Agency worked with stakeholders to identify other sources of data developed since 1994 that could be used to support the development of the Stage 1 DBPR and IESWTR. EPA will continue to work with stakeholders in analyzing and using the comprehensive ICR data and research for developing future Enhanced Surface Water Treatment requirements and the Stage 2 DBPR.

2. Public Health Concerns To Be Addressed

In 1990, EPA's Science Advisory Board (SAB), an independent panel of experts established by Congress, cited drinking water contamination as one of the most important environmental risks and indicated that disease-causing microbial contaminants (i.e., bacteria, protozoa and viruses) are probably the greatest remaining health risk management challenge for drinking water suppliers (EPA/SAB, 1990). Information on the number of waterborne disease outbreaks from the U.S. Centers for Disease Control and Prevention (CDC) underscores this concern. CDC indicates that, between 1980 and 1996, 401 waterborne disease outbreaks were reported, with over 750,000 associated cases of disease (Craun 1998, 1997a; Kramer et al 1996). During this period, a number of agents were implicated as the cause, including protozoa, viruses and bacteria, as well as several chemicals. Most of the cases (but not outbreaks) were associated with surface water, and specifically with a single outbreak of cryptosporidiosis in Milwaukee (over 400,000 cases) (MacKenzie et al, 1994).

It is important to note that for a number of reasons, the CDC reports may substantially understate the actual number of waterborne disease outbreaks and cases in the U.S. First, few States have an active outbreak surveillance program. Second, disease outbreaks are often not recognized in a community or, if recognized, are not traced to the drinking water source. Third, a large number of people experiencing gastrointestinal illness (predominantly diarrhea) do not seek medical attention. Fourth, physicians may often not have a broad enough community-wide basis of information to attribute gastrointestinal illness to any specific origin such as a drinking water source. Finally, an unknown but probably significant portion of waterborne disease is endemic (i.e., not associated with an outbreak), and thus is even more difficult to recognize.

Waterborne disease is usually acute (i.e., sudden onset and typically lasting a short time in healthy people). Some pathogens (e.g., *Giardia, Cryptosporidium*) may cause extended illness, sometimes lasting months or longer, in otherwise healthy individuals. Most waterborne pathogens cause gastrointestinal illness, with diarrhea, abdominal discomfort, nausea, vomiting, and/or other symptoms. Other waterborne pathogens cause, or at least are associated with, more serious disorders such as hepatitis, gastric cancer, peptic ulcers, myocarditis, swollen lymph glands, meningitis, encephalitis, and a myriad of other diseases.

Gastrointestinal illness may be chronic in vulnerable populations (e.g., immunocompromised individuals). The severity and duration of illness is often greater in immunocompromised persons than in healthy individuals and may be fatal among this population. For instance, a follow-up study of the 1993 Milwaukee waterborne disease outbreak reported that at least 50 *Cryptosporidium*-associated deaths occurred among the severely immunocompromised (Hoxie et al., 1997). Immunocompromised persons include infants, pregnant women, the elderly, and especially those with severely weakened immune systems (e.g., AIDS patients, those receiving treatment for certain types of cancer, organ-transplant recipients and people on immunosuppressant drugs) (Gerba et al., 1996).

With specific reference to cryptosporidiosis, the disease is caused by ingestion of environmentally-resistant *Cryptosporidium* oocysts, which are readily carried by the waterborne route. Humans and other animals may excrete these oocysts. Transmission of this disease often occurs through ingestion of the infective oocysts from contaminated water or food, but may also result from direct or indirect contact with infected persons or animals (Casemore, 1990; Cordell and Addiss, 1994). Symptoms of cryptosporidiosis include typical gastrointestinal symptoms (Current et al., 1983). As noted above, these may persist for several days to several months.

While cryptosporidiosis is generally a self-limiting disease with a complete

recovery in otherwise healthy persons, it can be very serious in immunosuppressed persons. EPA has a particular concern regarding drinking water exposure to *Cryptosporidium*, especially in severely immunocompromised persons, because there is no effective therapeutic drug to cure the disease. There have been a number of waterborne disease outbreaks caused by *Cryptosporidium* in the United States, United Kingdom and many other countries (Rose, 1997). There appears to be an immune response to *Cryptosporidium*, but it is not known if this results in protection (Fayer and Ungar, 1986).

One of the key regulations EPA has developed and implemented to counter pathogens in drinking water is the SWTR. Among its provisions, the rule requires that a surface water system have sufficient treatment to reduce the source water concentration of *Giardia* and viruses by at least 99.9% (3 log) and 99.99% (4 log), respectively. A shortcoming of the SWTR is that the rule does not specifically control for the protozoan *Cryptosporidium*. The first report of a recognized outbreak caused by *Cryptosporidium* was published during the development of the SWTR (D'Antonio et al., 1985).

In terms of occurrence, *Cryptosporidium* is common in the environment. Runoff from unprotected watersheds allows transport of these microorganisms to water bodies used as intake sites for drinking water treatment plants. A particular public health challenge is that simply increasing existing disinfection levels above those most commonly practiced in the United States today does not appear to be an effective strategy for controlling *Cryptosporidium*, because the *Cryptosporidium* oocyst is especially resistant to disinfection practices commonly used at water treatment plants. Today's rule addresses the concern of passage of *Cryptosporidium* through physical removal processes during water treatment. It also strengthens the effectiveness and reliability of physical removal for particulate matter and microorganisms in general, thereby reducing the likelihood of the disinfection barrier being over challenged. Waterborne disease outbreaks have been associated with a high level of particles passing through a water treatment plant (Fox and Lytle, 1996). This presents a significant public health concern. Hence, there is a need to optimize treatment reliability and to enhance physical removal efficiencies to minimize the *Cryptosporidium* levels in finished water. This rule, with tightened turbidity performance criteria and required individual filter monitoring, is formulated to address these public health concerns.

3. Regulatory Negotiation Process

In 1992 EPA initiated a negotiated rulemaking to address public health concerns associated with disinfectants, DBPs and microbial pathogens. The negotiators included representatives of State and local health and regulatory agencies, public water systems, elected officials, consumer groups and environmental groups. The Reg. Neg. Committee met from November 1992 through June 1993.

Early in the process, the negotiators agreed that large amounts of information necessary to understand how to optimize the use of disinfectants to concurrently minimize microbial and DBP risk on a plant-specific basis were unavailable. Nevertheless, the Reg. Neg. Committee agreed that EPA propose a Stage 1 DBPR to extend coverage to all community and nontransient noncommunity water systems that use disinfectants, reduce the current TTHM MCL, regulate additional DBPs, set limits for the use of disinfectants, and reduce the level of organic precursor compounds in the source water that may react with disinfectants to form DBPs.

EPA's most significant concern in developing regulations for disinfectants and DBPs was the need to ensure that adequate treatment be maintained for controlling risks from microbial pathogens. One of the major goals addressed by the Reg. Neg. Committee was to develop an approach that would reduce the level of exposure from disinfectants and DBPs without undermining the control of microbial pathogens. The intention was to ensure that drinking water is microbiologically safe at the limits set for disinfectants and DBPs and that these chemicals do not pose an unacceptable health risk at these limits. Thus, the Reg. Neg. Committee also considered a range of microbial issues and agreed that EPA should also propose a companion microbial rule (IESWTR).

Following months of intensive discussions and technical analysis, the Reg. Neg. Committee recommended the development of three sets of rules: a two-staged approach for the DBPs (proposal: 59 FR 38668, July 29, 1994) (EPA, 1994a), an ''interim'' ESWTR (proposal: 59 FR 38832, July 29, 1994) (EPA, 1994b) and ''long-term'' ESWTR, and an Information Collection Rule (proposal: 59 FR 6332, February 10, 1994) (EPA, 1994c) (promulgation: 61FR24354, May 14, 1996) (EPA, 1996b). The approach used in developing these proposals considered the constraints of simultaneously treating water to control for both microbial contaminants and disinfectants/DBPs.

The Reg. Neg. Committee agreed that the schedules for IESWTR and LTESWTR should be ''linked'' to the schedule for the Stage 1 DBPR to assure simultaneous compliance and a balanced risk-risk based implementation. The Reg. Neg. Committee agreed that additional information on health risk, occurrence, treatment technologies, and analytical methods needed to be developed in order to better understand the risk-risk tradeoff, and how to accomplish an overall reduction in health risks from both pathogens and disinfectants/DBPs.

Finally, the Reg. Neg. Committee agreed that to develop a reasonable set of rules and to understand more fully the limitations of the current SWTR additional field data were critical. Thus, a key component of the regulation negotiation agreement was the promulgation of the ICR previously described.

4. Federal Advisory Committee Process

In May 1996, the Agency initiated a series of public informational meetings to provide an update on the status of the 1994 proposal and to review new data related to microbial and DBP regulations that had been developed since July 1994. In August 1996, Congress enacted the 1996 SDWA Amendments which contained a number of new requirements, as discussed above, as well as specifying deadlines for final promulgation of the IESWTR and Stage 1 DBPR. To meet these deadlines and to maximize stakeholder participation, the Agency established the Microbial-Disinfectants/Disinfection Byproducts (M–DBP) Advisory Committee under the Federal Advisory Committee Act (FACA) in March 1997, to collect, share, and analyze new information and data, as well as to build consensus on the regulatory implications of this new information. The Committee consisted of 17 members representing EPA, State and local public health and regulatory agencies, local elected officials, drinking water suppliers, chemical and equipment manufacturers, and public interest groups.

The M–DBP Advisory Committee met five times in March through July 1997 to discuss issues related to the IESWTR and Stage 1 DBPR. Technical support for these discussions was provided by a Technical Work Group (TWG) established by the Committee at its first meeting in March 1997. The

Committee's activities resulted in the collection, development, evaluation, and presentation of substantial new data and information related to key elements of both proposed rules. The Committee reached agreement on a number of major issues that were discussed in Notices of Data Availability (NODA) for the IESWTR (62 FR 59486, November 3, 1997) (EPA, 1997a) and the Stage 1 DBPR (62 FR 59388, November 3, 1997) (EPA, 1997b). The major issues addressed by the Committee and in the NODAs include: (1) Maintain the proposed MCLs for TTHMs, HAA5 and bromate; (2) modify the enhanced coagulation requirements as part of DBP control; (3) include a microbial benchmarking/profiling to provide a methodology and process by which a PWS and the State, working together, assure that there will be no significant reduction in microbial protection as the result of modifying disinfection practices in order to meet MCLs for TTHM and HAA5; (4) continue credit for compliance with applicable disinfection requirements for disinfection applied at any point prior to the first customer, consistent with the existing SWTR; (5) modify the turbidity performance requirements and add requirements for individual filters; (6) establish an MCLG for *Cryptosporidium*; (7) add requirements for removal of *Cryptosporidium*; (8) provide for mandatory sanitary surveys; and (9) a commitment to additional analysis of the role of *Cryptosporidium* inactivation as part of a multiple barrier concept in the context of a subsequent **Federal Register** microbial proposal. The new data and analysis supporting the technical areas of agreement were summarized and explained at length in EPA's 1997 NODAs. The Committee's recommendations are embodied in an Agreement In Principle document dated July 15, 1997.

5. Overview of 1994 Proposal and 1997 Notice of Data Availability

EPA proposed to amend the Surface Water Treatment Rule in 1994 to provide additional protection against disease-causing organisms (pathogens) in drinking water (59 FR 38832: July 29, 1994). In November 1997 EPA published a Notice of Data Availability (62 FR 59486) (EPA, 1997a, b) that summarized the 1994 proposal; described new data and information that the Agency had obtained and analyses that had been developed since the proposal; provided information concerning the July 1997 recommendations of the M–DBP Advisory Committee described above on key issues related to the proposal; and requested comment on these recommendations as well as on other regulatory implications that flowed from the new data and information. The Agency also solicited additional data and information that were relevant to the issues discussed in the Notice. In addition, EPA provided notice that the Agency was re-opening the comment period for the 1994 proposal for 90 days. EPA also requested that any information that members of the public would like the Agency to consider as part of the final rule development process regarding data or views submitted to the Agency since the close of the comment period on the 1994 proposal be formally resubmitted during the reopened 90-day comment period unless already in the underlying record in the Docket for the Notice of Data Availability.

II. Summary of the Final Rule

The primary purposes of the IESWTR are (1) to improve control of microbial pathogens in drinking water, particularly for the protozoan *Cryptosporidium*, and (2) to guard against significant increases in microbial risk that might otherwise occur when systems implement the Stage 1 Disinfectants/Disinfection Byproducts Rule. Major components of the IESWTR include the following provisions:

(a) A Maximum Contaminant Level Goal (MCLG) of zero is established for the protozoan genus *Cryptosporidium*.

(b) Surface water systems serving 10,000 or more people, that are required to filter under the SWTR, must achieve at least 2 log removal of *Cryptosporidium*. Systems that use conventional or direct filtration meet this requirement if they comply with strengthened turbidity performance standards for combined filter effluent (described below) and the current requirements under the SWTR (e.g., meet design and operating conditions as specified by the State). Systems that use slow sand filtration or diatomaceous earth meet the 2 log removal requirement if they are in compliance with existing turbidity performance standards under the SWTR (less than or equal to 1 NTU in at least 95% of measurements taken each month or, for slow sand, alternative criteria as approved by the State; and a maximum of 5 NTU).

(c) The rule includes a series of requirements related to turbidity. These address the following:

Strengthened turbidity performance requirements for the combined filter effluent. For all surface water or GWUDI systems that use conventional treatment or direct filtration, serve 10,000 or more people, and are required to filter: (a) The turbidity level of a system's combined filtered water at each plant must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, and (b) the turbidity level of a system's combined filtered water at each plant must at no time exceed 1 NTU. For both the maximum and the 95th percentile requirements, compliance is determined based on measurements of the combined filter effluent at four-hour intervals.

Individual Filter Requirements. All surface water or GWUDI systems that use conventional or direct filtration, serve 10,000 or more people, and are required to filter must conduct continuous monitoring of turbidity for each individual filter and must provide an exceptions report to the State on a monthly basis. Exceptions reporting must include the following: (1) Any individual filter with a turbidity level greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart; and (2) any individual filter with a turbidity level greater than 0.5 NTU at the end of the first 4 hours of filter operation based on two consecutive measurements fifteen minutes apart. A filter profile (which is a graphical representation of an individual filter performance) must be produced within seven days of the exceedance if no obvious reason for the abnormal filter performance can be identified.

If an individual filter has turbidity levels greater than 1.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of three consecutive months, the system must make an exceptions report and conduct a self-assessment of the filter. If an individual filter has turbidity levels greater than 2.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of two consecutive months, the system must make an exception report and arrange for the conduct of a Comprehensive Performance Evaluation (CPE) by the State or a third party approved by the State.

State Authority. States must have rules or other authority to require systems to conduct a Composite Correction Program (CCP) and to assure that systems implement any follow-up recommendations that result as part of the CCP. The CCP consists of two elements—a CPE and Comprehensive Technical Assistance (CTA). The CPE is a thorough review and analysis of a plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may

be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. The CPE must include the following components: (1) Assessment of plant performance; (2) evaluation of major unit processes; (3) identification and prioritization of performance limiting factors; (4) assessment of the applicability of comprehensive technical assistance; and (5) preparation of a CPE report. A CTA is the performance improvement phase that is implemented if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA is a combination of utilizing CPE results as a basis for follow up, implementing process control priority-setting techniques, and maintaining long-term involvement to systematically train staff and administrators.

(d) Microbial benchmarking/profiling requirements are included to provide a methodology and process by which a public water system and the State, working together, assure that there will be no significant reduction in microbial protection as the result of significant disinfection practice modifications in order to meet MCLs for TTHM and HAA5. The disinfection profiling requirement included in today's rule applies to surface water systems serving 10,000 or more people and which have, based on a one year running annual average of representative samples taken in the distribution system, (1) measured TTHM levels of at least 80% of the MCL (0.064 mg/L) or (2) measured HAA5 levels of at least 80% of the MCL (0.048 mg/L). Those PWSs required to develop a disinfection profile that subsequently decide to make a significant change in disinfection practice must consult with the State prior to implementing such a change.

(e) States are required to conduct sanitary surveys for all public water systems using surface water or ground water under the direct influence of surface water, regardless of system size. Sanitary surveys are required no less frequently than every three years for community systems and no less frequently than every five years for noncommunity systems. For community systems determined by the State to have outstanding performance based on prior sanitary surveys, subsequent sanitary surveys may be conducted no less frequently than every five years. States must have the appropriate rules or other authority to require systems to respond in writing to significant deficiencies outlined in a sanitary survey report within at least 45 days, indicating how and on what schedule the system will address significant deficiencies noted in the survey. States must also have the appropriate rules or other authority to assure that facilities take the steps necessary to address significant deficiencies identified in the survey report that are within the control of the PWS and its governing body.

(f) *Cryptosporidium* is added to the definition of ground water under the direct influence of surface water (for systems serving 10,000 or more people).

(g) *Cryptosporidium* is added to the watershed protection requirements for systems that are avoiding filtration (for systems serving 10,000 or more people).

(h) Surface Water and GWUDI systems serving 10,000 or more people are required to cover all new treated water reservoirs, holding tanks or other storage facilities for which construction begins after the effective date of the rule.

The Surface Water Treatment Rule remains the base rule regulating public water systems that use surface water and ground water under the influence of surface water. All systems, filtered and unfiltered, must continue to comply with all the requirements of the SWTR and, where applicable, meet the new requirements of the IESWTR. The IESWTR's requirements for filtered systems are intended to ensure that where a filtration plant is required to protect public health, as specified in the SWTR, that plant will be operating well for the removal of *Cryptosporidium* and other microorganisms. EPA wishes to emphasize that compliance with today's requirements in no way relieves a public water system of its obligation to comply fully with pre-existing SWTR requirements. With regard to unfiltered systems in particular, development of today's rule was based on the assumption of full compliance with all filtration avoidance criteria in the SWTR.

Finally, EPA notes that today's **Federal Register** also contains the final Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR). EPA proposed this rule at the same time as the IESWTR and has finalized it along with the IESWTR.

III. Explanation of Today's Action

A. MCLG for *Cryptosporidium*

1. Today's Rule

The Agency is establishing an MCLG of zero for *Cryptosporidium*, as proposed. During the 1997 M–DBP Advisory Committee discussions, the Committee supported the proposed establishment of an MCLG of zero for *Cryptosporidium*. A key issue identified by the Advisory Committee and public commenters was whether the MCLG should be set at the genus level (i.e., *Cryptosporidium*) or at the more specific species level (i.e., C. *parvum*). Because of the uncertainties regarding taxonomy, cross reactions and cross transmission among mammals, EPA believes it is premature to establish the *Cryptosporidium* MCLG at the species level. In addition, the Agency believes that establishing an MCLG for *Cryptosporidium* at the genus level is consistent with the Safe Drinking Water Act, which requires EPA to set the MCLG with an adequate margin of safety (Section 1412(b)(4)(A)).

2. Background and Analysis

In the 1994 proposal of the IESWTR (59 FR 145, p. 38855; July 29, 1994), EPA proposed to establish an MCLG of zero for *Cryptosporidium*. The Agency based its proposal upon concerns about significant health effects on persons consuming inadequately treated surface waters and ground water under the influence of surface waters. Technical justifications for the proposed MCLG relied upon animal studies and human epidemiology studies of waterborne outbreaks of cryptosporidiosis.

Since the proposed rule, results of a human feeding study have become available which further warrant the establishment of an MCLG of zero (1997 NODA 59492). DuPont et al. (1995) fed 29 healthy volunteers single doses ranging from 30 to 1 million *C. parvum* oocysts obtained from a calf. Of the 16 volunteers who received 300 or more oocysts, 88% became infected. Of the five volunteers who received the lowest dose (30 oocysts), one became infected. According to a mathematical model based upon the DuPont et al. data, if an individual ingests a single viable oocyst there is about a 0.5% chance of infection (Haas et al., 1996). The probability of infection from *C. parvum* may be different for different strains.

In the process of further reviewing new information since 1994, EPA has re-examined the issues related to setting an MCLG at the genus level versus the species level. This issue was discussed in some detail during the M–DBP Advisory Committee meetings. Currently, the classification of a number of *Cryptosporidium* species is based, in part, on the animal host from which they were isolated. The Agency is aware that investigators have not found a *Cryptosporidium* species other than *C. parvum* that infects humans (with one highly questionable exception). To the Agency's knowledge, however, no human infectivity studies have been conducted to date with any species

other than *C. parvum*. Moreover, the taxonomy of the genus *Cryptosporidium* is uncertain and changing (Tzipori and Griffiths, 1998; Fayer et al., 1997). As a result, EPA cannot preclude the possibility that a new classification of the species comprising the genus *Cryptosporidium* may include more than one species capable of infecting humans. Recently, for example, Peng et al. (1997) analyzed 39 isolates of *C. parvum* from humans and cattle and found they could be separated into either of two genotypes, one of which could infect humans but not cattle or mice. In the future, these two genotypes may be separated into two different species.

In addition to the taxonomic issue, the current tests for *C. parvum* in stool specimens and water, which involve the microscopic examination of a stained specimen, may give positive results for *Cryptosporidium* species other than *C. parvum*. Often this results because other *Cryptosporidium* species (as well as other microorganisms) may react with the stains used to detect *C. parvum*. This is especially true for the commonly used acid-fast stain. In addition, *C. parvum* oocysts do not differ in size and shape from those of *C. baileyi* and *C. meleagridis* (Arrowood, 1997). As a result, it is not necessarily certain that oocysts in a human fecal specimen identified by a clinical laboratory as *C. parvum* are always *C. parvum*. (In general, clinical labs do not use a stain or other procedure that can distinguish between *C. parvum* and other *Cryptosporidium* species).

The Agency is aware that a few attempts have been made to infect one type of animal (e.g., mammals) with *Cryptosporidium* species isolated from other types of animals (e.g., birds), generally without success (Fayer, 1997). In addition, Graczyk et al. (1996b) found that *C. parvum* was not transmissible to fish, amphibia, or reptiles. Nevertheless, until more cross-species transmission data are available, the Agency cannot foreclose on the possibility that species other than *C. parvum* may be infective to humans. In their review of the literature, Fayer et al. (1990) concluded that the success of transmission studies is contingent upon not only species specificity, but also the condition and age of the oocysts, the route of inoculation of oocysts, and the age and immune status of the recipient. Therefore, negative results to date on transmission are not necessarily conclusive regarding host specificity.

EPA believes that it is prudent to set an MCLG at zero not only for taxonomic reasons but also because of concern that certain populations are at greater risk of waterborne cryptosporidiosis than others. This concern is heightened by the fact that currently there is no cure for cryptosporidiosis (for healthy individuals the disease tends to be self limiting). Thus, the importance of prevention and avoidance of infection becomes even more central to EPA's consideration of this issue. Until the taxonomy of *Cryptosporidium* has been clarified, EPA believes that an MCLG of zero for *Cryptosporidium* at the genus level is appropriate especially in light of the statutory requirement to establish MCLGs with ''an adequate margin of safety''.

3. Summary of Major Comments

Regarding the value of the MCLG most commenters supported the establishment of a MCLG of zero for *Cryptosporidium*. Reasons that were given for their support included: (1) Uncertainty exists in the infective dose for both healthy and vulnerable (immunocompromised) individuals; (2) an MCLG of zero is consistent with the regulatory approach for pathogens under the existing Surface Water Treatment Rule (SWTR); (3) one viable oocyst can cause an infection at least in some people; and (4) *Cryptosporidium* has particularly adverse effects on persons with immune disorders. No commenter proposed an MCLG value other than zero. Some commenters opposed any MCLG for *Cryptosporidium*, arguing that: (1) Current levels of treatment have some level of effectiveness against *Cryptosporidium* transmission to drinking water; (2) uncertainty exists associated with the analytical procedures used to detect *Cryptosporidium*; (3) current technology limits the ability to determine viability, infectivity, and species; and (4) the infectivity threshold has not been determined.

EPA agrees with the commenters who supported an MCLG of zero for *Cryptosporidium* for reasons stated in the previous section. EPA does not agree with comments opposing any MCLG for *Cryptosporidium*. While it is true that current levels of treatment control *Cryptosporidium* to some extent, studies have found *Cryptosporidium* oocysts in filtered water supplies of some treatment plants (LeChevallier, 1991b; LeChevallier, 1995). Therefore, the Agency believes that regulation of *Cryptosporidium* and enhanced treatment practices are warranted. Furthermore, the effectiveness of treatment is irrelevant to the question of setting an MCLG, which asks what is the level of (uncontrolled) *Cryptosporidium* in drinking water that will pose no risk to the health of persons. For the reasons discussed, that level is at zero. The availability of effective treatment merely ensures that EPA can regulate to control the health risk from *Cryptosporidium* reflected by the MCLG.

Comments which address the uncertainty related to the analytical method for *Cryptosporidium* and the fact that current technology does not allow viability, infectivity, and species to be determined may relate to the issue of whether EPA establishes an MCL versus treatment technique requirements for *Cryptosporidium*. However, they are not compelling with regard to the public health goal that should be set for this contaminant.

With regard to the infectivity threshold for *Cryptosporidium*, according to a mathematical model based upon the DuPont et al., 1995 data, if an individual ingests a single viable oocyst there is a 0.5% chance of infection (Haas et al., 1996). It is known that *Cryptosporidium* oocysts are capable of causing an infection in both healthy and seriously ill individuals. Death has been associated with some cryptosporidiosis cases, particularly among sensitive subpopulations (i.e., immunocompromised individuals) (Hoxie et al., 1997). For such reasons, EPA considers an MCLG of zero for *Cryptosporidium* to be appropriate.

EPA also received comments on whether the MCLG for *Cryptosporidium* should be set at the genus or the species level. Commenters offered several reasons for supporting an MCLG for *C. parvum*, as opposed to *Cryptosporidium*. Several professed that only *C. parvum* could infect humans, and therefore EPA should establish an MCLG based on that particular species. Commenters also contended that if, in future regulations, EPA were to establish a treatment technique requirement based on the *Cryptosporidium* density in the source water, publishing an MCLG for *Cryptosporidium* at the genus level might require systems to provide an additional level of treatment for *Cryptosporidium* species that are not known to be infectious to humans. In contrast, other commenters who supported the establishment of an MCLG for *Cryptosporidium* at the genus level stated that, unless further research justifies an MCLG at the species level, the MCLG should be set at the genus level. They reasoned that *Cryptosporidium* method limitations argued for setting the MCLG at the genus level.

In response to comments that did not support establishing an MCLG of zero for *Cryptosporidium* at the genus level,

EPA has carefully considered the issue of genus versus species level for *Cryptosporidium*. As mentioned earlier, EPA concludes that there exists much uncertainty regarding *Cryptosporidium* taxonomy, cross reactions and cross transmissions. Thus, EPA cannot conclude that these other species pose no health risk. For reasons mentioned above, the Agency believes that it is more appropriate to establish an MCLG for *Cryptosporidium* at the genus level at this time. This decision does not affect the level of treatment required under the IESWTR. EPA will revisit the impact of the MCLG in the context of future rules that include consideration of risk-based options.

B. Removal of *Cryptosporidium* by Filtration

1. Today's Rule

Today's final rule establishes a requirement for 2-log removal of *Cryptosporidium* for surface water and GWUDI systems serving 10,000 or more people that must filter under the SWTR. The requirement for at least 99 percent (2-log) removal of *Cryptosporidium* applies between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer. As discussed below, the data available to EPA indicate that rapid granular filtration systems (i.e., systems using conventional or direct filtration) when operated under appropriate coagulation conditions and optimized to meet the turbidity performance standards of the IESWTR (less than or equal to 0.3 NTU in 95% of the measurements each month and a maximum of 1 NTU) are achieving at least 2-log removal.

2. Background and Analysis

The 1994 proposal to amend the Surface Water Treatment Rule included several proposed treatment alternatives. Two of these alternatives—Alternatives B and C—specifically addressed *Cryptosporidium*. Alternative B envisioned treatment options for *Cryptosporidium* based on levels of source water occurrence. Alternative C called for 99% (2-log) removal of *Cryptosporidium*. EPA was unable to consider Alternative B for the IESWTR because occurrence data and related analysis from the ICR sampling and analysis survey discussed above were not available in time to meet the statutory promulgation deadline of November 1998. For the reasons outlined below and as recommended by the M–DBP Advisory Committee, EPA is proceeding with a 2-log removal requirement for *Cryptosporidium* for surface water and GWUDI systems serving 10,000 or more people that are required to filter under the SWTR.

As part of the 1997 M–DBP Advisory Committee process, substantial new data and information related to removal of *Cryptosporidium* by filtration were collected, evaluated and analyzed. The Committee recommended adoption of a 2-log *Cryptosporidium* removal requirement for all surface water systems that serve more than 10,000 people and are required to filter. The Committee also recommended that systems which use rapid granular filtration (direct filtration or conventional filtration treatment) and meet today's strengthened combined filter effluent turbidity requirements would be in compliance with the requirement for at least a 2-log removal of *Cryptosporidium*. Systems which use slow sand filtration and diatomaceous earth filtration and meet existing SWTR turbidity performance requirements (less than or equal to 1 NTU for the 95th percentile or alternative criteria as approved by the State) also would be in compliance with the requirement for at least a 2-log removal of *Cryptosporidium*.

In November of 1997, EPA issued a Notice of Data Availability (NODA) which discussed new data and information that the Agency had obtained and analyses that had been developed since the 1994 proposal. It also summarized recommendations of the M–DBP Advisory Committee on *Cryptosporidium* removal. The 1997 NODA requested comment on the new information, the Advisory Committee's recommendations, and on other regulatory implications and impacts.

The November 3, 1997 NODA provided new information regarding eight studies (Patania et al., 1995; Nieminski and Ongerth, 1995; Ongerth and Pecoraro, 1995; LeChevallier and Norton, 1992; LeChevallier et al., 1991b; Foundation for Water Research, 1994; Kelley et al., 1995; and West et al., 1994) that indicated that rapid granular filtration when operated under appropriate coagulation conditions and optimized to achieve a filtered water turbidity of less than 0.3 NTU should achieve at least 2-log of *Cryptosporidium* removal. These studies were analyzed as part of the 1997 IESWTR NODA.

3. Summary of Major Comments

In response to the 1994 Proposal, most commenters addressing the issue of treatment alternatives supported Alternative C which would require 2-log physical removal of *Cryptosporidium*. Some opposed any treatment requirement greater than a 2-log removal due to a lack of better understanding of dose-response, effectiveness of treatment and analyses to justify the higher treatment costs involved. Today's rule requires at least 2-log removal for *Cryptosporidium*. EPA will revisit issues related to further control of *Cryptosporidium* in future rulemakings.

The majority of commenters to the November 1997 NODA agreed with the appropriateness of establishing a 2-log removal requirement for *Cryptosporidium* in the IESWTR, although some commenters had additional concerns. One major concern was that a quantitative relationship between removal of *Cryptosporidium* and lowered turbidity was premature and had not been established. EPA believes that the studies identified in the NODA illustrate the removal efficiencies for *Cryptosporidium* by several filtration technologies. While these studies demonstrated a range of *Cryptosporidium* log-removals, it is important to realize that 2-log removal was consistently obtainable at turbidity levels of less than 0.3 NTU when systems were operated under appropriate coagulation conditions and optimized to achieve a filtered water turbidity level of less than 0.3 NTU. EPA will continue to assess data for control of *Cryptosporidium* by physical removal and disinfection as it becomes available, and will consider such data in subsequent regulations.

Another significant issue noted by several commenters was that systems should be provided the opportunity to demonstrate greater log removal of *Cryptosporidium*. Consistent with a key point made during M–DBP Advisory Committee discussions on this issue, EPA takes this opportunity to note the Agency's position that the requirement for at least 2-log removal is not intended to prevent a facility from demonstrating that it can achieve higher than 2-log removal of *Cryptosporidium* on a site-specific basis or States from demonstrating based on site-specific information that a specific facility may actually be achieving less than 2-log removal of *Cryptosporidium* even though it is meeting strengthened turbidity standards of 0.3 NTU for the 95th percentile and a maximum of 1 NTU.

C. Turbidity Control

1. Today's Rule

Today's rule establishes a number of requirements for filtration performance and filter monitoring and reporting, outlined below, which apply to surface

water systems or ground water under the direct influence of surface water (GWUDI) that serve 10,000 or more people and are required to filter under the SWTR. The basis for these provisions is explained at greater length in background sections of the 1997 IESWTR NODA.

Combined Filter Effluent Requirements

For conventional and direct filtration systems, the turbidity level of representative samples of a system's combined filter effluent water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month. The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU. For slow sand and diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month and the turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU (no change from the combined filter effluent turbidity requirements in the 1989 SWTR). For both the maximum and 95th percentile requirements, compliance is determined based on measurements of the combined filter effluent at four-hour intervals.

In carrying out these combined effluent requirements, and the individual filter requirements described below, systems must use methods for turbidity measurement previously approved by EPA. These are Method 2130B, published in Standard Methods for the Examination of Water and Wastewater (19th ed.); Great Lakes Instrument Method 2; and the revised EPA Method 180.1, approved in August 1993 in Methods for the Determination of Inorganic Substances in Environmental Samples (EPA–600/R–93–100). EPA notes that today's rule requires the measurement of turbidity. Turbidity is a method-defined parameter. Turbidity therefore is not a candidate for, and will not be subject to, the performance-based measurements system.

Individual Filter Requirements

Conventional and direct filtration systems must conduct continuous monitoring of turbidity for each individual filter and must provide an exceptions report to the State on a monthly basis as part of the existing combined filter effluent reporting process. Exceptions reporting must include the following: (1) Any individual filter with a turbidity level greater than l.0 NTU based on two consecutive measurements fifteen minutes apart; and (2) any individual filter with a turbidity level greater than 0.5 NTU at the end of the first 4 hours of filter operation based on two consecutive measurements fifteen minutes apart. The system must produce a filter profile for either situation if no obvious reason for the abnormal filter performance can be identified. EPA is including a discussion on filter profiles in its guidance document on turbidity which is currently being developed with input from stakeholders.

Individual Filter Follow-Up Activities

If an individual filter has turbidity levels greater than l.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of three consecutive months, the system must, in addition to filing an exceptions report, conduct a self-assessment of the filter. The self-assessment must consist of at least the following components: (1) Assessment of filter performance; (2) development of a filter profile; (3) identification and prioritization of factors limiting filter performance; (4) assessment of the applicability of corrections; and (5) preparation of a filter self-assessment report. The system must conduct the self-assessment within 14 days of the exceedance and report to the State that the self-assessment was conducted. If an individual filter has turbidity levels greater than 2.0 NTU based on two consecutive measurements fifteen minutes apart at any time in each of two consecutive months, the system must file an exceptions report and must no later than 30 days following the exceedance arrange for the conduct of a CPE by the State or a third party approved by the State. The CPE must be completed and submitted to the State no later than 90 days following the exceedance.

2. Background and Analysis

A primary focus of the 1994 proposal was the establishment of treatment requirements that would address public health risks from high densities of pathogens in poor quality source waters and from the waterborne pathogen *Cryptosporidium*. Approaches outlined in the 1994 proposal included treatment requirements based on site-specific concentrations of pathogens in source water and a proposed 2-log removal requirement for *Cryptosporidium* by filtration.

EPA specifically requested comment on what criteria, if any, should be included to ensure that systems optimize treatment plant performance and on whether any of the existing turbidity performance criteria should be modified (e.g., should systems be required to base compliance with the turbidity standards on individual filter effluent monitoring in lieu of or in addition to monitoring the confluence of all filters; and should any performance standard value be changed). In addition, the Agency also requested comment in the 1994 proposal on possible supplemental requirements for State notification of persistent high turbidity levels (e.g., broadening the requirements for State notification of turbidity exceedances).

The 1997 M-DBP Advisory Committee meetings resulted in the collection, development, evaluation, and presentation of substantial data and information related to turbidity control. The Committee's recommendations are reflected in today's rule.

The November 3, 1997 IESWTR NODA discussed new data and information regarding turbidity control with respect to three areas: (1) Current turbidity levels at systems throughout the country; (2) individual filter performance; and (3) turbidity measurement.

Current Turbidity Levels

The November 3, 1997 NODA discussed three data sets that summarized the historical turbidity performance of various filtration plants (AWWSC, 1997; Bissonette, 1997; SAIC, 1997b). These were evaluated to assess the national impact of modifying existing turbidity requirements. Each of the data sets was analyzed to assess the current performance of plants with respect to the number of months in which selected 95th percentile and maximum turbidity levels were exceeded. The data show that upwards of 90% of the systems are currently meeting the new requirements of a maximum turbidity limit of 1 NTU. With respect to the 95th percentile turbidity limit, roughly 78% of the systems are currently meeting the new requirement of 0.3 NTU. Estimates for systems needing to make changes to meet a turbidity performance limit of 0.3 NTU were based on the ability of systems currently to meet a 0.2 NTU. This assumption was intended to take into account a utility's concern with possible turbidity measurement error and to reflect the expectation that a number of utilities will ''aim'' lower than the regulatory performance level to assure compliance. The percentage of systems estimated to modify treatment practices to meet the revised turbidity requirements (i.e., 0.3 NTU 95th percentile and 1 NTU maximum combined filter effluent levels) is

approximately 50%. Based on the turbidity performance data, EPA assumed that for systems serving less than 100,000 people, 51.2 percent of the systems can be expected to make treatment changes to consistently comply with a monthly 95th percentile limit of 0.3 NTU. Similarly, for systems serving over 500,000 people, EPA assumed that 41.7 percent can be expected to make treatment changes to comply with a 0.3 NTU regulatory limit. For systems serving 100,000 to 500,000 people, EPA assumed that 46.5 percent of systems can be expected to make changes. As discussed in greater detail in the November 3, 1997 NODA, the tighter turbidity performance criteria for combined filter effluent in today's rule reflect actual current performance for a substantial percentage of systems nationally. Revising the turbidity criteria effectively ensures that these systems continue to perform at these levels (in addition to improving performance of systems that currently meet existing SWTR criteria but operate at turbidity levels higher than those in today's final rule).

Individual Filter Performance

Several of the studies published since 1994, considered by both EPA and the M-DBP Advisory Committee and outlined in the 1997 NODA, note that the greatest potential for a peak in turbidity (and thus, pathogen break-through) is near the beginning of the filter run after filter backwash or start up of operation (Amirtharajah 1988; Bucklin et al. 1988; Cleasby 1990; and Hall and Croll 1996). During a turbidity spike, significant amounts of particulate matter (including oocysts, if present) may pass through the filter. Various factors affect the duration and amplitude of filter spikes, including sudden changes to the flow rate through the filter, treatment of the filter backwash water, filter-to-waste capability, and site-specific water quality conditions. As discussed in the 1997 IESWTR NODA, these issues highlighted the need to ensure that systems have a greater understanding of individual filter performance and thus for establishment of individual filter monitoring and reporting requirements.

Turbidity Measurement

The November 3, 1997 NODA discussed several issues relating to measurement of turbidity. It was noted that issues exist concerning the accuracy and precision of turbidity measurement due to design criteria, calibration methods, calibration standards, and sampling technique. Performance evaluation (PE) studies conducted by EPA provide an indication of the current level of accuracy and precision for turbidity measurements among different laboratories for a common synthetically prepared water. In PE studies, PE samples with known turbidity levels are sent to participating laboratories (which are not informed of the turbidity level). Laboratories participating in these studies used turbidimeters from various manufacturers and conducted their analysis in accordance with calibration and analytical procedures they are familiar with. Thus, the variability of the results reflects differences resulting from using different turbidimeter models and methods and the effects of different laboratory procedures. Four PE studies were discussed in the NODA with turbidities in the range of 0.35 to 0.72 NTU. The Relative Standard Deviations (RSD) at turbidity levels considered in these PE studies are slightly below 20%.

3. Summary of Major Comments

In response to the 1994 proposal, EPA received a range of comments both in support of and in opposition to optimizing existing water treatment processes to address *Cryptosporidium* removal. Several commenters supported tighter turbidity standards as well as monitoring of individual filters. Other commenters suggested no modifications be made to turbidity standards until further implementation of the SWTR and/or further supporting data was gathered.

Commenters on the 1997 NODA provided additional views on the general subject of filtration performance and turbidity. Commenters generally supported tightening combined filter effluent performance standards as well as the establishment of individual filter monitoring requirements. EPA agrees with these comments, as reflected in today's rule. EPA also notes that turbidity performance data that reflects implementation of the SWTR was analyzed as part of the M–DBP Advisory Committee discussions and was considered by the Committee in developing the recommendations for turbidity which are reflected in today's rule.

Several commenters discussed the ability of systems to measure turbidity at low levels (<0.3 NTU) with accuracy and consistency. EPA believes that the performance evaluation (PE) studies cited in the NODA provide an indication of the precision and accuracy of turbidity measurements at low levels. While turbidities in these studies only ranged from 0.35 to 0.72 NTU, they provided an understanding of the ability to measure at such levels. EPA recognizes that accurate and consistent measurements are not only a function of available technology but also a function of a range of operator/technician factors including calibration, maintenance, training, and adherence to manufacturer instructions. In conjunction with the IESWTR, EPA is currently developing guidance, with stakeholder input, targeted at assisting owners/operators with understanding turbidity as well as focusing on the importance of accuracy and consistency in turbidity measurement, including the low level measurement concerns noted by the commenters.

Many commenters discussed the issue of lime-softening plants and how the new requirements would affect such plants which, because of the softening processes, have artificially elevated levels of turbidity. The IESWTR allows acidification of samples for the combined filter effluent at lime softening plants. In addition, EPA is allowing systems that use lime softening to apply to States for alternative exceedance reporting levels for individual filters if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover and not due to degraded filter performance.

Several commenters noted that special filters would present difficulties in complying with the individual filter monitoring requirements. While EPA realizes that variations exist in filter configurations and filters in use at systems throughout the country, the IESWTR will not seek to address the specific requirements of each and every one. EPA intends to provide States the flexibility and the tools necessary to effectively deal with special filters discussed by the commenters on a more appropriate case-by-case basis.

Another issue raised in public comments was the need to clarify how public notice requirements in the IESWTR would be integrated with future public notice requirements under the SDWA. EPA notes that today's action addresses public notification by using the existing public notification language for microbiological contaminants in 40 CFR 141.32 (e)(10) for violations of treatment technique requirements under the IESWTR. EPA takes this opportunity to note that the 1996 amendments to the SDWA require the Agency to make certain technical changes to the public notice regulations. EPA intends to propose changes to the public notice requirements in the **Federal Register** shortly after promulgation of the IESWTR. Applicable changes in the public notice

requirements, when they become effective, will supersede today's provisions. EPA also takes this opportunity to note that today's rule amends the Consumer Confidence Report Regulation (CCR) to extend the CCR requirements to apply to Subpart P violations.

Several respondents indicated that it would be necessary to provide guidance materials to systems to aid in compliance with these rules. EPA is currently developing a number of guidance manuals, with stakeholder input, to aid systems in understanding and complying with requirements. One such manual will address issues of turbidity control and filter performance.

D. Disinfection Benchmark for Stage 1 DBPR MCLs

1. Today's Rule

Today's rule establishes the disinfection benchmark as a procedure requiring certain PWSs to evaluate the impact on microbial risk of proposed changes in disinfection practice. It reflects the recommendation of the M–DBP Advisory Committee to develop a mechanism that allows utilities and States working together to assure that pathogen control is maintained while the Stage 1 DBPR provisions are implemented. In essence, this procedure involves a PWS charting daily levels of *Giardia lamblia* inactivation for a period of at least one year to create a profile of inactivation performance. The PWS must then use this profile to determine a baseline or benchmark of inactivation against which proposed changes in disinfection practices can be measured. However, only certain systems are required to develop a profile and keep it on file for State review during sanitary surveys. When those systems required to develop a profile plan a significant change in disinfection practice, they must submit the profile, along with an analysis of how the proposed change will affect the current disinfection benchmark, to the State for review. The disinfection benchmark provisions, then, contain three major components: applicability requirements, characterization of disinfection practice, and State review of proposed changes in disinfection practice. Each of these components is discussed in turn below.

Applicability

Systems are required to prepare a disinfection profile if at least one of the following criteria is met:

(1) TTHM levels are at least 80% of the MCL (0.064 mg/L) as an annual average

(2) Haloacetic acid (HAA5) levels are at least 80% of the MCL (0.048 mg/L) as an annual average

In connection with TTHM and HAA5 monitoring to create a disinfection profile, the following provisions apply:

First, the TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average. Second, systems that have collected TTHM and HAA5 data under the ICR must use the results of samples collected during the last 12 months of monitoring unless the State determines that there is a more representative annual data set. Third, systems not required to collect data under the ICR but which have collected four consecutive quarters of TTHM and HAA5 data that substantially meet the sample location, handling, and analytical methods requirements of the ICR may use those data if approved by the State. (Systems must coordinate with the State to confirm acceptability of the existing data). Fourth, if the system does not have four quarters of acceptable HAA5 and TTHM data by the end of 90 days following the IESWTR promulgation date, the PWS must conduct HAA5 and TTHM monitoring to determine an annual average. Alternatively, the system may elect to conduct profiling, as described below, and forego TTHM/HAA5 monitoring to determine applicability. This monitoring must be completed no later than 15 months after promulgation of this rule and conform to the monitoring location requirements of the 1979 TTHM Rule and the analytical methods in the May 1996 Information Collection Rule.

Today's rule applies profiling requirements to systems with TTHM or HAA5 concentrations of at least 80% of the MCL, based upon the M–DBP Advisory Committee technical recommendation that this level will cover most systems that might be expected to modify their disinfection practices to comply with the Stage 1 DBPR. Also, EPA previously considered this 80% target level at the recommendation of the 1992 Reg Neg Committee to evaluate Stage 1 DBPR compliance forecasts and costs, based upon the judgment that most facilities will take additional steps to ensure continuing MCL compliance if they are at or above this level.

Developing the Profile and Benchmark

Profiling is the characterization of a system's disinfection practice over a one year period. The system can create the profile by conducting new daily monitoring and also by using ''grandfathered'' data (as explained below). A disinfection profile consists of a compilation of daily *Giardia lamblia* log inactivations (plus virus inactivations for systems using either chloramines or ozone for primary disinfection), computed over the period of a year, based on daily measurements of operational data (disinfectant residual concentration(s), contact time(s), temperature(s), and, where necessary, pH).

Grandfathered data are those operational data that a system has previously collected at a treatment plant during the course of normal operation. These data may or may not have been used previously for compliance determinations with the SWTR. Those systems that have all necessary data to determine profiles using existing operational data collected prior to promulgation of the IESWTR may use these data in developing profiles. However, grandfathered data must be substantially equivalent to operational data that would be collected under this rule. These data must be representative of inactivation through the entire treatment plant and not just of certain treatment segments. The State determines whether grandfathered data are acceptable. (EPA believes that grandfathered data used in constructing profiles should be the most recent data available, unless the State determines that there is a more representative data.)

Systems required to develop disinfection profiles under this rule must exercise one of the following three options:

Option 1—Systems must conduct daily monitoring as described below. This monitoring must begin no later than 15 months after IESWTR promulgation and must continue for a period of one year. The data collected from this monitoring must be used to develop a one year disinfection profile;

Option 2—Systems that conduct monitoring under this rule, as described under Option 1, may also use one or two years of acceptable grandfathered data, in addition to the one year of new operational data, in developing the disinfection profile;

Option 3—Systems that have three years of acceptable existing operational data are not required to conduct monitoring to develop the disinfection profile under this rule. Instead, they may use grandfathered data to develop a three year disinfection profile. Systems must coordinate with the State to confirm acceptability of grandfathered data no later than 15 months after promulgation of this rule, but must conduct the required monitoring until the State approves the system's request to use grandfathered

data. In order to develop the profile, a system must:

—Measure disinfectant residual concentration (C, in mg/L) before or at the first customer and just prior to each additional point of disinfectant addition, whether with the same or a different disinfectant.
—Determine contact time (T, in minutes) for each residual disinfectant monitoring point during peak flow conditions. T can be based on either a tracer study or assumptions based on contactor basin geometry and baffling. However, systems must use the same method for both grandfathered data and new data.
—Measure water temperature (°C).
—Measure pH (for chlorine only).

The system must then convert daily operational data to daily log inactivation values for *Giardia* (and viruses when chloramines or ozone is used for primary disinfection) as follows:

—Determine CTcalc for each disinfection segment.
—Determine $CT_{99.9}$ (i.e., 3-log inactivation) from tables in the SWTR using temperature (and pH for chlorine) for each disinfection segment. Alternatively, States may allow an alternate calculation procedure (e.g. use of spreadsheet).
—For each segment, log inactivation = $(CTcalc/CT_{99.9})\times 3.0$.
—Sum the log inactivations for each segment to get the daily log inactivation.

A log inactivation benchmark is then calculated as follows:

1. Calculate the average log inactivation of all the days for each calendar month.
2. Determine the calendar month with the lowest average log inactivation.
3. The lowest average month becomes the critical period for that year.
4. If acceptable data from multiple years are available, the average of critical periods for each year becomes the benchmark.
5. If only one year of data is available, the critical period (lowest monthly average inactivation level) for that year is the benchmark.

State Review

If a system that is required to produce a disinfection profile decides to make a significant change in disinfection practice after the profile is developed, it must consult with the State before implementing such a change. Significant changes in disinfection practice are defined as: (1) Moving the point of disinfection (this is not intended to) include routine seasonal changes already approved by the State), (2) changing the type of disinfectant or (3) changing the disinfection process, (4) making other modifications designated as significant by the State. Supporting materials for such consultation with the State must include a description of the proposed change, the disinfection profile developed under this rule for *Giardia lamblia* (and, if necessary, viruses), and an analysis of how the proposed change will affect the current disinfection benchmark. In addition, the State is required to review disinfection profiles as part of its periodic sanitary survey.

EPA is currently developing, with stakeholder input, the *Disinfection Benchmarking Guidance Manual* for States and systems. This manual will provide instruction on the development of disinfection profiles, identification and evaluation of significant changes in disinfection practices, and considerations for setting an alternative benchmark. This manual will also provide guidance for systems that are required to develop a profile based on virus inactivation instead of *Giardia lamblia* inactivation.

2. Background and Analysis

A fundamental principle of the 1992–93 regulatory negotiation reflected in the 1994 proposal for the IESWTR was that new standards for control of disinfection byproducts must not result in significant increases in microbial risk. This principle was also one of the underlying premises of the 1997 M-DBP Advisory Committee's deliberations, i.e., that existing microbial protection must not be significantly reduced or undercut as a result of systems taking the necessary steps to comply with the Stage 1 DBPR. The Advisory Committee reached agreement on the use of microbial profiling and benchmarking as a process by which a PWS and the State, working together, assure that there will be no significant reduction in microbial protection as the result of modifying disinfection practices in order to meet MCLs for TTHM and HAA5.

The strategy of disinfection profiling and benchmarking stemmed from data provided to the EPA and M-DBP Advisory Committee by PWSs and reviewed by stakeholders, in which the baseline of microbial inactivation (expressed as logs of *Giardia lamblia* inactivation) demonstrated high variability. Inactivation varied by several log on a day-to-day basis at any particular treatment plant and by as much as tens of logs over a year due to changes in water temperature, flow rate (and, consequently, contact time), seasonal changes in residual disinfectant, pH, and disinfectant demand (and, consequently, disinfectant residual). There were also differences between years at individual plants. To address these variations, M-DBP stakeholders developed the procedure of profiling a plant's inactivation levels over a period of at least one year, and then establishing a benchmark of minimum inactivation as a way to characterize disinfection practice. This approach makes it possible for a plant that may need to change its disinfection practice in order to meet DBP MCLs to determine the impact the change would have on its current level of disinfection and, thereby, to assure that there is no significant increase in microbial risk.

3. Summary of Major Comments

In the 1997 IESWTR NODA, EPA requested public comment on all aspects of the benchmarking procedure, along with any alternative suggestions, from stakeholders and other interested parties. EPA specifically requested comment on the following issues: Applicability requirements; characterization of disinfection practices and components; use of TTHM and HAA5 data from the same time period instead of TTHM data from one year and HAA5 data from another; definition of significant changes to disinfection practice; different approaches to evaluating possible changes in disinfection practice against a disinfection profile; and whether the use of grandfathered data, if available, should be mandatory for profiling and benchmarking.

The majority of comments on the overall benchmarking procedure outlined in the 1997 IESWTR NODA were positive. Commenters acknowledged the procedure as a way to maintain microbial control in systems changing their disinfection practices to comply with DBP MCLs. However, a significant area of concern expressed in comments was that if PWSs believe they will be held to a relatively higher regulatory standard as a result of maintaining a greater level of disinfection than is currently required, then some PWSs may reduce log inactivation during profiling in order to lower their benchmarks. EPA emphasizes that benchmarking is not intended to function as a regulatory standard. Rather, the objective of the disinfection benchmark is to facilitate interactions between the States and PWSs for the purpose of assessing the impact on microbial risk of proposed significant changes to existing disinfection practices. Final decisions regarding levels of disinfection beyond

those required by the SWTR that are necessary to protect public health will continue to be left to the States. For this reason EPA has not mandated specific evaluation protocols or decision matrices for analyzing changes in disinfection practice. EPA is, however, providing support to the States in making these analyses through the issuance of guidance. This approach is consistent with a majority of comments on this issue which requested that EPA not require specific procedures for the setting of alternative benchmarks but, rather, provide guidance to States.

Several commenters suggested that instead of requiring profiling and benchmarking in regulations, EPA should place these procedures in guidance and allow the States to implement them at their discretion. EPA considers benchmarking to be an important measure in preventing significant increases in microbial risk during implementation of the M-DBP rule cluster. Moreover, States have different statutory authorities governing what they can mandate and some State agencies are prohibited by State law from adopting procedures not required by federal regulations. Consequently, EPA believes the inclusion of benchmarking as a regulation is warranted.

Commenters were concerned that the benchmarking procedure would not take into account source water characteristics and that benchmarking would not be accurate for systems switching from one disinfectant to another (e.g. chlorine to ozone). EPA will cover both of these topics in the *Disinfection Benchmarking Guidance Manual* in sections that address setting an alternative benchmark. Commenters also asked EPA to provide instruction on awarding disinfection credits taking into account possible synergistic effects for different sequential disinfectants. However, as discussed in other parts of this preamble, research in this area is not adequate for a disinfection credit scheme to be developed based on synergistic inactivation.

Most comments submitted to EPA on the issue of applicability favored using 80% of the MCLs for TTHM and HAA5 as threshold levels for profiling. Commenters agreed with the EPA and M-DBP Advisory Committee that these values would capture most of the PWSs likely to change their disinfection processes to meet DBP MCLs. One commenter proposed that using TTHM and HAA5 data from two different years would not present a problem because either one of these parameters can trigger the profiling requirement. However, the majority of comments on this subject supported requiring TTHM and HAA5 data to be collected during the same period since changes in water quality and treatment conditions influence not only the total quantity of DBPs but also the relative formation of different DBP species. In today's rule EPA requires that TTHM and HAA5 data used in determining applicability be collected during the same period. A few commenters recommended that the applicability requirements for profiling should also include ozonation systems with bromate concentrations at least 80% of the MCL (i.e. 8μg/L). EPA has elected not to include bromate levels in the profiling requirements because operational changes, such as dropping the pH during ozonation, can decrease bromate formation without reducing disinfection efficacy.

Certain commenters felt that disinfection profiling should only be required in the event that a system planned to change disinfection practice and that requiring plants which meet water quality standards to perform additional studies is unwarranted. EPA believes, however, that a profile should span all seasons of at least one year to show how seasonal variations impact the log inactivation provided. Consequently, waiting to profile until a disinfection change is needed is not practical because at least one year of monitoring is required and this could significantly delay the desired modifications. Accordingly, EPA maintains that profiling in advance of a decision to change disinfection practices will allow systems to comply with TTHM and HAA5 MCLs in a timely manner without increasing microbial risk. For this reason, EPA requires profiling of those PWSs most like to modify their disinfection procedures (i.e. those with TTHM and HAA5 concentrations at or above 80% of the MCLs).

Many comments advocated allowing the use of grandfathered data in developing disinfection profiles. However, commenters were predominantly against making the use of existing operational data mandatory. They expressed concern that such a requirement would be inherently inequitable, could entail significant retrieval costs, and that the data might not be representative of a system's current operations. EPA believes that grandfathered data will often provide the most accurate picture of historic levels of microbial disinfection and encourages its use in constructing the disinfection profile. However, EPA recognizes that certain problems, such as those identified by commenters, may justify the exclusion of grandfathered data and, therefore, has made the use of such data optional. EPA notes that States may consider issues related to profiling data when determining whether a proposed change in disinfection practice is acceptable.

The benchmarking procedure in today's rule, therefore, reflects the concerns of commenters in many respects. On issues such as the use of grandfathered data, applicability requirements, and evaluating proposed changes in disinfection practice, the disinfection benchmark requirements conform to the majority view of comments. In cases where the rule is at variance with certain commenters' suggestions, such as making the disinfection benchmarking procedure discretionary and requiring profiling only in advance of a proposed change in disinfection practice, EPA has acted in accordance with the need to achieve risk-risk balancing, which is a central objective of the M–DBP rule cluster.

E. Definition of Ground Water Under the Direct Influence of Surface Water

1. Today's Rule

In today's rule, EPA includes *Cryptosporidium* in the definition of ground water under the direct influence of surface water (GWUDI). This change in definition applies only to public water systems that serve 10,000 or more people.

2. Background and Analysis

EPA issued guidance in October 1992 as the *Consensus Method for Determining Groundwater Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis* (MPA). As part of this method, a microscopic examination is made of the ground water to determine whether insect parts, plant debris, rotifers, nematodes, protozoa, and other material associated with the surface or near surface environment are present. Additional guidance for making GWUDI determinations is also available (EPA, 1994d, e). Since 1990, States have acquired substantial experience in making GWUDI determinations and have documented their approaches (Massachusetts Department of Environmental Protection, 1993; Maryland, 1993; Sonoma County Water Agency, 1991). Guidance on existing practices undertaken by States in response to the SWTR may also be found in the *State Sanitary Survey Resource Directory*, jointly published in December 1995 by EPA and the Association of State Drinking Water Administrators. AWWARF has also

published guidance (Wilson et al., 1996).

In the existing MPA guidance (EPA, 1992), *Cryptosporidia* oocysts are included under the general category of coccidian protozoans, a more encompassing grouping, some of which are pathogenic to humans. The score assigned to an occurrence of a coccidian is equivalent to the score assigned to an occurrence of a *Giardia* cyst. Thus, it not anticipated that any change is needed in the MPA scoring methodology to accommodate the regulation of *Cryptosporidium* by this rule.

The 1997 NODA summarized the available guidance and additional information provided by the States and regulated community. Most recently, Hancock et al. (1998) summarized some of the available data on parasitic protozoan occurrence in ground water and EPA compiled additional data on such occurrence in wells (SAIC, 1997a).

3. Summary of Major Comments

The July 29, 1994, **Federal Register** notice proposed to amend the SWTR by including *Cryptosporidium* in the definition of a GWUDI system. Under the 1994 IESWTR proposal, a system using ground water considered vulnerable to *Cryptosporidium* contamination would be subject to the provisions of the SWTR. EPA proposed that this determination be made by the State for individual sources using State-established criteria. The 1994 proposed IESWTR also requested comment on revisions to EPA's guidance on this issue.

Commenters generally agreed that *Cryptosporidium* should be added to the definition.

F. Inclusion of Cryptosporidium in Watershed Control Requirements

1. Today's Rule

In today's final rule, EPA is extending the existing watershed control regulatory requirements for unfiltered systems serving 10,000 or more people to include the control of *Cryptosporidium*. *Cryptosporidium* will be included in the watershed control provisions for these systems wherever *Giardia lamblia* is mentioned.

2. Background and Analysis

Watershed control requirements were initially established in 1989 (EPA, 1989b, 54 FR 27496, June 29, 1989) as one of a number of preconditions that a public water system using surface water must meet to avoid filtration. As part of its 1994 IESWTR proposal (EPA, 1994b, 59 FR 38839, July 29, 1994), EPA requested comment on extending these existing watershed control requirements for unfiltered systems at 40 CFR 141.71(b)(2) to include the control of *Cryptosporidium*. This was intended to be analogous to and build upon the existing requirements for *Giardia lamblia* and viruses; *Cryptosporidium* would be included in the watershed control provisions wherever *Giardia lamblia* is mentioned. In the November 3, 1997 NODA (EPA, 1997a, 62 FR 59506), the Agency also requested comment on issues pertaining to monitoring for *Giardia* and *Cryptosporidium* for unfiltered systems serving 10,000 or more people.

As noted above, the SWTR specifies the conditions under which a system can avoid filtration (40 CFR 141.71). These conditions include good source water quality, as measured by concentrations of coliforms and turbidity; disinfection requirements; watershed control; periodic on-site inspections; the absence of waterborne disease outbreaks; and compliance with the Total Coliform Rule and the MCL for TTHMs. This watershed control program under the SWTR must include a characterization of the watershed hydrology characteristics, land ownership, and activities which may have an adverse effect on source water quality, and must minimize the potential for source water contamination by *Giardia lamblia* and viruses. The SWTR Guidance Manual (EPA, 1991a) identifies both natural and human-caused sources of contamination to be controlled. These sources include wild animal populations, wastewater treatment plants, grazing animals, feedlots, and recreational activities. The Guidance Manual recommends that grazing and sewage discharges not be permitted within the watershed of unfiltered systems, but indicates that these activities may be permissible on a case-by-case basis where there is a long detention time and a high degree of dilution between the point of activity and the water intake. Although there are no specific monitoring requirements in the watershed protection program, the non-filtering utility is required to develop State-approved techniques to eliminate or minimize the impact of identified point and non-point sources of pathogenic contamination. The guidance already suggests identifying sources of microbial contamination, other than *Giardia*, transmitted by animals, and points out specifically that *Cryptosporidium* may be present if there is grazing in the watershed.

As discussed in the 1997 IESWTR NODA, the Seattle Water Department summarized the *Giardia* and *Cryptosporidium* monitoring results from several unfiltered water systems (Montgomery Watson, 1995). The central tendency of this data is approximately 1 oocyst/100L. In light of data previously discussed that indicates that at least 2-log removal of *Cryptosporidium* is achievable with filtration, and considering the Seattle data analysis, it appears that unfiltered water systems that comply with the source water requirements of the SWTR have a risk of cryptosporidiosis equivalent to that of a water system with a well-operated filter plant using a water source of average quality. EPA plans to continue to evaluate this issue when additional data becomes available.

3. Summary of Major Comments

Commenters generally supported specific inclusion of *Cryptosporidium* in the watershed control requirements for unfiltered systems. Some commenters supported watershed control programs in general without specifically offering an opinion on *Cryptosporidium*. A few commenters specifically opposed the inclusion of *Cryptosporidium* in the watershed control program, maintaining that other avenues of watershed control could be promoted without including this organism in the control plan and that environmental sources of *Giardia* and *Cryptosporidium* were not sufficiently understood.

In response, EPA believes that the environmental sources of *Cryptosporidium* are sufficiently understood, as described above, to support rule requirements. *Cryptosporidium* cannot be easily controlled with conventional disinfection practices, and therefore its presence in source water serving unfiltered surface water systems must be addressed. EPA also believes that *Cryptosporidium* poses a potential hazard to public health and, as noted above, is establishing in today's rule an MCLG of zero for this pathogenic protozoan. EPA is therefore amending the existing watershed control requirements for unfiltered systems to include *Cryptosporidium* in order to protect public health. EPA believes that an effective watershed protection program will help to improve source water quality. Existing guidance already references the need to guard against pathogenic protozoa including specifically *Cryptosporidium*. EPA is proceeding on the presumption that existing watershed programs already consider and State reviews have evaluated the adequacy of watershed provisions to assure that raw drinking water supplies are adequately protected against *Cryptosporidium* contamination.

To the extent this is not the case, however, EPA expects that unfiltered systems, and States in their annual review, will reassess their program with regard to this concern and take whatever steps are necessary to ensure that potential vulnerability to *Cryptosporidium* contamination is considered and adequately addressed.

With regard to monitoring, many NODA commenters supported some form of routine monitoring for *Giardia* and *Cryptosporidium* in unfiltered watershed systems serving 10,000 or more people. A few NODA commenters supported event monitoring (i.e., an occasion where the raw water turbidity and/or fecal/total coliform concentration exceeds a specific value or possibly a site-specific 90th percentile value) for large unfiltered systems while others were silent on the issue or against event monitoring. In response, today's final rule does not include monitoring requirements for unfiltered systems for several reasons. The IFA method is the only method currently and widely available to evaluate the presence or absence of *Cryptosporidium* in a water supply. However, EPA does not believe this method is appropriate for regulatory compliance purposes because of its low recovery and variability. EPA therefore believes that monitoring is most appropriately handled through guidance at this time. EPA is working with stakeholders to develop a guidance document for unfiltered systems which will describe possible monitoring programs. Moreover, the Agency is supporting and participating in the development of improved *Cryptosporidium* analytical methods, including a draft interim method 1622. At the moment, it is unclear when prototype *Cryptosporidium* methods (both method 1622, as well as methods under development to determine viability and infectivity) will be adequate for regulatory use and compliance determinations at low concentration levels, but ongoing research appears promising in this area. As a result, establishment of *Cryptosporidium* monitoring requirements for unfiltered systems will be considered during the development of future microbial rules when EPA has more information on which to base a regulation (e.g. availability of better methods, ICR monitoring data, and research characterizing the relationship between watershed control and pathogen occurrence).

G. Covered Finished Water Reservoirs

1. Today's Rule

In today's final rule EPA is requiring surface water and GWUDI systems that serve 10,000 or more people to cover all new reservoirs, holding tanks or other storage facilities for finished water for which construction begins after the effective date of this rule, February 16, 1999. Today's final rule does not apply these requirements to existing uncovered finished water reservoirs.

2. Background and Analysis

The proposed IESWTR (EPA, 1994b, 59 FR 38841) indicated that EPA was considering whether to issue regulations requiring systems to cover finished water reservoirs and storage tanks, and requested public comment. The IESWTR Notice of Data Availability (EPA, 1997a, 62 FR 59509) indicated that EPA was considering a requirement that systems cover all new reservoirs, holding tanks or other storage facilities for finished water for which construction begins after the effective date of the rule and invited comment on this issue. The IESWTR NODA also invited further comment on whether there should be a requirement that all finished water reservoirs, holding tanks and other storage facilities be covered as part of the development of future regulations.

As discussed in the 1997 IESWTR Notice of Data Availability, when a finished water reservoir is open to the atmosphere it may be subject to some of the environmental factors that surface water is subject to, depending upon site-specific characteristics and the extent of protection provided. Potential sources of contamination to uncovered reservoirs and tanks include airborne chemicals, surface water runoff, animal carcasses, animal or bird droppings and growth of algae and other aquatic organisms due to sunlight that results in biomass (Bailey and Lippy, 1978). In addition, uncovered reservoirs may be subject to contamination by persons tossing items into the reservoir or illegal swimming (Pluntze 1974; Erb, 1989). Increases in algal cells, heterotrophic plate count (HPC) bacteria, turbidity, color, particle counts, biomass and decreases in chlorine residuals have been reported (Pluntze, 1974, AWWA Committee Report, 1983, Silverman et al., 1983, LeChevallier et al. 1997a).

Small mammals, birds, fish, and the growth of algae may contribute to the microbial degradation of an open finished water reservoir (Graczyk et al., 1996a; Geldreich, 1990; Fayer and Ungar, 1986; Current, 1986). In one study, sea gulls contaminated a 10 million gallon reservoir and increased bacteriological growth, and in another study waterfowl were found to elevate coliform levels in small recreational lakes by twenty times their normal levels (Morra, 1979). Algal growth increases the biomass in the reservoir, which reduces dissolved oxygen and thereby increases the release of iron, manganese, and nutrients from the sediments. This, in turn, supports more growth (Cooke and Carlson, 1989). In addition, algae can cause drinking water taste and odor problems as well as impact water treatment processes.

EPA suggested in the proposal that covering reservoirs and storage tanks would reduce the potential for contamination of the finished water by pathogens and hazardous chemicals, as well as limit the potential for taste and odor problems and increased operation and maintenance costs resulting from algal blooms associated with environmental factors such as sunlight. Because of these concerns, EPA guidelines recommend that all finished water reservoirs and storage tanks be covered (EPA, 1991a,b). The American Water Works Association (AWWA) also has issued a policy statement strongly supporting the covering of reservoirs that store potable water (AWWA, 1993). In addition, a survey of nine States was conducted in the summer of 1996 (Montgomery Watson, 1996). The States which were surveyed included several in the West (Oregon, Washington, California, Idaho, Arizona, and Utah), two States in the East known to have water systems with open reservoirs (New York and New Jersey), and one midwestern State (Wisconsin). Seven of the nine States which were surveyed require by direct rule that all new finished water reservoirs and tanks be covered.

EPA is currently developing, with stakeholder input, an Uncovered Finished Water Reservoir Guidance Document. The manual will discuss methods to maintain water quality, control aquatic and microbial growths, describe methods to cover and line reservoirs, and discuss the use of sampling and sampling points to monitor reservoir water quality.

3. Summary of Major Comments

Most commenters on the proposed rule supported either federal or State requirements for covered finished water reservoirs. Some commenters on the proposed rule suggested that regulations apply only to new reservoirs while other commenters opposed any requirement, citing high cost, the notion that ''one size does not fit all,'' and aesthetic benefits of an open reservoir. Nearly all

the commenters on the NODA supported regulatory requirements for covered finished water reservoirs in order to protect human health. Many commenters on the NODA supported requirements for covered finished water reservoirs for both new and existing reservoirs. Some commenters on the NODA supported requirements for new reservoirs only to be covered and believed that requirements for existing uncovered reservoirs should be included in a future regulation rather than in today's rule. Several commenters on the NODA were against a federal requirement for covered finished reservoirs. One commenter thought that EPA should provide States with sufficient flexibility to make the final decision on this issue while another commenter suggested that any future regulatory action for existing reservoirs should take the form of guidance to States. One commenter believes that EPA does not have enough information to require covered finished reservoirs.

In response, EPA believes, in light of the substantial information summarized above, that microbial contamination risks are posed by uncovered finished water reservoirs and therefore is requiring that all new reservoirs be covered. The final rule requires that finished water reservoirs for which construction begins after the effective date of today's rule be built with covers. With respect to existing reservoirs, EPA needs more time to collect and analyze additional information to evaluate regulatory impacts on systems with existing uncovered reservoirs on a national basis. EPA needs this information in order to carry out the cost benefit analysis for a requirement that existing reservoirs be covered. The IESWTR therefore does not require that existing reservoirs have covers installed. EPA will further consider whether to require the covering of existing reservoirs during the development of subsequent microbial regulations when additional data and analysis to develop the national costs of coverage are available.

H. Sanitary Survey Requirements

1. Today's Rule

The State must complete sanitary surveys for all surface water and GWUDI systems no less frequently than every three years for community systems and no less frequently than every five years for noncommunity systems. The State may ''grandfather'' sanitary surveys conducted after December 1995 for the first set of required sanitary surveys if the surveys address the eight survey components of the 1995 EPA/State guidance. The rule also provides that for community systems determined by the State to have outstanding performance based on prior sanitary surveys, successive sanitary surveys may be conducted no less frequently than every five years. In its primacy application, the State must include: (1) How it will decide whether a system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency, and (2) how it will decide whether a deficiency identified during a survey is significant.

In the IESWTR, a sanitary survey is defined as an onsite review of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

Components of a sanitary survey may be completed as part of a staged or phased State review process within the established frequency interval set forth below. A sanitary survey must address each of the following eight elements: Source; treatment; distribution system; finished water storage; pumps, pump facilities, and controls; monitoring and reporting and data verification; system management and operation; and operator compliance with State requirements. In addition, sanitary surveys include review of disinfection profiles for systems required to comply with the disinfection benchmarking requirements discussed elsewhere in today's notice.

States must have the appropriate rules or other authority to assure that facilities take the steps necessary to address any significant deficiencies identified in the survey report that are within the control of the public water system and its governing body. As noted above, a State must also, as part of its primary application, include how it will decide; (1) Whether a system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency, and (2) whether a deficiency identified during a survey is significant for the purposes of this rule. In addition, a State must have appropriate rules or other authority to ensure that a public water system responds to significant deficiencies outlined in a sanitary survey report within 45 days of receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

EPA notes that it will consider sanitary surveys that meet IESWTR requirements to also meet the requirements for sanitary surveys under the Total Coliform Rule (TCR), since the definition of a sanitary survey under the IESWTR is broader than that for the TCR (i.e., a survey as defined under the IESWTR includes all the elements, and more, of a sanitary survey as required under the TCR). Moreover, with regard to TCR sanitary survey frequency, the IESWTR requires that surveys be conducted at least as frequently, or, in some cases, possibly more often than required under the TCR.

2. Background and Analysis

The July 29, 1994, **Federal Register** proposed to amend the SWTR to require periodic sanitary surveys for all public water systems that use surface water, or ground water under the direct influence of surface water, regardless of whether they filter or not. States would be required to review the results of each sanitary survey to determine whether the existing monitoring and treatment practices for that system are adequate, and if not, what corrective measures are needed to provide adequate drinking water quality.

The July 1994 notice proposed that only the State or an agent approved by the State would be able to conduct the required sanitary survey, except in the unusual case where a State has not yet implemented this requirement, i.e., the State had neither performed the required sanitary survey nor generated a list of approved agents. The proposal suggested that under exceptional circumstances the sanitary survey could be conducted by the public water system with a report submitted to the State within 90 days. EPA also requested comment on whether sanitary surveys should be required every three or every five years.

In 1993, the Government Accounting Office (GAO) issued a report summarizing the findings of a survey conducted to examine sanitary survey programs as well as GAO's key observations (GAO, 1993). ''On the basis of a nationwide questionnaire and a review of 200 sanitary surveys conducted in four States (Illinois, Montana, New Hampshire and Tennessee), GAO found that sanitary surveys are often deficient in how they are conducted, documented and/or interpreted.''

The GAO survey found that 45 States omit one or more of the key elements of surveys that EPA recommends be evaluated. The report also indicated that, ''regardless of a system's size,

deficiencies previously disclosed frequently went uncorrected.''

In summary, GAO observed that problems with sanitary survey programs are compounded by the lack of any minimum requirements on how surveys are to be conducted and documented. The GAO report notes that the result ''has been that a key benefit of surveys—identifying and correcting problems before they become larger problems affecting water quality— has often not been realized.''

Sanitary surveys have historically been conducted by State drinking water programs as a preventive tool to identify water system deficiencies that could pose a threat to public health. The general requirements for State primacy in § 142.10(b)(2) of subpart B include a provision that the State have a systematic program for conducting sanitary surveys for public water systems, with priority given to those systems not in compliance with the State's primary drinking water regulations. In addition, the TCR includes regulatory requirements for systems to have a periodic on-site sanitary survey (54 FR 27544–27568, 29 June 1989). This rule requires all systems that collect fewer than 5 total coliform samples each month to undergo such surveys. These sanitary surveys must be conducted by the State or an agent approved by the State. Community water systems were to have had the first sanitary survey conducted by June 29, 1994, and every five years thereafter while non-community water systems are to have the first sanitary survey conducted by June 29, 1999, and every five years thereafter unless the system is served by a protected and disinfected ground water supply, in which case, a survey must be conducted every 10 years. The TCR does not specify in detail what must be addressed in a sanitary survey or how such a survey should be conducted.

The SWTR does not specifically require water systems to undergo a sanitary survey. Instead, it requires that unfiltered water systems, as one criterion to remain unfiltered, have an annual on-site inspection to assess the system's watershed control program and disinfection treatment process. The on-site survey must be conducted by the State or a party approved by the State. This on-site survey is not a substitute for a more comprehensive sanitary survey, but the information can be used to supplement a full sanitary survey.

EPA's SWTR Guidance Manual (EPA, 1991a), Appendix K, suggests that, in addition to the annual on-site inspection, a sanitary survey be conducted every three to five years by both filtered and unfiltered systems. This time period is suggested ''since the time and effort needed to conduct the comprehensive survey makes it impractical for it to be conducted annually.''

Since the publication of the proposed ESWTR and GAO report, EPA and the States (through the Association of State Drinking Water Authorities) have issued a joint guidance on sanitary surveys entitled *EPA/State Joint Guidance on Sanitary Surveys* (1995). The Guidance outlines the following elements as integral components of a comprehensive sanitary survey:

- Source
—Protection
—Physical Components and Condition
- Treatment
- Distribution System
- Finished Water Storage
- Pumps/Pump Facilities and Controls
- Monitoring/Reporting/Data Verification
- Water System Management/ Operations
- Operator Compliance with State Requirements

The guidance also addresses the qualifications for sanitary survey inspectors, the development of assessment criteria, documentation, follow-up after the survey, tracking and enforcement.

As discussed earlier, EPA published a NODA (62 FR 59485) in November 1997 discussing new information the Agency has received since the 1994 IESWTR proposal as well as recommendations of the M-DBP Advisory Committee. The Advisory Committee made recommendations on the definition and frequency of surveys, as well as on survey components based on the 1995 EPA/State Guidance, and follow-up activities. In the 1997 Notice, EPA requested comment on the Advisory Committee recommendations. In addition, the Agency requested comment on whether systems should be required to respond in writing to a State's sanitary survey report. EPA also requested comment on (1) what would constitute ''outstanding performance'' for purposes of allowing sanitary surveys for a community water system to be conducted every five years and (2) how to define ''significant deficiencies.''

3. Summary of Major Comments

Commenters on the 1994 proposal generally voiced support for requiring a periodic sanitary survey for all systems. One commenter suggested that EPA develop sanitary survey guidance for administration by the States, while another commenter suggested that sanitary surveys by the private sector be certified by States or national associations using EPA-defined criteria. Commenters recommended that surveys be conducted either by the State or a private independent party/contractor. One respondent contended that sanitary surveys, as presently conducted, were insufficient to assess operational effectiveness in surface water systems.

With regard to sanitary survey frequency, commenters on the 1994 proposal were nearly evenly divided between every three years and every five years. Some commenters argued that the frequency should depend on: (1) Whether a system's control is effective or marginal, (2) system size (less frequent for small systems), (3) source water quality, (4) whether the State believes a system's water quality is likely to change over time, (5) results of the previous survey, and (6) population density on the watershed. One commenter suggested an annual sanitary survey.

In terms of the frequency of conducting a sanitary survey, commenters on the 1997 notice generally voiced support for the frequencies recommended by the M–DBP Advisory Committee. One commenter suggested that all public water systems should have a sanitary survey no less often than once every three years and that systems with unsatisfactory or provisional ratings should be surveyed annually or more often. Another commenter suggested that even outstanding systems should be surveyed on a three year cycle because personnel or management changes can impact plant performance. One respondent recommended that sanitary surveys be required at a maximum frequency of every five years for all public water systems using surface water or ground water under the direct influence of surface water as a source. One commenter suggested that three and five year schedules be given as targets rather than requirements to allow States flexibility in deploying resources.

EPA believes that the frequencies in today's rule allow States the flexibility to prioritize and carry out the sanitary survey process, while also ensuring that these surveys will be conducted as an effective preventive tool to identify and correct water system deficiencies that could pose a threat to public health. Given these considerations and recognizing that there are many more non-community than community water systems, EPA believes that the required frequencies for sanitary surveys are reasonable.

With respect to the definition of outstanding performance, most commenters on the 1997 notice suggested some combination of both a history of no rule or public health violations and past surveys without significant deficiencies. One commenter suggested that a system with no rule violations in a year meeting 0.1 NTU ninety-five percent of the time and practicing filter to waste should get some type of formal recognition from EPA and be considered to have outstanding performance. Another respondent pointed out that in addition to performance, other factors such as management, emergency preparedness and backup structures are critical to maintain outstanding performance.

EPA believes that today's rule provides State flexibility to work within their existing programs in addressing how to define outstanding performance and significant deficiencies as part of their primacy application. The Agency will discuss these issues in further detail in Sanitary Survey Guidance which is currently under development with stakeholder input.

I. Compliance Schedules

1. Today's rule

Today's action establishes revised compliance deadlines for States to adopt and for public water systems to implement the requirements in this rulemaking. Central to the determination of these deadlines are the principles of simultaneous compliance between the Stage 1 DBPR and the corresponding rules (Interim Enhanced Surface Water Treatment Rule, Long Term Enhanced Surface Water Treatment Rule, and Ground Water Rule) to ensure continued microbial protection, and minimization of risk-risk tradeoffs. These deadlines also reflect new legislative provisions enacted as part of 1996 SDWA amendments. Section 1412 (b)(10) of the SDWA as amended provides PWSs must comply with new regulatory requirements 36 months after promulgation (unless EPA or a State determines that an earlier time is practicable or that additional time up to two years is necessary for capital improvements). In addition, section 1413(a)(1) provides that States have 24 instead of the previous 18 months from promulgation to adopt new drinking water standards.

Applying the 1996 SDWA Amendments to today's action, this rulemaking provides that States have two years from promulgation to adopt and implement the requirements of this regulation. Simultaneous compliance will be achieved as follows.

Subpart H water systems that serve a population of 10,000 or more generally have three years from promulgation to comply with all requirements of this rule, except for profiling and benchmarking, which require systems to begin sampling after three months. In cases where capital improvements are needed to comply with the rule, States may grant such systems up to an additional two years to comply. These deadlines were consistent with those for the Stage 1 DBPR.

While only subpart H systems serving at least 10,000 people are affected by today's rule, EPA has included information on the compliance requirements for other system categories for the reader. Subpart H systems that serve a population of less than 10,000 and all ground water systems will be required to comply with applicable Stage 1 DBPR requirements within five years from promulgation. Since the Long Term 1 Enhanced Surface Water Treatment Rule (LT1) requirements that apply to systems under 10,000 and the Ground Water Rule (GWR) are scheduled to be promulgated two years after today's rule or in November 2000, the net result of this staggered deadline is that these systems will be required to comply with both Stage 1 DBPR and LT1/GWR requirements three years after promulgation of LT1/GWR at the same end date of November 2003. For reasons discussed in more detail below, EPA believes this is both consistent with the requirements of section 1412(b)(10) as well as with legislative history affirming the Reg. Neg. objectives of simultaneous compliance and minimization of risk-risk tradeoff.

2. Background and Analysis

The background, factors, and competing concerns that EPA considered in developing the compliance deadlines in today's rule are explained in detail in both the Agency's IESWTR and Stage 1 DBPR November 1997 NODAs. As explained in those NODAs, EPA identified four options to implement the requirements of the 1996 SDWA Amendments. The requirements outlined above reflect the fourth option that EPA requested comment upon in November 1997.

By way of background, the SDWA 1996 Amendments affirmed several key principles underlying the M–DBP compliance strategy developed by EPA and stakeholders as part of the 1992 regulatory negotiation process. First, under section 1412(b)(5)(A), Congress recognized the critical importance of addressing risk/risk tradeoffs in establishing drinking water standards and gave EPA the authority to take such risks into consideration in setting MCL or treatment technique requirements. The technical concerns and policy objectives underlying M–DBP risk-risk tradeoffs are referred to in the initial sections of today's rule and have remained a key consideration in EPA's development of appropriate compliance requirements. Second, Congress explicitly adopted the phased M–DBP regulatory development schedule developed by the Negotiating Committee. Section 1412(b)(2)(C) requires that the M–DBP standard setting intervals laid out in EPA's proposed ICR rule be maintained even if promulgation of one of the M–DBP rules is delayed. As explained in the 1997 NODA, this phased or staggered regulatory schedule was specifically designed as a tool to minimize risk/risk tradeoff. A central component of this approach was the concept of ''simultaneous compliance'', which provides that a PWS must comply with new microbial and DBP requirements at the same time to assure that in meeting a set of new requirements in one area, a facility does not inadvertently increase the risk (i.e., the risk ''tradeoff'') in the other area.

A complicating factor that EPA took into account in developing today's deadlines is that the SDWA 1996 Amendments changed two statutory provisions that elements of the 1992 Negotiated Rulemaking Agreement were based upon. The 1994 Stage 1 DBPR and ICR proposals provided that 18 months after promulgation large PWS would comply with the rules and States would adopt and implement the new requirements. As noted above, Section 1412(b)(10) of the SDWA as amended now provides that drinking water rules shall become effective 36 months after promulgation (unless the Administrator determines that an earlier time is practicable or that additional time for capital improvements is necessary—up to two years). In addition, section 1413(a)(1) now provides that States have 24 instead of the previous 18 months to adopt new drinking water standards that have been promulgated by EPA.

Today's compliance deadline requirements reflect the principle of simultaneous compliance and the concern with risk-risk tradeoffs. Subpart H systems serving a population of at least 10,000 will be required to comply with the key provisions of this rule on the same schedule as they will be required to comply with the parallel requirements of the accompanying Stage 1 DBPR that is also included in today's **Federal Register**.

With regard to subpart H systems serving fewer than 10,000, EPA believes that providing a five year compliance period under Stage 1 DBPR is appropriate and warranted under section 1412(b)(10), which expressly allows five years where necessary for capital improvements. As discussed in more detail in the 1997 IESWTR NODA, capital improvements require, of necessity, preliminary planning and evaluation. An essential prerequisite of such planning is a clear understanding of final compliance requirements that must be met. In the case of the staggered M–DBP regulatory schedule established as part of the 1996 SDWA Amendments, LT1 microbial requirements for systems under 10,000 are required to be promulgated two years after the final Stage 1 DBPR. As a result, small systems will not even know what their final combined compliance obligations are until promulgation of the LT 1 rule. Thus, an additional two year period reflecting the two year Stage 1 DBPR/LT 1 regulatory development interval established by Congress is required to allow for the preliminary planning and design steps which are inherent in any capital improvement process.

In the case of ground water systems, the statutory deadline for promulgation of the GWR is May 2002. However, EPA intends to promulgate this rule by November 2000, in order to allow three years for compliance and still ensure simultaneous compliance by ground water systems with the Stage 1 DBPR and the GWR. As in the case of subpart H systems serving fewer than 10,000, system operators will not know until November 2000 what the final compliance requirements for both rules are. EPA thus believes it appropriate to grant the additional two years for compliance with the Stage 1 DBPR allowed by the statute.

EPA has been very successful in meeting all of the new statutory deadlines and is on track for the LT1 Rule and GWR. While EPA fully intends to meet the schedule discussed earlier, if those rules are delayed the Agency will evaluate all available options to protect against unacceptable risk-risk trade-offs. Part of this effort is the extensive outreach to systems already underway to fully inform water supplies of the likely elements in the upcoming rules. In addition, EPA would consider including provisions for streamlined variance and/or exemption processing in these rules if they were delayed, in order to enhance State flexibility in ensuring that compliance with the Stage 1 DBPR is not required before the corresponding microbial protection rule.

Under today's Stage 1 DBPR, EPA has already provided small subpart H systems and ground water systems the two-year extension for capital improvements since these systems will not know with certainty until November 2000 if capital improvements will be needed for simultaneous compliance with the Stage 1 DBPR and LT1/GWR. States considering whether to grant a two-year capital improvement extension for compliance with the GWR or LT1 will also need to consider the impact of such extensions on compliance with today's rule, since the two-year extension for the Stage 1 DBPR has already been used. EPA believes, however, that these systems will generally not require extensive capital improvements that take longer than three years to install to meet Stage 1 DBPR, GWR, and LT1 requirements, or will require no capital improvements at all. However if needed, EPA will work with States and utilities to address systems that require time beyond November 2003 to comply. This strategy may include exemptions. In addition, EPA will provide guidance and technical assistance to States and systems to facilitate timely compliance with both DBP and microbial requirements. EPA will request comment on how best to do this when the Agency proposes the LTESWTR and GWR.

3. Summary of Major Comments

Commenters were in general agreement that the compliance deadline strategy contained in the fourth option of the 1997 NODA did the best job of complying with the requirements to 1996 SDWA Amendments and meeting the objectives of the 1993 Reg. Neg. Agreement that Congress affirmed as part of the 1996 Amendments. Nonetheless, a number of commenters expressed concern about the ability of large surface water systems that had to make capital improvements to comply with all requirements of the Stage 1 DBPR and IESWTR. They pointed out that capital improvements include more than just the construction, but also financing, design, and approval.

EPA believes that the provisions of section 1412(b)(10) of the SDWA as amended allow systems the flexibility needed to comply. As noted earlier in this section, States may grant up to an additional two years compliance time for an individual system if capital improvements are necessary. Moreover, as both of these rules have been under negotiation since 1992, proposed in 1994 and further clarified in 1997, EPA believes that most systems have had substantial time to consider how to proceed with implementation and to initiate preliminary planning. Several commenters also supported delaying the promulgation of the Stage 1 DBPR for ground water systems until the GWR is promulgated, in order to ensure simultaneous compliance with both rules. EPA believes that this option would not be consistent with the reg-neg agreement, as endorsed by Congress, because the agreement specifies that the Stage 1 DBPR will apply to all community and nontransient noncommunity water systems. Moreover, EPA has committed to the LT1 and GWR promulgation schedule outlined above precisely to address this issue.

In conclusion EPA believes that the compliance deadlines outlined above for systems covered by this rule are appropriate and consistent with the requirements of the 1996 SDWA amendments. The Agency notes, however, that some elements of Option 4 outlined in the 1997 NODA apply to systems that may be covered by future Long Term Enhanced and Ground Water rules. EPA intends to follow the deadline strategy outlined in Option 4 for these future rules. However, as today's action only relates to the IESWTR, the Agency will defer final action on deadlines associated with future rules until those rules, themselves, are finalized.

IV. State Implementation

This section describes the regulations and other procedures and policies States have to adopt, or have in place, to implement today's final rule. States must continue to meet all other conditions of primacy in section 142.

Section 1413 of the SDWA establishes requirements that a State or eligible Indian tribe must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include (1) adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the public water supply supervision

program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's final rule, along with the special primacy requirements discussed below.

To implement today's final rule, States are required to adopt revisions to § 141.2—definitions; § 141.32—public notification; § 142.14—records kept by States; § 142.15—reports by States; § 142.16—special primacy requirements; § 141.52—maximum contaminant level goals for microbiological contaminants; § 141.70—general requirements; § 141.71—criteria for avoiding filtration; § 141.73—filtration; § 141.153—content of the reports; and a new subpart P, consisting of § 141.170 to § 141.175.

A. Special State Primacy Requirements

In addition to adopting drinking water regulations at least as stringent as the Federal regulations listed above, EPA requires that States adopt certain additional provisions related to this regulation to have their program revision application approved by EPA. This information advises the regulated community of State requirements and helps EPA in its oversight of State programs. States which require without exception all public water systems using a surface water source or a ground water source under the direct influence of surface water to provide filtration need not demonstrate that the State program has provisions that apply to systems which do not provide filtration treatment. However, such States must provide the text of the State statutes or regulations which specifies that public water systems using a source water must provide filtration.

EPA is currently developing, with stakeholder input, several guidance documents to aid the States and water systems in implementing today's final rule. This includes guidance for the following topics: Enhanced coagulation, disinfection benchmark and profiling, turbidity, alternative disinfectants, M–DBP simultaneous compliance, sanitary survey, unfiltered systems and uncovered finished water reservoirs. In addition, upon promulgation of the IESWTR, EPA will work with States to develop a State implementation guidance manual.

To ensure that the State program includes all the elements necessary for a complete enforcement program, the State's application must include the following in order to obtain EPA's approval for implementing this rule:

(1) Adoption of the promulgated IESWTR.

(2) Description of how the State will implement its sanitary survey program and how the State will assure that a system responds in writing to a sanitary survey report within 45 days indicating how and on what schedule the system will address significant deficiencies noted in the survey. The description must also identify the appropriate rules or other authority of the State to assure that PWSs respond to significant deficiencies. The State must conduct sanitary surveys that include eight specified components (described below) for all surface water and GWUDI systems no less frequently than every 3 years for community systems and no less frequently than every five years for noncommunity systems. The State may ''grandfather'' sanitary surveys conducted after December 1995 for the first set of required sanitary surveys if the surveys address the eight sanitary survey components (source; treatment; distribution system; finished water storage; pumps, pump facilities and controls; monitoring and reporting and data verification; system management and operation; and operator compliance with State requirements). For community systems determined by the State to have outstanding performance based on prior sanitary surveys, subsequent sanitary surveys may be conducted no less than every five years. The State must include how it will decide whether a system has outstanding performance in its primacy application. Components of a sanitary survey may be completed as part of a staged or phased State review process within the established frequency. The State must also describe how it will decide whether a deficiency identified during a sanitary survey is significant.

(3) Description of the procedures the State will use to determine the adequacy of changes in disinfection process by systems required to profile and benchmark under § 141.172 and how the State will consult with PWSs to evaluate modifications to disinfection practice.

(4) Description of existing or adoption of appropriate rules or other authority to assure PWSs to conduct a Composite Correction Program (CCP) and to require that PWSs implement any follow up recommendations that results as part of the CCP.

(5) Description of how the State will approve a more representative annual data set than the data set determined under § 141.172(a)(1) or (2) for the purpose of determining applicability of the requirements of § 141.172 (disinfection benchmarking/profiling).

(6) Description of how the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(7) For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration or diatomaceous earth filtration, a description of how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with the disinfection treatment that meets the requirements of § 141.172(b) of this title, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts; and a description of how, for the system that makes this demonstration, the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

B. State Recordkeeping Requirements

Today's rule includes changes to the existing record-keeping provisions to implement the requirements in today's final rule. States must maintain records of the following: (1) Turbidity measurements must be kept for not less than one year, (2) disinfectant residual measurements and other parameters necessary to document disinfection effectiveness must be kept for not less than one year, (3) decisions made on a system-by-system basis and case-by-case basis under provisions of part 141, subpart H or subpart P, (4) a list of systems consulting with the State concerning a modification of disinfection practice (including the status of the consultation), (5) a list of decisions that a system using alternative filtration technologies can consistently achieve a 99 percent removal of *Cryptosporidium* oocysts as well as the required levels of removal and/or

inactivation of *Giardia* and viruses for systems using alternative filtration technologies, including State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised and the State must provide a copy of the decision to the system, (6) a list of systems required to do filter self-assessments, CPE or CCP. These decision records must be kept for 40 years (as currently required by § 142.14 for other State decision records) or until a subsequent determination is made, whichever is shorter.

C. State Reporting Requirements

Currently States must report to EPA information under 40 CFR 142.15 regarding violations, variances and exemptions, enforcement actions and general operations of State public water supply programs. Today's rule requires States to provide additional information to EPA within the context of the existing special report requirements for the SWTR (§ 142.15(c)(1)). States must report a list of Subpart H systems that have had a sanitary survey completed during the previous year and an evaluation of the State's program for conducting sanitary surveys.

D. Interim Primacy

On April 28, 1998, EPA amended its State primacy regulations at 40 CFR 142.12 (EPA 1998d, 63 FR 23362) to incorporate the new process identified in the 1996 SDWA amendments for granting primary enforcement authority to States while their applications to modify their primacy programs are under review. The new process grants interim primary enforcement authority for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation. This interim enforcement authority begins on the date of the primacy application submission or the effective date of the new or revised State regulation, whichever is later, and ends when EPA makes a final determination. However, this interim primacy authority is only available to a State that has primacy for every existing national primary drinking water regulation in effect when the new regulation is promulgated.

As a result, States that have primacy for every existing NPDWR already in effect may obtain interim primacy for this rule, beginning on the date that the State submits its complete and final application for primacy for this rule to EPA, or the effective date of its revised regulations, whichever is later. In addition, a State which wishes to obtain interim primacy for future NPDWRs must obtain primacy for this rule. After the effective date of today's rule, any State that does not have primacy for this rule cannot obtain interim primacy for future rules.

V. Economic Analysis

A. Today's Rule

EPA has estimated that the total annualized cost for implementing the IESWTR is $307 million, in 1998 dollars, at 7 percent rate cost of capital. This estimate includes annualized treatment costs to utilities ($192 million), start-up and annualized monitoring costs to utilities ($99 million), and start-up and annualized monitoring costs to States ($16 million). Annualized treatment costs to utilities includes annual operation and maintenance costs ($106 million) and annualized capital costs assuming 7 percent cost of capital ($86 million). The two cost elements which have the greatest impact on total annualized costs are treatment ($192 million), which for the most part reflects turbidity treatment costs, and turbidity monitoring ($96 million). More detail including the basis for these estimates and alternate cost estimates using different cost of capital assumptions are described later in this section. The benefits resulting from this rule range from $0.263 billion to $1.240 billion per year using a valuation of $2,000 in health damages avoided per cryptosporidiosis illness prevented (based on the mean of a distribution of values ascribed to health damages avoided, as discussed below). Based on this analysis, EPA has determined that the benefits of today's rule justify the costs.

B. Overview of RIA for Proposed Rule

The Regulatory Impact Analysis (RIA) (EPA, 1994f) for the proposed IESWTR (59 FR 38832, July 29, 1994) only considered one of the rule options that were proposed: that which would require systems to provide enough treatment to achieve less than a 10^{-4} risk level from giardiasis while meeting the Stage 1 DBPR. Other rule options were not considered for the RIA because of insufficient data at the time of proposal. The RIA for the proposed 1994 IESWTR estimated national capital and annualized costs (amortized capital and annual operating costs) for surface water systems serving at least 10,000 people at $4.4 billion and $468 million (in 1998 dollars at a 10% cost of capital) respectively. In estimating these costs, it was assumed that additional *Giardia* reduction beyond the requirements of the SWTR to achieve the 10^{-4} risk level would be achieved solely by using chlorine as the disinfectant and providing additional contact time by increasing the disinfectant contact basin size. Under the 1994 RIA, EPA also estimated that 400,000 to 500,000 *Giardia* infections per year that could be avoided would have an economic value of $1.4 to $1.7 billion per year (in 1998 dollars at a 10% cost of capital), suggesting under this rule option, the benefit nationwide of avoiding *Giardia* infections would be as much as three or four times greater than the estimated $468 million national annual cost of providing additional contact time. Development of the proposed rule option was based on the availability of an analytical method to quantify *Giardia* source water concentrations and prescribe appropriate levels of treatment to achieve the 10^{-4} risk level. This rule option was dropped from consideration of a final IESWTR since adequate methods for measuring *Giardia* were not available during the final development phase of this rule. Also, ICR data was not available to evaluate the validity of assumed national *Giardia* source water concentration levels under the RIA for the proposed rule.

C. What's Changed Since the Proposed Rule

National source water occurrence data for *Giardia* and *Cryptosporidium* are being collected as part of the ICR but this data will not become available until after promulgation of the IESWTR. Since February 1997, the Agency worked with stakeholders to identify additional data available since 1994 to support the RIA for the IESWTR published today. USEPA established the Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee to collect, share and analyze new information and data, as well as to build consensus on the regulatory implications of this new information.

D. Summary of Cost Analysis

The IESWTR will result in increased costs to public water systems for improved turbidity treatment, monitoring, disinfection benchmarking and covering new finished water reservoirs, as well as State implementation costs. As discussed earlier in this Notice, the rule will only apply to systems using surface water or ground water under the direct influence of surface water that serve 10,000 or more persons. (EPA notes that the rule does include provisions for primacy States to conduct sanitary surveys for all surface water and GWUDI systems regardless of size.) EPA intends to address systems serving less than 10,000 people, under the Long Term 1

Enhanced Surface Water Treatment Rule.

Table V.1 indicates estimated annual costs associated with implementing the IESWTR in 1998 dollars for different cost of capital assumptions. A cost of capital rate of 7 percent was used to calculate the unit costs for the national compliance cost model. This rate represents the standard discount rate preferred by the Office of Management and Budget (OMB) for benefit-cost analyses of government programs and regulations. The 3 percent rate and 10 percent rate are provided as a sensitivity analysis. The 10 percent rate also provides a link to the 1994 Stage 1 DBPR cost analysis which was based on a 10 percent rate.

Estimated costs are presented as either public water system (utility) or State costs. Utility costs include all costs associated with improved turbidity treatment, start-up and annual costs for turbidity monitoring, the one-time cost of performing disinfection benchmarking, and costs for covering new finished water reservoirs. State costs include program start-up and ongoing implementation costs, including sanitary surveys.

The 1994 proposal, in 1998 dollars, is equivalent to $4.370 billion for total capital costs, a difference of $3.611 billion (in 1998 dollars) from the capital costs estimated for today's final rule. The difference is accounted for primarily by rule criteria evaluated in the benefit-cost analysis, i.e., changes in the level of disinfection required. Under the final IESWTR virtually no systems would need to install additional disinfection contact basins. Also, the capital costs associated with physical removal under the final IESWTR are substantially lower than those estimated in the 1994 RIA.

To comply with the IESWTR, systems would be expected to employ treatment enhancement and/or modifications. These activities were grouped into 10 decision tree categories based on general process descriptions as follows: chemical addition, coagulant improvements, rapid mixing, flocculation improvements, settling improvements, filtration improvements, hydraulic improvements, administration culture improvements, laboratory modifications and process control testing modifications. Descriptions of how systems were expected to evaluate these activities are included in the document *Technologies and Costs for the Interim Enhanced Surface Water Treatment Rule* (USEPA, 1998b).

The decision tree stratifies public water systems into groups or categories based on the number of people served and the range of treatment choices available to them to achieve compliance. The decision tree incorporates estimates of the percent of public water systems in each category selecting a particular approach to achieve compliance. These percentages were factors in the national cost model and represent the percentage of systems needing to modify treatment to meet the limits. Further description of the compliance decision tree and methodology are included in the *Regulatory Impact Analysis for the Interim Enhanced Surface Water Treatment Rule* (USEPA, 1998a). Based on this decision tree analysis and the total costs indicated in Table V.1, the two cost elements which have the greatest impact on national costs are Total Treatment, which for the most part reflects turbidity treatment costs, and Turbidity Monitoring. The percent of systems estimated to modify treatment practices to meet the revised turbidity requirements (i.e., 0.3 NTU 95 percentile and 1 NTU maximum combined filter effluent levels) is 50 percent (or 691 out of a possible 1,381 systems), as shown in Table V.2. Turbidity monitoring is required of all systems covered by the rule and using rapid granular filtration (i.e., conventional or direct filtration). As shown in table V.3, total annual cost to utilities for turbidity monitoring are $96 million.

E. Household Costs

Household costs are a way to represent water system treatment costs as costs to the system customer. Under the IESWTR, households will face the increases in annual costs displayed in Figure V.1. All households served by large surface water systems will incur additional costs under the IESWTR since all systems are required to perform turbidity monitoring activities. However, as shown in the cumulative distribution of households affected by the rule, 92 percent of households (60 million) will incur less than a cost of $1 per month. 7 percent of households (5 million) will face an increase in cost of between $1 and $5 per month. The highest cost faced by 23,000 households is approximately $100 per year ($8 per month).

The assumptions and structure of this analysis, in describing the curve, tend to overestimate the highest costs. To be on the upper bound of the curve, a system would have to implement all, or almost all, of the treatment activities. These systems, however, might seek less costly alternatives, such as connecting into a larger regional water system.

F. Summary of Benefits Analysis

The economic benefits of the IESWTR derive from the increased level of protection to public health. The primary goal of these provisions is to improve public health by increasing the level of protection from exposure to *Cryptosporidium* and other pathogens (i.e., *Giardia*, or other waterborne bacterial or viral pathogens) in drinking water supplies through improvements in filtration at water systems. The IESWTR is expected to reduce the level of *Cryptosporidium* and other pathogen contamination in finished drinking water supplies through improvements in filtration at water systems (i.e., revised turbidity requirements). In this case, benefits will accrue due to the decreased likelihood of endemic incidences of cryptosporidiosis, giardiasis and other waterborne disease, and the avoidance of resulting health costs. In addition to reducing the endemic disease, the provisions are expected to reduce the likelihood of the occurrence of *Cryptosporidium* outbreaks and their associated economic costs, by providing a larger margin of safety against such outbreaks for some systems.

The benefit analysis attempts to take into account some of the uncertainties in the analysis by estimating benefits under two different current treatment assumptions and three improved removal assumptions. The benefit analysis also used Monte Carlo simulations to derive a distribution of estimates, rather than a single point estimate.

The benefits analysis focused on estimating changes in incidence of cryptosporidiosis that would result from the rule. The analysis included estimating the baseline (pre-IESWTR) levels of exposure from *Cryptosporidium* in drinking water, reductions in such exposure resulting from treatment changes to comply with the IESWTR, and resultant reductions of risk.

Baseline levels of *Cryptosporidium* in finished water were estimated by assuming national source water occurrence distribution (based on data by LeChevallier and Norton 1995) and a national distribution of *Cryptosporidium* removal by treatment.

In the IESWTR RIA, the following two assumptions were made about the performance of current treatment in removing oocysts to estimate finished water *Cryptosporidium* concentrations. Based on treatment removal efficiency data presented in the 1997 IESWTR NODA, EPA assumed a national distribution of physical removal

efficiencies with a mean of 2.5 logs and a standard deviation of ±0.63 logs. Under this assumption, average log removal for different plants would generally range from 1.25 logs to 3.75 logs. Because the finished water concentrations of oocysts represent the baseline against which improved removal from the IESWTR is compared, variations in the log removal assumption could have considerable impact on the risk assessment. To evaluate the impact of the removal assumptions on the baseline and resulting improvements, an alternative mean log removal/inactivation assumption of 3.0 logs and a standard deviation of ±0.63 logs was also used to calculate finished water concentrations of *Cryptosporidium*. Under this assumption average log removal for different plants would generally range from 1.75 to 4.25 logs.

For each of the two baseline assumptions, USEPA assumed that a certain number of plants would show low, mid or high improved removal, depending upon factors such as water matrix conditions, filtered water turbidity effluent levels, and coagulant treatment conditions. As a result, the RIA considers six scenarios that encompass the range of endemic health damages avoided based on the rule.

The finished water *Cryptosporidium* distributions that would result from additional log removal with the turbidity provisions were derived assuming that additional log removal was dependent on current removal, i.e., that sites currently operating at the highest filtered water turbidity levels would show the largest improvements or high improved removal assumption (e.g., plants now failing to meet a 0.4 NTU limit would show greater removal improvements than plants now meeting a 0.3 NTU limit).

Table V.4 indicates estimated annual benefits associated with implementing the IESWTR. The benefits analysis quantitatively examines endemic health damages avoided based on the IESWTR for each of the six scenarios mentioned above. For each of these scenarios, EPA calculated the mean of the distribution of the number of illnesses avoided. The assessment also discusses, but does not quantify, other economic benefits that may result from the provisions, including the avoided health damage costs associated with reduced risk of outbreaks and avoided costs of averting behavior such as boiling water or use of an alternative water source during outbreaks or periods of high turbidity.

According to the RIA performed for the IESWTR published today, the rule is estimated to reduce the mean annual number of illnesses caused by *Cryptosporidium* in water systems improving filtration by 110,000 to 463,000 cases depending upon which of the six baseline and improved *Cryptosporidium* removal assumptions was used. Based on these values, the mean estimated annual benefits of reducing the illnesses ranges from $0.263 billion to $1.240 billion per year. This calculation is based on a valuation of $2,000 per incidence of cryptosporidiosis prevented which is the mean of a distribution of values ascribed to health damages avoided. The RIA also indicated that the rule could result in a mean reduction of 14 to 64 fatalities each year, depending upon the varied baseline and improved removal assumptions. Using a mean value of $5.6 million per statistical life saved, reducing these fatalities could produce benefits in the range of $0.085 billion to $0.363 billion.

G. Comparison of Costs and Benefits

Given the costs summarized in Table V.1 and the benefits summarized in Table V.4, the IESWTR results in positive net benefits under all three improved removal scenarios (low, mid, and high) assuming that current treatment as a national average achieves 2.5 log of *Cryptosporidium* removal, taking into account only the value of cost of illness avoided. Using a current national average treatment removal assumption of 3.0 logs, net benefits are positive under the high and mid improved removal scenarios. Net benefits using the 3.0 log current removal assumption are negative under the low improved removal scenario using only the value of cost of illness avoided, however, when the value of mortalities prevented is added into the benefits, all scenarios have positive net benefits at the mean.

Thus, the monetized net benefits are positive across most of the range of current treatment assumptions, improved log removal scenarios, and discount rates. The benefits due to the illnesses avoided may be slightly overstated when aggregated with benefits due to mortalities avoided, because the mortalities were not netted out of the number of illnesses. This value is minimal and would not be captured at the level of significance of the analysis. Several categories of benefits, including reducing the risk of outbreaks, reducing exposure to other pathogens such as *Giardia*, and avoiding the cost of averting behavior have not been quantified for this analysis, but could represent substantial additional economic value. In addition, the estimates for avoided costs of illness do not include the value for pain and suffering or the risk premium.

TABLE V.1.—ANNUAL COSTS OF THE INTERIM ENHANCED SURFACE WATER TREATMENT RULE ($000S)

	Final Rule (1998 dollars)			1994 Proposal	
	3% Cost of Capital	7% Cost of Capital	10% Cost of Capital	10% Cost of Capital 1992 dollars	10% Cost of Capital 1998 dollars
Utility Costs					
Utility Treatment Capital	$758,965	$758,965	$758,965	$3,665,568	$4,370,389
Annual Costs					
Annualized Capital†	65,999	85,611	103,437		
Annual O&M	105,943	105,943	105,943		
Total Treatment	171,942	191,554	209,380	391,702	466,891
Turbidity Monitoring	95,924	95,924	95,924		
Turbidity Exceptions*	195	195	195		
Disinfection Benchmarking	2,841	2,841	2,841		
Subtotal	270,902	290,514	308,340	391,702	466,891
Annualized One-Time Costs**					
Turbidity Monitoring Start-Up	289	405	504	.....	.....

TABLE V.1.—ANNUAL COSTS OF THE INTERIM ENHANCED SURFACE WATER TREATMENT RULE ($000S)—Continued

	Final Rule (1998 dollars)			1994 Proposal	
	3% Cost of Capital	7% Cost of Capital	10% Cost of Capital	10% Cost of Capital 1992 dollars	10% Cost of Capital 1998 dollars
HAA Benchmarking	175	246	306	.....	.....
Subtotal	464	651	810	.....	.....
Total Annual Utility Costs	271,366	291,165	309,150	.....	.....
State Costs					
Annual Costs					
Turbidity Monitoring	5,256	5,256	5,256	.....	.....
Turbidity Exceptions***	409	409	409	.....	.....
Sanitary Survey	6,979	6,979	6,979	867	1,034
Disinfection Benchmarking	2,789	2,789	2,789	.....	.....
Subtotal	15,433	15,433	15,433	867	1,034
Annualized One-Time Costs**					
Turbidity Monitoring Start-Up	27	38	48	.....	.....
Disinfection Benchmarking Start-Up	22	30	38	.....	.....
Sanitary Survey Start-Up	39	55	69	.....	.....
Subtotal	88	123	155	.....	.....
Total Annual State Costs	15,521	15,556	15,588	.....	.....
Total Annual Costs	286,887	306,721	324,738	392,569	467,925

*Costs associated with Individual Filter Effluent Turbidity Requirements for exceptions reporting, Individual Filter Assessments.
**All one-time costs are annualized over 20 years.
***Costs associated with Reporting Exceptions and Comprehensive Performance Evaluations.
†Most costs are annualized over 20 years. Some costs, including turbidimeters and process control monitoring, are annualized over 7 years.

TABLE V.2.—FINAL ANNUAL COST ESTIMATES FOR TURBIDITY TREATMENT REQUIREMENTS

[0.3 NTU CFE 95th percentile, 1 NTU CFE Maximum 1998 $000s]

System Size (population served)	Number of Systems	Systems Modifying Treatment	3 Percent Cost of Capital	7 Percent Cost of Capital	10 Percent Cost of Capital
10,000–25,000	594	303	$ 33,946	$ 37,624	$40,932
25,000–50,000	316	161	29,316	31,862	35,304
50,000–75,000	124	63	15,450	17,143	18,564
75,000–100,000	52	27	7,958	8,861	9,508
100,000–500,000	259	122	56,895	63,544	69,080
500,000–1 Million	26	11	16,310	18,381	20,092
>1 Million	10	4	10,130	11,641	12,927
Total	1,381	691	170,005	189,056	206,407

TABLE V.3.—UTILITY TURBIDITY START-UP AND MONITORING ANNUAL COSTS

Compliance Activities	Respondents Affected	Unit Costs	CF*	Annual Costs
Utility Start-Up Costs**	1,381 Systems	$3,108	0.09439	$405,136
Utility Plant Monitoring Costs	1,728 Plants	52,644		90,968,832
Utility System Monitoring Costs	1,381 Systems	3,588		4,955,028
Total Annual Utility Costs for Turbidity Monitoring and Start-Up.	.....			96,328,996

*The Capitalization Factor (CF) is calculated using the cost of capital (7%), the number of years of capitalization (20 years), and the current value of money ($1).
**Start-up costs are annualized over 20 years with a CF of 0.09439.

TABLE V.4.—SUMMARY OF POTENTIAL ANNUAL BENEFITS

	Baseline Assumes			
	2.5 Log Cryptosporidium Removal		3.0 Log Cryptosporidium Removal	
	Mean	Range	Mean	Range
Cryptosporidiosis Illness Avoided Annually				
Low Estimate of Number of Illnesses Avoided.	338,000	0–1,029,000	110,000	0–322,500
Cost of Illness Avoided	$0.950 billion	0–1.883 billion	0.263 billion	0–0.585 billion
Mid Number of Illnesses Avoided.	432,000	0–1,074,000	141,000	0–333,000
Cost of Illness Avoided	1.172 billion	0–1.960 billion	0.327 billion	0–0.608 billion
High Number of Illnesses Avoided.	463,000	0–1,080,000	152,000	0–338,000
Cost of Illness Avoided	1.240 billion	0–1.999 billion	0.359 billion	0–0.620 billion
Value of Cryptosporidiosis Mortalities Avoided Annually				
Low Number of Mortalities Avoided.	48	0–129	14	0–40
Value of Mortalities Avoided.	0.272 billion	0–0.674 billion	0.085 billion	0–0.209 billion
Mid Number of Mortalities Avoided.	60	0–135	18	0–42
Value of Mortalities Avoided.	0.341 billion	0–0.706 billion	0.107 billion	0–0.219 billion
High Number of Mortalities Avoided.	64	0–136	20	0–42
Value of Mortalities Avoided.	0.363 billion	0–0.708 billion	0.115 billion	0–0.221 billion
Reduced Risk of Cryptosporidiosis Outbreaks				
Cost of Illness Avoided Emergency Expenditures Liability Costs	Benefits not quantified, but could be substantial for large outbreak ($0.800 billion cost of illness avoided for a Milwaukee-level outbreak).			
Reduced Risk from Other Pathogens.	Benefits not quantified.			
Enhanced Aesthetic Water Quality.	Difference may not be noticeable to consumer.			
Averting Behavior	Benefits not quantified, but could be substantial for large outbreak ($0.020 billion to $0.062 billion for a Milwaukee-level outbreak).			

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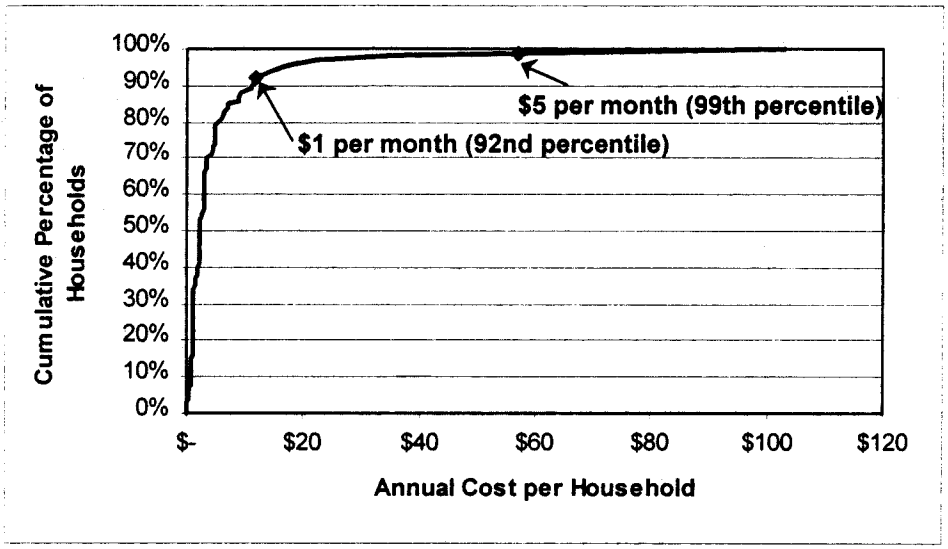
Figure V.1: Cumulative Distribution of Annual Cost per Household of the IESWTR



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VI. Additional Issues Discussed in 1994 Proposal and 1997 NODA

A. Inactivation of Cryptosporidium

When the IESWTR was proposed in 1994, EPA recognized that chlorine disinfectants were relatively ineffective in inactivating *Cryptosporidium*, but was not certain if alternative disinfectants might be more effective than chlorine. In the NODA for the IESWTR, EPA discussed the present data on *Cryptosporidium* disinfection for a variety of disinfectants. Many commenters thought that sufficient data was not available to develop guidelines for estimating inactivation of *Cryptosporidium* in water. Several commenters pointed out the inconsistency of inactivation data from different studies. Some commenters also supported the use of *Giardia* as the target organism for defining the disinfection benchmark required by today's rule. EPA believes that variability in inactivation results is not surprising, given the absence of standard testing protocol and methodology, and agrees that the existing data is not sufficient to enable the development of guidelines for estimating inactivation efficiencies for *Cryptosporidium* in water. The Agency also notes that research is underway to better clarify inactivation efficiencies for *Cryptosporidium* and anticipates that new research results will be available for consideration during the development of the Long Term 2 Enhanced Surface Water Treatment Rule which EPA plans to promulgate simultaneously with the Stage 2 DBPR.

B. Giardia Inactivation CT Values for Profiling/Benchmarking

In the 1997 NODA for the IESWTR, EPA requested comment on developing CT tables for free chlorine at pH levels above 9, which are not currently available in EPA's guidance to the SWTR. This effort was intended to support implementation of the microbial profiling/benchmarking required in the today's rule. Under the profiling/benchmarking requirement, certain utilities must determine CT values and compute daily average log inactivation of *Giardia*.

While some commenters supported the CT tables for high pHs presented in the NODA, other commenters opposed them because they thought that the literature data were not sufficient for development of these CT tables. Commenters also noted that for the systems with pH levels higher than 9, States currently provide guidelines by which utilities can estimate inactivation levels for the purpose of compliance with the SWTR. State guidelines are to use inactivation levels at pH 9 for above pH 9 conditions. EPA believes these guidelines, along with existing CT tables, are sufficient for implementing the benchmark/profiling requirements and therefore no additional CT tables have been developed at this time.

As explained previously, in conjunction with today's rule, EPA is also concurrently promulgating the Stage 1 DBPR under which the maximum disinfectant residual level for free chlorine is 4 mg/L. However, the CT tables for free chlorine that appear in the SWTR Guidance Manual only cover the chlorine residual up to 3 mg/L. Some commenters expressed a need for CT values for higher chlorine residuals. Since it has been observed that the free chlorine residual concentration (C) is not as significant as the contact time (T) in terms of inactivation kinetics for *Giardia* cysts and no data are currently available to support the development of additional CT tables for the range of chlorine residuals between 3 and 4 mg/L, EPA recommends that for the purpose of microbial profiling/benchmarking the value of 3 mg/L as Cl_2 be used for estimating log inactivation when the chlorine residual level is higher than 3 mg/L.

C. Cross Connection Control

Today's Rule

EPA is not establishing requirements for cross connection control in today's final rule. The Agency does plan to consider cross connection control issues during the development of subsequent microbial regulations, in the context of a broad range of issues related to distribution systems. At that time the results of research currently in progress should be available to the Agency and enable EPA to make regulatory decisions.

Background and Analysis

The proposed IESWTR (EPA, 1994b, 59 FR 38841, July 29, 1994) requested

public comment on whether the Agency should require States and/or systems to have a cross-connection control program. In addition, the Agency solicited comment on a number of associated issues, including (1) what specific criteria, if any, should be included in such a requirement, (2) how often such a program should be evaluated, (3) whether EPA should limit any requirement to only those connections identified as a cross connection by the public water system or the State, and (4) conditions under which a waiver from this requirement would be appropriate. The Agency also requested commenters to identify other regulatory measures EPA should consider to prevent contamination of drinking water in the distribution system (e.g., minimum pressure requirements in the distribution system).

Historically, a significant portion of waterborne disease outbreaks reported by CDC are caused by distribution system deficiencies. Distribution system deficiencies are defined in CDC's publication *Morbidity and Mortality Weekly Report* as cross connections, contamination of water mains during construction or repair, and contamination of a storage facility. Between 1971–1994, approximately 53 waterborne disease outbreaks reported were associated with cross connections or backsiphonage. Fifty-six outbreaks were associated with other distribution system deficiencies (Craun, Pers. Comm. 1997b). Some outbreaks have resulted from water main breaks or repairs.

There is no centralized repository where backflow incidents are reported or recorded. The vast majority of backflow incidents are probably not reported. Examples of specific backflow incidents are described in detail in EPA's *Cross-Connection Control Manual* (EPA, 1989a).

Where cross connections exist, some protection is still afforded to the distribution system by the maintenance of a positive water pressure in the system. Adequate maintenance of pressure provides a net movement of water out through breaks in the distribution pipes and prevents contaminated water outside of the pipes from entering the drinking water supply. The loss of pressure in the distribution system, less than 20 psi, can cause a net movement of water from outside the pipe to the inside, possibly allowing the introduction of fecal contamination into the system. This problem is of special concern where wastewater piping is laid in the same street as the water pipes, creating a potential threat to public health whenever there is low or no pressure.

A number of States have cross connection control programs, although the extent to which they vary is unclear. A Florida Department of Environmental Protection survey evaluated cross-connection control regulations in the 50 States (Florida DEP 1996). The survey results showed that 29 of the 40 States that responded to the survey request have programs. The rigor of the programs and the extent to which they are enforced was not addressed by the survey. An EPA report suggests that the responsibility for administration and enforcement of the State programs is generally at the local level (EPA, 1995a).

Summary of Major Comments

Most commenters supported either a federal or State cross connection control program in order to prevent disease outbreaks and injury to the public. Some commenters suggested EPA update its guidance document on cross connection control. Commenters opposed to a cross connection control program indicated that (1) a federally-mandated program would be impractical, burdensome, and would fail, (2) a State or local program would be more appropriate than an EPA-mandated program, (3) most States already have a comprehensive program, thus negating need for federal regulations, (4) EPA should publish general guidelines only, and (5) there should be a separate regulation because a cross connection control program would affect both surface water and ground water.

As noted above, EPA plans to consider cross connection control in the context of future microbial rules rather than in the IESWTR. The Agency will consider cross connection control issues in connection with a broad range of issues related to distribution systems as it develops these microbial rules. Issues to be considered include biofilm growth and the potential for biofilm associated with pathogens, water treatment and distribution system operations to minimize microbial growth, and causes of pathogen intrusion into the distribution system. These are all areas that are the focus of a significant research effort, most of which is still in progress. The American Water Works Association Research Foundation (AWWARF) presently has 17 projects pertaining to maintenance of water quality in the distribution system that are not yet complete. EPA's laboratories are also working on important research questions in these areas. EPA intends to evaluate this large body of distribution system research as well as data on State and local government requirements and their impact in order to develop comprehensive regulations and guidance on distribution system maintenance and operations, including the prevention of cross-connections.

EPA has previously published guidance on cross connection control entitled the Cross Connection Control Manual (EPA, 1989a, EPA 570/9–89–007, June 1989). This guidance describes methods, devices, etc. for prevention of backflow and back-siphonage, testing procedures for backflow preventers, administration of cross-connection programs and cross-connection control ordinance provisions. The Agency plans to update this Cross Connection Control Manual during the development of future microbial rules that address cross connection. The Agency will request public comment on issues related to cross connection control at that time. EPA would also like to point out that a number of States and local governments have existing cross connection control programs and strongly encourages States and local governments to implement effective cross connection control programs.

D. Filter Backwash Recycling

The SDWA Amendments of 1996 require that the EPA promulgate a regulation governing the recycle of filter backwash water within the treatment process by August 2000. The Agency is currently developing data and collecting information to consider these issues in a separate rule rather than in the IESWTR. The Agency held a public meeting in Denver, Colorado, in July 1998 and plans to hold another meeting in early 1999 to discuss available data and possible regulatory options, and intends to propose a rule in August of 1999.

E. Certification Criteria for Water Plant Operators

The July 29, 1994 notice requested comment on whether the ESWTR should define minimum certification criteria for surface water treatment plant operators. Currently, the SWTR (141.70) requires such systems to be operated by ''qualified personnel who meet the requirements specified by the State''. EPA is not further defining ''qualified'' in the IESWTR as the operator certification requirements discussed below will address this issue. The 1996 Amendments to the SDWA direct the Administrator, EPA, in cooperation with the States, to publish guidelines in the **Federal Register** specifying minimum standards for certification and recertification of operators of

community and nontransient noncommunity public water systems. Draft guidelines were published in the **Federal Register** Friday, March 27, 1998 (EPA 1998f) with a 90-day public comment period. Final guidelines are required to be published by February 1999. States then have two years to adopt and implement an operator certification program that meets these guidelines. After that date, if a State has not adopted and implemented an approved program, the Administrator must withhold 20 percent of the funds a State is otherwise entitled to receive in its Drinking Water State Revolving Fund (DWSRF) capitalization grants under section 1452 of SDWA. Questions regarding the draft guidelines may be directed to Jenny Jacobs (202–260–2939) or Richard Naylor (202–260–5135) of EPA's Office of Ground Water and Drinking Water. Their e-mail addresses are: jacobs.jenny@epamail.epa.gov and naylor.richard@epamail.epa.gov. In light of the 1996 Amendments and the draft guidelines, certification criteria need not be included in today's rule.

VII. Other Requirements

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA is generally required to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of the rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the RFA, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

The RFA authorizes use of an alternative definition to that of the Small Business Administration for a small water utility. Throughout the 1992–93 negotiated rulemaking process for the Stage 1 DBPR and IESWTR and in the July 1994 proposals for these rules, a small public water system (PWS) was defined as a system serving fewer than 10,000 persons. This definition reflects the fact that the original 1979 standard for total trihalomethanes applied only to systems serving at least 10,000 people. The definition thus recognizes that baseline conditions from which systems serving fewer than 10,000 people will approach disinfection byproduct control and simultaneous control of microbial pathogens is different than that for systems serving 10,000 or more persons. EPA again discussed this approach to the definition of a small system for these rules in the March 1998 Disinfectants/Disinfection Byproducts Notice of Data Availability (63 FR 15676, March 31, 1998). EPA is continuing to define ''small system'' for purposes of this rule and the Stage 1 DBPR as a system which serves fewer than 10,000 people. The IESWTR applies only to systems serving at least 10,000 people and accordingly does not have a significant economic impact on a substantial number of small entities. Accordingly EPA has not completed a regulatory flexibility analysis for the IESWTR or a small entity compliance guide.

The Agency has since proposed and taken comment on its intent to define ''small entity'' as a public water system that serves 10,000 or fewer persons for purposes of its regulatory flexibility assessments under the RFA for all future drinking water regulations. (See Consumer Confidence Reports Rule, 63 FR 7620, Feb. 13, 1998.) In that proposal, the Agency discussed the basis for its decision to use this definition and to use a single definition of small public water system whether the system was a ''small business'', ''small nonprofit organization'', or ''small governmental jurisdiction.'' EPA also consulted with the Small Business Administration on the use of this definition as it relates to small businesses. Subsequently, the Agency has used this definition in developing its regulations under the Safe Drinking Water Act. This approach is virtually identical to the approach used in the IESWTR and Stage 1 DBPR.

B. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0205.

The information collected as a result of this rule will allow the States and EPA to evaluate PWS compliance with the rule. For the first three years after promulgation of this rule, the major information requirements pertain to monitoring, compliance reporting and sanitary surveys. Responses to the request for information are mandatory (Part 141). The information collected is not confidential.

EPA is required to estimate the burden on PWS for complying with the final rule. 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.

EPA estimates that the annual burden on PWS and States for reporting and recordkeeping will be 150,557 hours. This is based on an estimate that there will be 998 respondents per year who will each, on average, need to provide 3,803 responses and that the average response will take 40 hours. The total annual cost burden is $27,448,013. This includes total annual labor costs of $4,615,791 for the following activities: reading and understanding the rule, planning, training, data collection, data review, data reporting, recordkeeping, compliance tracking and making determinations. The cost burden also includes capital costs of $17,137,222 for turbidimeter installation by PWS, and an operations and maintenance cost of $5,695,000 for turbidimeters.

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. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule. This ICR was previously subject to public notice and comment prior to OMB approval. As a result, EPA finds that there is ''good cause'' under section 553 (b) (B) of the Administrative Procedures Act (5 U.S.C. 553 (b) (B) to amend this table without prior notice and comment. Due to the technical nature of the table, further notice and comment would be unnecessary.

C. Unfunded Mandates Reform Act

1. Summary of UMRA requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local,

and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes an explanation why that alternative was not adopted with the final rule.

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.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate and the private sector in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized below. The written statement addresses the following areas: (a) Authorizing legislation; (b) cost-benefit analysis including an analysis of the extent to which the costs of State, local and Tribal governments will be paid for by the Federal government; (c) estimates of future compliance costs and disproportionate budgetary effects; (d) macro-economic effects; and (e) a summary of EPA's consultation with State, local, and Tribal governments and their concerns, including a summary of the Agency's evaluation of those comments and concerns; (f) identification and consideration of regulatory alternatives; and (g) selection of the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The major points of this written statement are summarized below. A more detailed description of this analysis is presented in EPA's *Unfunded Mandates Reform Act Analysis for the IESWTR* (EPA,1998c) which is included in the docket for this rule.

a. Authorizing Legislation

Today's rule is promulgated pursuant to (section 1412(b)(2)(C)) of the 1996 amendments to the SDWA; paragraph C of this section establishes a statutory deadline of November 1998 to promulgate this rule. In addition, the Interim Enhanced Surface Water Treatment Rule (IESWTR) is closely integrated with the Stage 1 DBPR, which also has a statutory deadline of November 1998.

b. Cost Benefit Analysis

Section V of this preamble discusses in detail the cost and benefits associated with the IESWTR. Also, the EPA's *Regulatory Impact Analysis of the Interim Enhanced Surface Water Treatment Rule* (EPA, 1998a) contains a detailed cost benefit analysis. The analysis includes both qualitative and monetized benefits for improvements to health and safety. Because of scientific uncertainty regarding the exposure assessment and the risk assessment for *Cryptosporidium*, the Agency calculated partial monetary benefit estimates for three different scenarios (low, medium, high) of improved removal of *Cryptosporidium* concentrations assuming two different levels of current inactivation (2.5 log baseline or 3.0 log baseline). Potential monetized annual benefits for illness avoided associated with *Cryptosporidium* ranged from a mean of $0.263 billion (3.0 log) to a mean of $1.24 billion (2.5 log) for this rule depending upon varied baseline and improved *Cryptosporidium* removal assumptions. The benefits from reduction in exposure to *Cryptosporidium* have been compared with the aggregate annualized costs to State, local, and tribal governments and the private sector that totaled approximately $307 million (annualized at 7%).

Using a current national average treatment removal assumption of 3.0 logs, net benefits are positive under the high and mid improved removal scenarios. Net benefits using the 3.0 log current removal assumption are negative near and below the mean associated with the low improved removal assumption using only the value of cost of illness avoided; however, when the value of mortalities prevented is added with the benefits, all scenarios have positive net benefits at the mean.

Thus, the monetized net benefits are positive across most of the range of current treatment assumptions, improved log removal scenarios, and discount rates. The benefits due to the illnesses avoided may be slightly overstated because mortalities were not netted out of the number of illnesses avoided. This value is minimal and would not be captured at the level of significance of the analysis. Other possible benefits considered in the analysis but not monetized are reducing the risk of outbreaks, reducing the exposure to other pathogens, enhancing aesthetic water quality, avoiding the cost of averting behavior, and reducing the cost of pain and suffering. These benefits could add substantial economic value to this rule.

Various Federal programs exist to provide financial assistance to State, local, and Tribal governments in complying with this rule. The Federal government provides funding to States that have primacy enforcement responsibility for their drinking water programs through the Public Water Systems Supervision Grants program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include the Drinking Water State Revolving Fund (DWSRF) and Housing and Urban Development's Community Development Block Grant Program.

For example, SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State will have considerable flexibility to determine the design of its program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to ten percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program.

c. Estimates of Future Compliance Costs and Disproportionate Budgetary Effects

EPA believes that the cost estimates indicated above in Section V to be a fairly accurate assessment of future

compliance costs and generally does not anticipate any disproportionate budgetary effects. In general, the costs that a public water system, whether publicly or privately owned, will incur to comply with this rule will depend on many factors that are not generally based on location. However, the data needed to confirm this assessment and to analyze other impacts of this problem are not available; therefore, EPA looked at three other factors: The impacts of the regulation on small versus large systems, the costs to public versus private water systems, and the costs to households. First, EPA notes that the IESWTR does not have a significant impact on a substantial number of small entities, as discussed previously in Section VII.A. These small systems are the subject of a subsequent rulemaking planned for 2000.

Second, the review of costs to public versus private systems is based on estimates of the allocation of the systems across size categories and can only be viewed as an indication of possible impacts. More important, implementation of the rule affects both public and private water systems equally, with the variance in total cost by system size merely a function of the number of affected systems. This analysis is presented in further detail in the *IESWTR UMRA Analysis Document* (EPA, 1998c).

Finally, the highest estimated household costs would be for those households served by systems that would have to implement all proposed combined filter effluent alternative treatment activities to meet the 0.3 NTU requirement for 95 percent of samples in a given month and a maximum of 1 NTU. However, this analysis may overstate costs because these systems may choose a less costly alternative such as point-of-use devices, selecting alternative water sources, or connecting to a larger regional water system.

d. Macro-economic Effects

As required under UMRA Section 202, EPA is required to estimate the potential macro-economic effects of the regulation. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1997, real GDP was $7,188 billion so a rule would have to cost at least $18 billion to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the IESWTR should be negligible based on the fact that the total annual costs are about $307 million per year (at a 7 percent cost of capital) and the costs are not expected to be highly focused on a particular geographic region or sector.

e. Summary of EPA's Consultation With State, Local, and Tribal Government and Their Concerns

Under UMRA section 202, EPA is to provide a summary of its consultation with elected representatives (or their designated authorized employees) of affected State, local and Tribal governments in this rulemaking. Although this rule was proposed before UMRA became a statutory requirement, EPA initiated consultations with governmental entities and the private sector affected by this rule through various means. This included participation on a Regulatory Negotiation Committee, chartered under the Federal Advisory Committee Act (FACA), in 1992–93 that included stakeholders representing State and local governments, public health organizations, public water systems, elected officials, consumer groups, and environmental groups.

After the amendments to SDWA in 1996, the Agency initiated a second FACA process, similarly involving a broad range of stakeholders, and held meetings during 1997 to address the expedited deadline for promulgation of the IESWTR in November 1998. EPA established the M–DBP Advisory Committee to collect, share, and analyze new data reviewed since the earlier Reg. Neg. process and also to build a consensus on the regulatory implications of this new information. The M–DBP Advisory Committee established a technical working group to assist them with the many scientific issues surrounding this rule. The Committee included representatives from organizations such as the National League of Cities, the National Association of City and County Health Officials, the Association of Metropolitan Water Agencies, the Association of State Drinking Water Administrators, and the National Association of Water Companies. In addition, the Agency invited the Native American Water Association to participate in the FACA process to develop this rule. Although they eventually decided not to take part, the Association continued to be informed of meetings and developments through a stakeholders mailing list. Stakeholders who participated in the FACA processes, as well as all other interested members of the public, were invited to comment on the proposed rule and NODA. Also, as part of the Agency's Communication Strategy, EPA sent copies of the proposed rule and NODA to many stakeholders, including six tribal associations.

In addition, the Agency notified governmental entities and the private sector of opportunities to provide input on this rule in the **Federal Register** on July 29, 1994 (59 FR 38832) and on November 3, 1997 (62 FR 59485). EPA received written comments from approximately 37 commenters on the July 29, 1994 notice and from approximately 157 commenters on the November 3, 1997 notice. Of the 37 commenters on the 1994 proposed rule, approximately 22% were States and 35% were local governments. Of the 157 commenters on the 1997 Notice of Data Availability, approximately 8% were States and 27% were local governments.

The public docket for this rulemaking contains all comments received by the Agency and provides details about the nature of State and local governments' concerns. Issues addressed by State and local government commenters included concerns about the cost and feasibility of proposed regulatory alternatives to require treatment levels based on *Giardia* and/or *Cryptosporidium* occurrence in a public water system's source water; preferences for requiring 2 log removal of *Cryptosporidium* for filtered systems; and concerns about the feasibility of requiring source water monitoring for unfiltered systems. A number of commenters on the issue of sanitary survey frequencies supported the three and five years frequencies for community and non-community water systems, respectively, as recommended by the M–DBP Advisory Committee. Some State commenters, however, expressed concern about resources for carrying out the surveys on such a schedule. On the issue of flexibility in implementing the Stage 1 DBPR and IESWTR to ensure that the rules are implemented simultaneously, most commenters preferred option four (discussed in the November 1997 IESWTR NODA) that calls for simultaneous implementation of both the IESWTR and the Stage 1 DBPR.

EPA understands the State and local government concerns noted above. EPA agrees that of the regulatory alternatives proposed, the appropriate alternative is the 2 log removal requirement for *Cryptosporidium* included in the final rule; the rule does not include treatment requirements based on microbial occurrence in source water. Nor does it require source water monitoring for unfiltered systems, based in part on concerns about current availability of

analytical methods. With respect to sanitary survey frequencies, the final IESWTR reflects the M–DBP Advisory Committee's recommendations, including provisions that allow States to (1) grandfather surveys done after December 1995 if they address eight elements that are currently part of existing State/EPA guidance; (2) do sanitary surveys on a five-year instead of a three-year schedule for community water systems that the State determines to be outstanding performers; and (3) carry out survey components in a staged or phased manner within the established frequency. EPA believes that these frequencies and associated provisions in the final rule allow States the flexibility to prioritize and carry out the sanitary survey process as an effective tool to identify and correct water system deficiencies that could pose a threat to public health. EPA agrees that concurrent implementation of the Stage 1 DBPR and IESWTR, as described in option 4 and reflected in the final Stage 1 DBPR compliance schedules, is the most effective means of implementing both rules. Finally, the Agency believes that the final IESWTR will provide public health benefits that justify the costs of the rule by reducing the public's exposure to microbial pathogens, including *Cryptosporidium*. EPA notes that, as discussed in Section V. above, over 90% of affected households will incur costs of less than $1 per month.

f. Regulatory Alternatives Considered

As required under section 205 of the UMRA, EPA considered several regulatory alternatives that developed from the Regulatory Negotiation process, M–DBP Advisory Committee, and stakeholder comments. These approaches sought to improve microbial protection and balance the risk/risk tradeoff of controlling microbial pathogens while simultaneously limiting the formation of disinfection byproducts. EPA proposed core requirements related to ground water under the direct influence of surface water, watershed control for unfiltered systems and sanitary surveys for all surface water systems, as well as five treatment alternatives for controlling pathogens, including a number of sub-options. In addition, the Agency requested comment on possible supplemental treatment requirements for requiring covers on finished water reservoirs, cross connection control programs and State notification of high turbidity levels and other issues related to turbidity control. Among these various approaches, the Agency was unable to pursue certain ones in the final IESWTR because additional data was needed.

Additional analysis of the regulatory alternatives was provided by the M–DBP Advisory Committee. The M–DBP Advisory Committee assessed tightening turbidity performance criteria and monitoring individual filtration performance. The Committee discussed at least one alternative that would have required the use of membrane technology to improve turbidity performance but concluded that utilities could more affordably achieve sufficient performance levels through changes in operation and administrative practices. The Committee considered three different turbidity standards as well as some existing State requirements for individual filter monitoring. A more detailed description of these alternatives is discussed in Chapter V of the *IESWTR Regulatory Impact Analysis* (EPA, 1998a).

g. Selection of the Least Costly, Most Cost-Effective or Least Burdensome Alternative That Achieves the Objectives of the Rule

As discussed above, EPA considered various regulatory options that would reduce exposures to pathogens and disinfectant byproducts that are the objectives of the SDWA. For instance, the M–DBP Committee analyzed the cost for three different levels of turbidity performance for the combined filter effluent turbidity requirements (measured in NTUs). The three NTU limits considered at the 95th percentile were 0.1, 0.2, and 0.3 and their cost estimates show a clear distinction among the three different levels. At the 0.1 NTU, the total annual costs of treatment were estimated to be $3,213 million. At 0.2 NTU and 0.3 NTU, the total annual costs of treatment were estimated to be $317 million and $174 million, respectively. The costs of the 0.1 NTU requirement were roughly 20 times the 0.3 NTU scenario and 10 times the 0.2 NTU scenario.

The large increase in costs for the 1.0 NTU scenario occurs because it was assumed that 95 percent of systems would need to install costly membrane technology to comply with this level. Most of the difference between the 0.2 and 0.3 levels is attributable to twice as many systems having to install coagulant aid polymer feed and filter aid polymer feed capabilities in complying with the 0.2 NTU limit as compared with the 0.3 NTU limit. The Committee recommended the 0.3 option because they felt that this level would provide adequate health protection at the least cost. The 0.3 NTU limit was the option that was eventually adopted as part of this rule and is the least costly option that accomplishes the objectives of the IESWTR.

3. Impacts on Small Governments

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely effect small governments. Thus this rule is not subject to the requirements of section 203 of UMRA. For purposes of the IESWTR, EPA has defined small public water systems as those that serve a population of fewer than 10,000, as discussed above in Section VIIA. Consequently, section 203 of UMRA does not apply because, as discussed above, the IESWTR applies to systems serving 10,000 or more people. As noted above, EPA plans to address surface water systems serving fewer than 10,000 people in the Long Term 1 Enhanced Surface Water Treatment Rule.

Even though section 203 does not apply, the FACA processes gave a variety of stakeholders, including small governments, the opportunity for timely and meaningful participation in the regulatory development process. Groups such as the National Association of City and County Health Officials and the National League of Cities participated in the rule making process. Through such participation and exchange, EPA notified small governments of requirements under consideration and provided officials of these small governments with an opportunity to have meaningful and timely input into the development of regulatory proposals.

D. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (''ANTTAA''), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

Today's rule requires the use of previously approved technical standards for the measurement of turbidity. In previous rulemakings, EPA

approved three methods for measuring turbidity in drinking water. Turbidity is a method-defined parameter and therefore modifications to any of the three approved methods requires prior EPA approval. One of the approved methods was published by the Standard Methods Committee of American Public Health Association, the American Water Works Association, and the Water Environment Federation, a voluntary consensus standard body. That method, Method 2130B is published in Standard Methods for the Examination of Water and Wastewater (19th ed.). Standard Methods is a widely used reference which has been peer-reviewed throughout the scientific community. In addition to this voluntary consensus standard, EPA approved Great Lakes Instrument Method 2 as an alternate test procedure for the measurement of turbidity. Finally, the Agency approved a revised EPA Method 180.1 for turbidity measurement in August 1993 in Methods for the Determination of Inorganic Substances in Environmental Samples (EPA–600/R–93–100).

In 1994, EPA reviewed and rejected an additional technical standard for the measurement of turbidity, the ISO 7027 standard, which measures turbidity at a higher wavelength than the approved test measurement standards. The ISO 7027 is an analytical method for the measurement of turbidity. ISO 7027 measures turbidity using either 90° scattered or transmitted light depending on the turbidity concentration evaluated. Although instruments conforming to ISO 7027 specifications are similar to the GLI instrument, only the GLI instrument uses pulsed, multiple detectors to simultaneously read both 90° scattered and transmitted light. EPA has no data upon which to evaluate whether the separate 90° scattered or transmitted light measurement evaluations according to the ISO 7027 method would produce results that are equivalent to results produced using GLI Method 2, Standard Method 2130B, or EPA Method 180.1.

Today's final rule also requires continuous individual filter monitoring for turbidity and requires PWSs to calibrate the individual turbidimeter according to the turbidimeter manufacturer's instructions. These calibration instructions may constitute technical standards as that term is defined in the NTTAA. EPA has looked for voluntary consensus standards with regard to calibration of turbidimeter. The American Society for Testing and Materials (ASTM) is developing such voluntary consensus standards; however, there do not appear to be any voluntary consensus standards available at this time.

E. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because it will have an annual effect on the economy of $100 million or more. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 (59 FR 7629) establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice related issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders.

Three aspects of today's rule comply with the Environmental Justice Executive Order and they can be classified as follows: (1) The overall nature of the rule; (2) the inclusion of sensitive sub-populations in the regulatory development process; and (3) the convening of a stakeholder meeting specifically to address environmental justice issues. The IESWTR applies uniformly to all surface water and GWUDI systems that serve a population of at least 10,000 and consequently, the health protection benefits this rule provides are equal across all income and minority groups within these communities. A complementary regulation is under development that will address similar issues for systems serving fewer than 10,000 people.

In addition, concerns of the sensitive sub-populations were included in the IESWTR through the Reg. Neg. and M-DBP Advisory Committee process undertaken to craft the regulation. Both Committees were chartered under the FACA authorization, and included a broad cross-section of regulators, regulated communities, industry, public interest groups, and State and local public health officials. Representatives of sensitive sub-populations, in particular people with AIDS, participated in the regulatory development process. Extensive discussion on setting treatment requirements that provide the maximum feasible protection took place, and the final consensus that resulted in the rule considered issues of affordability, equity, and safety.

Finally, as part of EPA's responsibilities to comply with E.O. 12898, the Agency held a stakeholder meeting on March 12, 1998 (EPA 1998e) to address various components of pending drinking water regulations; and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call between eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's Drinking Water Programs. The major objectives for the March 12, 1998 (EPA 1998e) meeting were:

- Solicit ideas from Environmental Justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts;
- Identify key issues of concern to EJ stakeholders; and
- Receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in OGWDW regulatory efforts.

In addition, EPA developed a plain-English guide specifically for this

meeting to assist stakeholders in understanding the multiple and sometimes complex issues surrounding drinking water regulation.

Overall, EPA believes this rule will equally protect the health of all minority and low income populations within communities served by public water systems regulated under this rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule initiated after April 21, 1997, or proposed after April 21, 1998, that (1) is determined to be ''economically significant'' as defined under E.O. 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The final rule is not subject to the Executive Order because EPA published a notice of proposed rulemaking before April 21, 1998. However, EPA's policy since November 1, 1995, is to consistently and explicitly consider risks to infants and children in all risk assessments generated during its decision making process including the setting of standards to protect public health and the environment.

In promulgating the IESWTR the Agency recognizes that the health risks associated with exposure to the protozoan *Cryptosporidium* are of particular concern for certain sensitive subpopulations, including children and immunocompromised individuals. These concerns were considered as part of the regulatory development process, particularly in the establishment of the MCLG for *Cryptosporidium* in drinking water, and are reflected in the final rule. The IESWTR establishes a Maximum Contaminant Level Goal (MCLG) of zero for *Cryptosporidium* at the genus level, taking into account the need to protect sensitive populations (e.g., children) and providing for an adequate margin of safety. For public water systems that use surface water, filter and serve at least 10,000 people, the Agency is establishing physical removal treatment requirements for *Cryptosporidium*. For systems that use conventional or direct filtration, the Agency is strengthening the existing turbidity standards for finished water and is also requiring individual filter monitoring to assist in controlling pathogen breakthrough during the treatment process.

H. 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, or EPA consults with 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.''

EPA has concluded that this rule will create a mandate on State, local, and tribal governments and that the Federal government will not provide all of the funds necessary to pay the direct costs incurred by the State, local, and tribal governments in complying with the mandate. In developing this rule, EPA consulted with State and local governments to enable them to provide meaningful and timely input in the development of this rule. EPA also invited the Native American Water Association to participate in the FACA process to develop this rule. Although they decided not to take part in the deliberations, the Association continued to be informed of meetings and developments through a stakeholders mailing list.

As described above in Section VII. C.2(e), EPA held extensive meetings with a variety of State and local representatives who provided meaningful and timely input in the development of the proposed rule. State and local representatives were part of the FACA committees involved in the development of this rule. Summaries of the meetings have been included in the public docket for this rulemaking. See section VII.C.2(e) for summaries of the extent of EPA's consultation with State, local, and tribal governments; the nature of the government concerns; and EPA's position supporting the need to issue the rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, 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 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. There are very few Tribal surface water systems that serve 10,000 or more people. Moreover, the rule does not impose requirements on the Tribal systems that differ from those required for other water systems covered under the rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Consultation With the Science Advisory Board, National Drinking Water Council, and Secretary of Health and Human Services

In accordance with section 1412(d) and (e) of SDWA, EPA consulted with the Science Advisory Board, National Drinking Water Council, and Secretary of Health and Human Services, and requested and considered their comments in developing this rule.

K. Likely Effect of Compliance With the IESWTR on the Technical, Financial, and Managerial Capacity of Public Water Systems

Section 1420(d)(3) of the SDWA as amended requires that, in promulgating a NPDWR, the Administrator shall

include an analysis of the likely effect of compliance with the regulation on the technical, financial, and managerial capacity of public water systems. The following analysis has been performed to fulfill this statutory obligation.

Overall water system capacity is defined in EPA guidance (EPA 816–R–98–006) (EPA 1998g) as the ability to plan for, achieve, and maintain compliance with applicable drinking water standards. Capacity has three components: technical, managerial, and financial.

Technical capacity is the physical and operational ability of a water system to meet SDWA requirements. Technical capacity refers to the physical infrastructure of the water system, including the adequacy of source water and the adequacy of treatment, storage, and distribution infrastructure. It also refers to the ability of system personnel to adequately operate and maintain the system and to otherwise implement requisite technical knowledge. A water system's technical capacity can be determined by examining key issues and questions, including:

- *Source water adequacy.* Does the system have a reliable source of drinking water? Is the source of generally good quality and adequately protected?
- *Infrastructure adequacy.* Can the system provide water that meets SDWA standards? What is the condition of its infrastructure, including well(s) or source water intakes, treatment, storage, and distribution? What is the infrastructure's life expectancy? Does the system have a capital improvement plan?
- *Technical knowledge and implementation.* Is the system's operator certified? Does the operator have sufficient technical knowledge of applicable standards? Can the operator effectively implement this technical knowledge? Does the operator understand the system's technical and operational characteristics? Does the system have an effective operation and maintenance program?

Managerial capacity is the ability of a water system to conduct its affairs in a manner enabling the system to achieve and maintain compliance with SDWA requirements. Managerial capacity refers to the system's institutional and administrative capabilities.

Managerial capacity can be assessed through key issues and questions, including:

- *Ownership accountability.* Are the system owner(s) clearly identified? Can they be held accountable for the system?
- *Staffing and organization.* Are the system operator(s) and manager(s) clearly identified? Is the system properly organized and staffed? Do personnel understand the management aspects of regulatory requirements and system operations? Do they have adequate expertise to manage water system operations? Do personnel have the necessary licenses and certifications?
- *Effective external linkages.* Does the system interact well with customers, regulators, and other entities? Is the system aware of available external resources, such as technical and financial assistance?

Financial capacity is a water system's ability to acquire and manage sufficient financial resources to allow the system to achieve and maintain compliance with SDWA requirements.

Financial capacity can be assessed through key issues and questions, including:

- *Revenue sufficiency.* Do revenues cover costs? Are water rates and charges adequate to cover the cost of water?
- *Credit worthiness.* Is the system financially healthy? Does it have access to capital through public or private sources?
- *Fiscal management and controls.* Are adequate books and records maintained? Are appropriate budgeting, accounting, and financial planning methods used? Does the system manage its revenues effectively?

1,381 systems are affected by the IESWTR. Of these, 691 may need to modify their treatment process and undertake turbidity monitoring, and will need to meet the disinfection benchmarking and turbidity exceptions reporting requirements. The other 690 systems will need to do turbidity monitoring and will need to meet the disinfection benchmarking and turbidity exceptions reporting requirements as applicable, but will not need to modify their treatment process.

Systems not modifying treatment will need to do turbidity monitoring, disinfection benchmarking, and turbidity exceptions reporting, These systems are not generally expected to require significantly increased technical, financial, or managerial capacity to comply with these new requirements. Some individual facilities may have weaknesses in one or more of these areas, but overall surface water systems should have or be able to easily obtain the capacity needed for these activities.

Systems needing to modify treatment will employ one or more of a variety of steps. The steps expected to be employed by 25% or more of systems in virtually all size categories covered by the rule are: install backwash water polymer feed capability; install individual filter turbidimeters; account for recycle flow in process control decisions; implement a policy and commitment to lower water quality goals; utilize alternative process control testing equipment; modify/implement process control monitoring and control; and designate a process control strategy facilitator.

Furthermore, there are a number of actions that are expected to be taken disproportionately by the smaller sized systems covered under the IESWTR (that is to say, a greater percentage of smaller sized systems will undertake these activities than will larger sized systems). These steps include: Structural and mechanical rapid mix improvements; filter underdrain retrofits and gravel media; filter rate-of-flow controller replacement; hydraulic improvements in flow distribution/control/measurement; increase plant staffing; replace obsolete bench top turbidimeters; purchase jar test apparatus; and train staff to understand process control strategy.

For many systems serving between 10,000 and 100,000 persons which need to make treatment modifications an enhancement of technical, financial, and managerial capacity may likely be needed. As the preceding paragraph makes clear, these systems will be making structural improvements and enhancing laboratory and staff capacity. Larger sized systems have typically already made these improvements as part of normal operations. Meeting the requirements of the IESWTR will require operating at a higher level of sophistication and in a better state of repair than some plants in the 10,000–100,000 person size category have considered acceptable in the past.

Certainly there will be exceptions both between 10,000 and 100,000 persons and above. Some larger plants are expected to find that their technical, managerial, and financial capacity needs to be upgraded to support the system in meeting the new requirements. Likewise, some plants serving 10,000–100,000 persons will already have more than adequate technical, financial, and managerial capacity to meet these requirements. However, in general, the systems serving 10,000–100,000 persons needing to make treatment modifications will be the ones most needing to enhance their capacity.

L. 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 rule is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 16, 1999.

VIII. References

Amirtharajah A (1988). Some theoretical and conceptual views of filtration. Journal AWWA (Dec 1988), pgs 36–46.

Arrowood, M J (1997). Diagnosis. pp. 43–64, In: R. Fayer (ed.), *Cryptosporidium* and Cryptosporidiosis. CRC Press, New York.

AWWA Water Industry Data Base (WIDB) (1996) AWWA, Denver, CO.

AWWA (1993). American Water Works Association. Officers and Committee Directory. AWWA Denver, CO.

AWWA Committee Report (1983). Deterioration of water quality in large distribution reservoirs (open reservoirs). AWWA Committee on Control of Water Quality in Transmission and Distribution Systems. Journal AWWA (June 1983), pgs 313–318.

AWWSC (1997). Treatment Plant Turbidity Data. Provided to the Technical Work Group, American Water Works Service Company, 1997.

Bailey S W and E C Lippy (1978). Should all finished water reservoirs be covered. Public Works for April 1978. p66–70.

Bissonette E (1997). Summary of the Partnership for Safe Water Initial Annual Technical Report.

Bucklin K, A Amirtharajah, and KO Cranston (1988). The characteristics of initial effluent quality and its implications for the filter-to-waste procedure. AWWARF, Nov 1988.

Casemore D P (1990). Epidemiological aspects of human cryptosporidiosis. Epidemiol. Infect. 104:1–28.

Cleasby J L (1990). Filtration, Chapter 8, IN: (F Pontius, ed) Water Quality and Treatment. AWWA, Denver, CO.

Cooke G D and R E Carlson (1989). Manual: Reservoir management for Water Quality and THM Precursor Control. AWWARF, Denver, CO.

Cordell, R L, and D G Addiss (1994). Cryptosporidiosis in child care settings: a review of the literature and recommendations for prevention and control. Pediatr. Infect. Dis. Jour. 13(4):310–317.

Craun G F (1998). Waterborne outbreaks 1995–1996. Memorandum to Valerie Blank, USEPA, OGWDW, June 20, 1998.

Craun G F (Pers. Comm. 1997a). Note to the IESWTR NODA Docket, dated 10/2/97, from Heather Shank-Givens (EPA).

Craun G F (Pers. Comm 1997b). Note to the IESWTR NODA Docket, dated 10/16/97, from Heather Shank-Givens (EPA).

Current W L (1986). *Cryptosporidium*: its biology and potential for environmental transmission. CRC Critical Reviews in Environmental Control 17(1): 21–33.

Current W L, Reese N C, Ernst J V, Bailey W S, Heyman M B and W M Weistein (1983). Human Cryptosporidiosis in Immunocompetent and Immunodeficient Persons: Studies of an Outbreak and Experimental Transmission. New England Journal of Medicine Vol. 308, No.21:1252–1257.

D'Antonio R G, R E Winn, J P Taylor, et al. (1985). A waterborne outbreak of cryptosporidiosis in normal hosts. Ann. Intern. Med. 103:886–888.

Dupont H L, C L Chappell, C R Sterling, P C Okhuysen, J B Rose, W Jakubowski (1995). The infectivity of *Cryptosporidium parvum* in healthy volunteers. New Eng J of Med 332(13):855–859.

E&S Environmental Chemistry (1997) Portland Water Bureau Water Utility Survey—Draft. City of Portland, Oregon Open Reservoir Study. March 31, 1997.

EPA (1998a). Environmental Protection Agency. Regulatory Impact Analysis for the Interim Enhanced Surface Water Treatment Rule; EPA–815–B–98–003. September 1998.

EPA (1998b). Environmental Protection Agency. Technologies and Costs for the Interim Enhanced Surface Water Treatment Rule; EPA–815–R–98–015. July 1998.

EPA (1998c). Unfunded Mandates Reform Act Analysis for the Interim Enhanced Surface Water Treatment Rule. September 1998.

EPA (1998d). Revisions to State Primacy Requirements to Implement Safe Drinking Water Act Amendments; Final Rule. 63 FR 23362.

EPA (1998e). Environmental Justice Stakeholder Meeting Summaries. March 12, 1998.

EPA (1998f). Public Review Draft Guidelines for the Certification and Recertification of the Operators of Community and Nontransient Noncommunity Public Water Systems, Notice. 63 FR 15064.

EPA (1998g). Guidance on Implementing the Capacity Development Provisions of the Safe Drinking Water Act Amendments of 1996. EPA 816–R–98–006, July 1998.

EPA (1997a) National Primary Drinking Water Regulations: Interim Enhanced Surface Water Treatment Rule Notice of Data Availability; 62 FR59486.

EPA (1997b) National Primary Drinking Water Regulations: Disinfectants and Disinfection Byproducts Notice of Data Availability; 62 FR 59388.

EPA (1996a). ''An Evaluation of the Statistical Performance of a Method f or Monitoring Protozoan Cysts in US Source Waters,'' (June 26, 1996), 58 pages. Appendix to the report, about 50 pages.

EPA (1996b). National Primary Drinking Water Regulations: Monitoring Requirements for Public Drinking Water Supplies; Final Rule. May 14, 1996. 61 FR 24354.

EPA (1995a). Survey Report on the Cross-Connections Control Program. E1HWG4–01–0091–5400070.

EPA (1995b). Research Plan for Microbial Pathogens and Disinfection Byproduct in Drinking Water. SAB Review Draft (Oct 1995). Office of Research and Development & Office of Water, EPA.

EPA, American Water Works Association (AWWA), AWWA Research Foundation (AWWARF), Association of Metropolitan Water Agencies (AMWA), Association of States Drinking Water Administrators (ASDWA), and National Association of Water Companies (NAWC) (1995). Partnership for Safe Water Voluntary Water Treatment Plant Performance Improvement Program Self-Assessment Procedures. October, 1995.

EPA/ASDWA State Joint Guidance on Sanitary Surveys. December 1995.

EPA (1994a). National Primary Drinking Water Regulations; Disinfectants and Disinfection Byproducts; Proposed Rule. 59 FR 38668, July 29, 1994. EPA/811–Z–94–004.

EPA (1994b). National Primary Drinking Water Regulations: Enhanced Surface Water Treatment Requirements; Proposed Rule. 59 FR 38832: July 29, 1994.

EPA (1994c). Monitoring Requirements for Public Drinking Water Supplies; Proposed Rule. 59 FR 6332, February 10, 1994.

EPA (1994d). Training on GWUDI Determinations Workshop Manual. Office of Groundwater and Drinking Water, EPA. Washington DC (April 1994).

EPA (1994e). January 10, 1994 letter from Jim Elder, Director, Office of Ground Water and Drinking Water to John H. Sullivan, Deputy Executive Director, AWWA.

EPA (1994f) The Regulatory Impact Analysis for the Interim Enhanced Surface Water Treatment Rule. Office of Ground Water and Drinking Water, May 1994.

EPA (1993). Nephelometric Method 180.1. 600/R–93–100.

EPA (1992). Consensus Method for Determining Groundwater Under the Direct Influence of Surface Water Using Microscopic Particulate Analysis (MPA). EPA 910/9–92–029.

EPA (1991a). Guidance manual for compliance with the filtration and disinfection requirements for public water systems using surface water sources. Environmental Protection Agency, Washington, DC. (Also Published by AWWA in 1991)

EPA (1991b). Optimizing Water Treatment Plant Performance Using the Composite Correction Program. EPA/625/6–91/027.

EPA/SAB (1990). Reducing Risk: Setting Priorities and Strategies for Environmental Protection (September 1990).

EPA (1989a). Cross-Connection Control Manual. EPA 570/9–89–007. Environmental Protection Agency. Washington, DC.

EPA (1989b). Drinking Water; National Primary Drinking Water Regulations: Disinfection; Turbidity, *Giardia lamblia*, Viruses, Legionella, and Heterotrophic Bacteria; Final Rule. 54 FR 27486, June 29, 1989.

EPA (1989c). Drinking Water; National Primary Drinking Water Regulations; Total Coliforms (including Fecal Coliforms and E. Coli); Final Rule. 54 FR 27544, June 29, 1989.

EPA (1979). National Interim Primary Drinking Water Regulations; Control of

Trihalomethanes in Drinking Water. 44 FR 68624, November 29, 1979.

Erb T M (1989). Implementation of Environmental Regulations for Improvements to Distribution Reservoirs in Los Angeles. Proc. AWWA Annual Conference. p.197–205.

Fayer R, C A Speer, J P Dubey. (1997). General Biology of *Cryptosporidium*. In: *Cryptosporidium* and Cryptosporidiosis. R Fayer, ed. Boca Raton, FL: CRC Press, Inc. pp.2–5.

Fayer R, C A Speer, J P Dubey. (1990). General Biology of *Cryptosporidium*. In: *Cryptosporidium* and Cryptosporidiosis. R Fayer, C A Speer, and J B Dubey eds. Boca Raton, FL: CRC Press, Inc. pp.2–29.

Fayer R and B L P Ungar (1986). *Cryptosporidium* spp. and cryptosporidiosis. Microbiol. Rev. 50(4):458–483.

Florida DEP (1996). The State of Florida's Evaluation of Cross-Connection Control Rules/Regulations in the 50 States. Florida Department of Environmental Protection. Aug. 1996 (Rev.).

Foundation for Water Research [Hall, Pressdee, and Carrington] (1994). Removal of *Cryptosporidium* oocysts by water treatment processes. (April 1994) Foundation for Water Research, Britain.

Fox K R and Lytle D A (1996) Milwaukee's Cryptosporidium Outbreak: Investigation and Recommendations. JAWWA 88(9): 87–94.

GAO (1993). Report to the Chairman, Subcommittee on Health and the Environment, Committee on Energy and Commerce, House of Representatives: Drinking Water: Key Quality Assurance Program is Flawed and Underfunded. GAO/RCED–93–97. April 1993.

Geldreich E E (1990). Microbiological Quality Control in Distribution Systems. IN: (FW Pontius, ed) Water Quality and Treatment 4th Ed. McGraw-Hill, Inc.

Gerba C P., J B Rose, and C N Haas (1996). Sensitive populations: who is at the greatest risk? International Journal of Food Microbiology 30 (1996): 113–123.

Gertig K R, G L Williamson-Jones, F E Jones, and B D Alexander (1988). Filtration of *Giardia* Cysts and Other Particles Under Treatment Conditions: Vol. 3: Rapid Rate Filtration Using 1' x 1' Pilot Filters on the Cache La Poudre River. American Water Works Association, Denver, Colorado, February 1988.

Graczyk T K, M R Cranfield, R Fayer, and M S Anderson (1996a). Viability and Infectivity of *Cryptosporidium parvum* Oocysts are Retained upon Intestinal Passage through a Refractory Avian Host. Applied and Environmental Microbiology 62(9): 3234–3237.

Graczyk T K, R Fayer and M R Cranfield (1996b). *Cryptosporidium parvum* is not transmissable to fish, amphibians or reptiles. J. Parasitol. 82(5): 748–751.

Great Lakes Instruments (1992). Analytical Method for Turbidity Measurement: GLI Method 2. GLI, Milwaukee, WI.

Grubbs W D, B Macler, and S Regli (1992). Modeling *Giardia* occurrence and risk. EPA–811–B–92–005. Office of Water Resource Center. Washington, DC.

Haas C N, C S Crockett, J B Rose, C P Gerba, and A M Fazil (1996). Assessing the Risk Posed By Oocysts in Drinking Water. Journal AWWA (Sept 1996), 88(9): 131–136.

Haas C N and J B Rose (1995). Developing an action level for *Cryptosporidium*. Journal AWWA (Sept 1995), 87(9): 81–84.

Hall T and B Croll (1996). The UK Approach to *Cryptosporidium* Control in Water Treatment. AWWA Water Quality Technology Conference Proceedings. Oct. 1996.

Hancock C M, J B Rose, M Callahan (1998). *Cryptosporidium* and *Giardia* in US Groundwater. Journal AWWA (March 1998), 90(3): 58–61.

Hoxie N J, J P Davis, J M Vergeront, R D Nashold and K A Blair. (1997). Cryptosporidiosis—associated mortality following a massive waterborne outbreak in Milwaukee, WI. Amer. J. Publ. Health 87 (12) 2032–2035.

Kelley M B, P K Warrier, J K Brokaw, K L Barrett, and S Komisar (1995). A study of two US Army installations drinking water sources and treatment systems for the removal of *Giardia* and *Cryptosporidium*. Proceedings of AWWA Water Quality Technology Conference, New Orleans, LA, pp. 2197–2230.

Kramer M H, B L Herwaldt, G F Craun, R L Calderon and D D Juranek. 1996. Waterborne Disease: 1993 and 1994 (Fig 4). J. AWWA 88(3): 66–80.

LeChevallier M W, W D Norton, and T B Atherholt (1997a). Protozoa in open reservoirs. Journal AWWA (Sept 1997), 89(9): 84–96.

LeChevallier M W and W D Norton (1995). *Giardia* and *Cryptosporidium* in Raw and Finished Water, Journal AWWA 87: 54–68.

LeChevallier M W and W D Norton (1992). Examining relationships between particle counts and *Giardia*, *Cryptosporidium* and turbidity. Journal AWWA (Dec 1992), pgs 52–60.

LeChevallier M W, D N Norton, and R G Lee (1991a). Occurrence of *Giardia* and *Cryptosporidium* spp in surface water supplies. Appl Environ Microbiol 57: 2610–2616.

LeChevallier M W, D N Norton, and R G Lee (1991b). *Giardia* and *Cryptosporidium* spp. in filtered drinking water supplies. Appl Environ Microbiol 57(9): 2617–2621.

Logsdon G S, M M Frey, TC Stefanich, S L Johnson, D E Feely, J B Rose, M Sobsey (1994). The removal and disinfection efficiency of lime softening process for *Giardia* and Viruses. AWWARF, Denver, CO.

Maryland Compliance Monitoring Division, Chesapeake Bay and Watershed Management. Water Quality Monitoring Program (Steinfort, Duval, Roser et al.) (1993). Findings of an Investigation of Surface Water Influence on Warrenfelts and Keedysville Springs, Addressing Bacteriological Monitoring, Streamflow Discharges and Various Fluorometric Protocols. Technical Report 93–002.

Massachusetts Department of Environmental Protection. (Rapacz MV and HC Stephens) (1993). Groundwater: To Filter or Not to Filter. Jour. New England Water Works Association. CVII(1): 1–14.

MacKenzie W R and N J Hoxie, M E Proctor, M S Gradus, KA Blair, DE Peterson, J J Kazmierczak, DA Addiss, K R Fox, J B Rose, and J P Davis (1994). A massive outbreak in Milwaukee of *Cryptosporidium* infection transmitted through the public water supply. New England Journal of Medicine 331(3): 161–167.

Montgomery Watson (1996). Summary of State Open Reservoir Regulations. City of Portland, Oregon, Open Reservoir Study. July 1, 1996.

Montgomery Watson (1995). Enhanced Monitoring Program; *Giardia* and *Cryptosporidium* 1994 Results Report. Seattle Water Department. March, 1995.

Morra J J (1979). A Review of Water Quality Problems Caused by Various Open Distribution Storage Reservoirs. Pgs 316–321.

Nieminski EC (1995). Effectiveness of Direct Filtration and Conventional Treatment in Removal of *Cryptosporidium* and *Giardia*. Proceedings AWWA Annual Conf., June 1995.

Nieminski EC and J E Ongerth (1995). Removing *Giardia* and *Cryptosporidium* by Conventional Treatment and Direct Filtration. Jour. AWWA (Sept 1995), 87(9): 96–106.

Ongerth J E and J P Pecoraro (1995). Removing *Cryptosporidium* Using Multimedia Filters. Jour. AWWA (Dec 1995), 87(12): 83–89.

Patania N L, J G Jacangelo, L Cummings, A Wilczak, K Riley, and J Oppenheimer (1995). Optimization of Filtration for Cyst Removal. AWWARF, Denver, CO.

Peng, M M, L Xiao, A R Freeman, M J Arrowood, A A escalante, A C Weltman, C S L Ong, W R Mackenzie, A A Lal and C B Beard. (1997). Genetic polymorphism among *Cryptosporidium parvum* isolates: evidence of two distinct human transmission cycles. Emerging Infectious Diseases 3(4): 567–573.

Pluntze J C (1974). Health aspects of uncovered reservoirs. Journal AWWA (Aug 1974), pgs 432–437.

Rose J. (1997). Environmental Ecology of *Cryptosporidium* and Public Health Implications. Annual Rev. Public Health 18: 135–61.

SAIC (1997a). Microscopic Particulate Analysis (MPA) Correlations with *Giardia* and *Cryptosporidium* Occurrence in Ground Water Under the Direct Influence of Surface Water (GWUDI) Sources. Science Applications International Corporations (SAIC), Nov. 14, 1997.

SAIC (1997b). State 1 and State 2 Turbidity Data. Analyzed and presented to the Technical Work Group. Science Applications International Corporation (SAIC), 1997.

Silverman G S, L A Nagy, and B H Olson (1983). Variations in particulate matter, algae, and bacteria in an uncovered, finished-drinking-water reservoir. Journal AWWA (Apr 1983), 75(4):191–195.

Sonoma County Water Agency (1991) Russian River Demonstration Study (unpublished report) and Letter from Bruce H. Burton, P.E., District Engineer, Santa Rosa District Office to Robert F. Beach, General Manager Sonoma County Water Agency.

Standard Methods for the Examination of Water and Wastewater (1992). Method 2130B.

Timms S, J S Slade, and C R Fricker (1995). Removal of *Cryptosporidium* by slow sand filtration. Wat Sci Tech, 31(5–6): 81–84.

Tzipori S and J K Griffiths (1998). Natural History and Biology of *Cryptosporidium parvum*. Adv. Parasitol. 40:5–36.

West T, P Daniel, P Meyerhofer, A DeGraca, S Leonard, and C Gerba (1994). Evaluation of *Cryptosporidium* Removal through High-Rate Filtration. Proceedings AWWA Annual Conf., June 1994, pp 493–504.

Wilson M P, W D Gollnitz, S N Boutros, and W T Boria (1996). Determining Groundwater Under the Direct Influence of Surface Water. AWWA Research Foundation, Denver CO.

List of Subjects

40 CFR Parts 9

Reporting and recordkeeping requirements.

40 CFR Parts 141 and 142

Drinking water, Environmental protection, Public utilities, Reporting and recordkeeping requirements, Reservoirs, Utilities, Water supply, Watersheds.

Dated: November 30, 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 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding under the indicated heading the new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control no.
* * * * *	
National Primary Drinking Water Regulations	
* * * * *	
141.170	2040–0205
141.172	2040–0205
141.174–141.175	2040–0205
* * * * *	

PART 141—National Primary Drinking Water Regulations

3. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

4. Section 141.2 is amended by revising the definition of ''ground water under the direct influence of surface water'' and adding the following definitions in alphabetical order to read as follows:

§ 141.2 Definitions.

* * * * *

Comprehensive performance evaluation (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with subpart P of this part, the comprehensive performance evaluation must consist of at least the following components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

* * * * *

Disinfection profile is a summary of daily *Giardia lamblia* inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in § 141.172.

* * * * *

Filter profile is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

* * * * *

Ground water under the direct influence of surface water means any water beneath the surface of the ground with significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia* or (for subpart H systems serving at least 10,000 people only) *Cryptosporidium*, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence must be determined for individual sources in accordance with criteria established by the State. The State determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well construction characteristics and geology with field evaluation.

* * * * *

Uncovered finished water storage facility is a tank, reservoir, or other facility used to store water that will undergo no further treatment except residual disinfection and is open to the atmosphere.

* * * * *

5. Section 141.32 is amended by revising paragraph (e)(10) to read as follows:

§ 141.32 Public notification.

* * * * *

(e) * * *

(10) *Microbiological contaminants* (for use when there is a violation of the treatment technique requirements for filtration and disinfection in subpart H or subpart P of this part). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants are a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than your drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little to none of this risk and should be considered safe.

* * * * *

6. In § 141.52, the table is amended by adding a new entry, in numerical order, to read as follows:

§ 141.52 Maximum contaminant level goals for microbiological contaminants.

* * * * *

Contaminant	MCLG
* * * * *	
(5) *Cryptosporidium*	zero.

7. Section 141.70 is amended by adding paragraph (d) to read as follows:

§ 141.70 General requirements.

* * * * *

(d) *Additional requirements for systems serving at least 10,000 people.* In addition to complying with requirements in this subpart, systems serving at least 10,000 people must also comply with the requirements in subpart P of this part.

8. Section 141.71 is amended by revising paragraph (b)(6) to read as follows:

§ 141.71 Criteria for avoiding filtration.

* * * * *

(b) * * *

(6) The public water system must comply with the requirements for trihalomethanes in §§ 141.12 and 141.30 until December 17, 2001. After December 17, 2001, the system must comply with the requirements for total trihalomethanes, haloacetic acids (five), bromate, chlorite, chlorine, chloramines, and chlorine dioxide in subpart L of this part.

* * * * *

9. Section 141.73 is amended by adding paragraph (a)(3) and revising paragraph (d) to read as follows:

§ 141.73 Filtration.

* * * * *

(a) * * *

(3) Beginning December 17, 2001, systems serving at least 10,000 people must meet the turbidity requirements in § 141.173(a).

* * * * *

(d) *Other filtration technologies.* A public water system may use a filtration technology not listed in paragraphs (a) through (c) of this section if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses. For a system that makes this demonstration, the requirements of paragraph (b) of this section apply. Beginning December 17, 2001, systems serving at least 10,000 people must meet the requirements for other filtration technologies in § 141.173(b).

10. Section 141.153 is amended by revising the first sentence of paragraph (d)(4)(v)(C) to read as follows:

§ 141.153 Content of the reports.

* * * * *

(d) * * *

(4) * * *

(v) * * *

(C) When it is reported pursuant to §§ 141.73 or 141.173: The highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in §§ 141.73 or 141.173 for the filtration technology being used. * * *

* * * * *

11. Part 141 is amended by adding a new subpart P to read as follows:

Subpart P—Enhanced Filtration and Disinfection

Sec.

§ 141.170 General requirements.

(a) The requirements of this subpart P constitute national primary drinking water regulations. These regulations establish requirements for filtration and disinfection that are in addition to criteria under which filtration and disinfection are required under subpart H of this part. The requirements of this subpart are applicable to subpart H systems serving at least 10,000 people, beginning December 17, 2001 unless otherwise specified in this subpart. The regulations in this subpart establish or extend treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia,* viruses, heterotrophic plate count bacteria, *Legionella, Cryptosporidium,* and turbidity. Each subpart H system serving at least 10,000 people must provide treatment of its source water that complies with these treatment technique requirements and are in addition to those identified in § 141.70. The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

(1) At least 99 percent (2-log) removal of *Cryptosporidium* between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems, or *Cryptosporidium* control under the watershed control plan for unfiltered systems.

(2) Compliance with the profiling and benchmark requirements under the provisions of § 141.172.

(b) A public water system subject to the requirements of this subpart is considered to be in compliance with the requirements of paragraph (a) of this section if:

(1) It meets the requirements for avoiding filtration in §§ 141.71 and 141.171 and the disinfection requirements in §§ 141.72 and 141.172; or

(2) It meets the applicable filtration requirements in either § 141.73 or § 141.173 and the disinfection requirements in §§ 141.72 and 141.172.

(c) Systems are not permitted to begin construction of uncovered finished water storage facilities beginning February 16, 1999.

§ 141.171 Criteria for avoiding filtration.

In addition to the requirements of § 141.71, a public water system subject to the requirements of this subpart that does not provide filtration must meet all of the conditions of paragraphs (a) and (b) of this section.

(a) *Site-specific conditions.* In addition to site-specific conditions in § 141.71(b), systems must maintain the watershed control program under § 141.71(b)(2) to minimize the potential for contamination by *Cryptosporidium* oocysts in the source water. The watershed control program must, for *Cryptosporidium*:

(1) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(2) Monitor the occurrence of activities which may have an adverse effect on source water quality.

(b) During the onsite inspection conducted under the provisions of § 141.71(b)(3), the State must determine whether the watershed control program established under § 141.71(b)(2) is adequate to limit potential contamination by *Cryptosporidium* oocysts. The adequacy of the program must be based on the comprehensiveness of the watershed review; the effectiveness of the system's program to monitor and control detrimental activities occurring in the watershed; and the extent to which the water system has maximized land ownership and/or controlled land use within the watershed.

§ 141.172 Disinfection profiling and benchmarking.

(a) *Determination of systems required to profile.* A public water system subject to the requirements of this subpart must determine its TTHM annual average using the procedure in paragraph (a)(1) of this section and its HAA5 annual average using the procedure in

paragraph (a)(2) of this section. The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring.

(1) The TTHM annual average must be the annual average during the same period as is used for the HAA5 annual average.

(i) Those systems that collected data under the provisions of subpart M (Information Collection Rule) must use the results of the samples collected during the last four quarters of required monitoring under § 141.142.

(ii) Those systems that use ''grandfathered'' HAA5 occurrence data that meet the provisions of paragraph (a)(2)(ii) of this section must use TTHM data collected at the same time under the provisions of §§ 141.12 and 141.30.

(iii) Those systems that use HAA5 occurrence data that meet the provisions of paragraph (a)(2)(iii)(A) of this section must use TTHM data collected at the same time under the provisions of §§ 141.12 and 141.30.

(2) The HAA5 annual average must be the annual average during the same period as is used for the TTHM annual average.

(i) Those systems that collected data under the provisions of subpart M (Information Collection Rule) must use the results of the samples collected during the last four quarters of required monitoring under § 141.142.

(ii) Those systems that have collected four quarters of HAA5 occurrence data that meets the routine monitoring sample number and location requirements for TTHM in §§ 141.12 and 141.30 and handling and analytical method requirements of § 141.142(b)(1) may use those data to determine whether the requirements of this section apply.

(iii) Those systems that have not collected four quarters of HAA5 occurrence data that meets the provisions of either paragraph (a)(2)(i) or (ii) of this section by March 16, 1999 must either:

(A) Conduct monitoring for HAA5 that meets the routine monitoring sample number and location requirements for TTHM in §§ 141.12 and 141.30 and handling and analytical method requirements of § 141.142(b)(1) to determine the HAA5 annual average and whether the requirements of paragraph (b) of this section apply. This monitoring must be completed so that the applicability determination can be made no later than March 16, 2000, or

(B) Comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with paragraph (b) of this section.

(3) The system may request that the State approve a more representative annual data set than the data set determined under paragraph (a)(1) or (2) of this section for the purpose of determining applicability of the requirements of this section.

(4) The State may require that a system use a more representative annual data set than the data set determined under paragraph (a)(1) or (2) of this section for the purpose of determining applicability of the requirements of this section.

(5) The system must submit data to the State on the schedule in paragraphs (a)(5)(i) through (v) of this section.

(i) Those systems that collected TTHM and HAA5 data under the provisions of subpart M (Information Collection Rule), as required by paragraphs (a)(1)(i) and (a)(2)(i) of this section, must submit the results of the samples collected during the last 12 months of required monitoring under § 141.142 not later than December 16, 1999.

(ii) Those systems that have collected four consecutive quarters of HAA5 occurrence data that meets the routine monitoring sample number and location for TTHM in §§ 141.12 and 141.30 and handling and analytical method requirements of § 141.142(b)(1), as allowed by paragraphs (a)(1)(ii) and (a)(2)(ii) of this section, must submit those data to the State not later than April 16, 1999. Until the State has approved the data, the system must conduct monitoring for HAA5 using the monitoring requirements specified under paragraph (a)(2)(iii) of this section.

(iii) Those systems that conduct monitoring for HAA5 using the monitoring requirements specified by paragraphs (a)(1)(iii) and (a)(2)(iii)(A) of this section, must submit TTHM and HAA5 data not later than March 16, 2000.

(iv) Those systems that elect to comply with all other provisions of this section as if the HAA5 monitoring had been conducted and the results required compliance with this section, as allowed under paragraphs (a)(2)(iii)(B) of this section, must notify the State in writing of their election not later than December 16, 1999.

(v) If the system elects to request that the State approve a more representative annual data set than the data set determined under paragraph (a)(2)(i) of this section, the system must submit this request in writing not later than December 16, 1999.

(6) Any system having either a TTHM annual average ≥0.064 mg/L or an HAA5 annual average ≥0.048 mg/L during the period identified in paragraphs (a)(1) and (2) of this section must comply with paragraph (b) of this section.

(b) *Disinfection profiling.* (1) Any system that meets the criteria in paragraph (a)(6) of this section must develop a disinfection profile of its disinfection practice for a period of up to three years.

(2) The system must monitor daily for a period of 12 consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the CT99.9 values in Tables 1.1–1.6, 2.1, and 3.1 of § 141.74(b), as appropriate, through the entire treatment plant. This system must begin this monitoring not later than March 16, 2000. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system must conduct the monitoring in paragraphs (b)(2)(i) through (iv) of this section. A system with more than one point of disinfectant application must conduct the monitoring in paragraphs (b)(2)(i) through (iv) of this section for each disinfection segment. The system must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in § 141.74(a), as follows:

(i) The temperature of the disinfected water must be measured once per day at each residual disinfectant concentration sampling point during peak hourly flow.

(ii) If the system uses chlorine, the pH of the disinfected water must be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

(iii) The disinfectant contact time(s) (''T'') must be determined for each day during peak hourly flow.

(iv) The residual disinfectant concentration(s) (''C'') of the water before or at the first customer and prior to each additional point of disinfection must be measured each day during peak hourly flow.

(3) In lieu of the monitoring conducted under the provisions of paragraph (b)(2) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (b)(3)(i) of this section. In addition to the monitoring conducted under the provisions of paragraph (b)(2) of this section to develop the disinfection profile, the system may elect to meet the requirements of paragraph (b)(3)(ii) of this section.

(i) A PWS that has three years of existing operational data may submit those data, a profile generated using those data, and a request that the State approve use of those data in lieu of monitoring under the provisions of

paragraph (b)(2) of this section not later than March 16, 2000. The State must determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (b)(2) of this section. These data must also be representative of *Giardia lamblia* inactivation through the entire treatment plant and not just of certain treatment segments. Until the State approves this request, the system is required to conduct monitoring under the provisions of paragraph (b)(2) of this section.

(ii) In addition to the disinfection profile generated under paragraph (b)(2) of this section, a PWS that has existing operational data may use those data to develop a disinfection profile for additional years. Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph (c) of this section. The State must determine whether these operational data are substantially equivalent to data collected under the provisions of paragraph (b)(2) of this section. These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) The system must calculate the total inactivation ratio as follows:

(i) If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either of the methods in paragraph (b)(4)(i)(A) or (b)(4)(i)(B) of this section.

(A) Determine one inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.

(B) Determine successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine ($\Sigma(CTcalc/CT_{99.9})$).

(ii) If the system uses more than one point of disinfectant application before the first customer, the system must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The ($CTcalc/CT_{99.9}$) value of each segment and (($CTcalc/CT_{99.9}$)) must be calculated using the method in paragraph (b)(4)(i) of this section.

(iii) The system must determine the total logs of inactivation by multiplying the value calculated in paragraph (b)(4)(i) or (ii) of this section by 3.0.

(5) A system that uses either chloramines or ozone for primary disinfection must also calculate the logs of inactivation for viruses using a method approved by the State.

(6) The system must retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the State for review as part of sanitary surveys conducted by the State.

(c) *Disinfection benchmarking.* (1) Any system required to develop a disinfection profile under the provisions of paragraphs (a) and (b) of this section and that decides to make a significant change to its disinfection practice must consult with the State prior to making such change. Significant changes to disinfection practice are:

(i) Changes to the point of disinfection;

(ii) Changes to the disinfectant(s) used in the treatment plant;

(iii) Changes to the disinfection process; and

(iv) Any other modification identified by the State.

(2) Any system that is modifying its disinfection practice must calculate its disinfection benchmark using the procedure specified in paragraphs (c)(2)(i) through (ii) of this section.

(i) For each year of profiling data collected and calculated under paragraph (b) of this section, the system must determine the lowest average monthly *Giardia lamblia* inactivation in each year of profiling data. The system must determine the average *Giardia lamblia* inactivation for each calendar month for each year of profiling data by dividing the sum of daily *Giardia lamblia* of inactivation by the number of values calculated for that month.

(ii) The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of *Giardia lamblia* inactivation in each year of profiling data.

(3) A system that uses either chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the State.

(4) The system must submit information in paragraphs (c)(4)(i) through (iii) of this section to the State as part of its consultation process.

(i) A description of the proposed change;

(ii) The disinfection profile for *Giardia lamblia* (and, if necessary, viruses) under paragraph (b) of this section and benchmark as required by paragraph (c)(2) of this section; and

(iii) An analysis of how the proposed change will affect the current levels of disinfection.

§ 141.173 Filtration.

A public water system subject to the requirements of this subpart that does not meet all of the criteria in this subpart and subpart H of this part for avoiding filtration must provide treatment consisting of both disinfection, as specified in § 141.72(b), and filtration treatment which complies with the requirements of paragraph (a) or (b) of this section or § 141.73 (b) or (c) by December 17, 2001.

(a) *Conventional filtration treatment or direct filtration.* (1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, measured as specified in § 141.74(a) and (c).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU, measured as specified in § 141.74(a) and (c).

(3) A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the State.

(b) *Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration.* A public water system may use a filtration technology not listed in paragraph (a) of this section or in § 141.73(b) or (c) if it demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.72(b), consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts, and the State approves the use of the filtration technology. For each approval, the State will set turbidity performance requirements that the system must meet at least 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses,

and 99 percent removal of *Cryptosporidium* oocysts.

§ 141.174 Filtration sampling requirements.

(a) Monitoring requirements for systems using filtration treatment. In addition to monitoring required by § 141.74, a public water system subject to the requirements of this subpart that provides conventional filtration treatment or direct filtration must conduct continuous monitoring of turbidity for each individual filter using an approved method in § 141.74(a) and must calibrate turbidimeters using the procedure specified by the manufacturer. Systems must record the results of individual filter monitoring every 15 minutes.

(b) If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring, but for no more than five working days following the failure of the equipment.

§ 141.175 Reporting and recordkeeping requirements.

In addition to the reporting and recordkeeping requirements in § 141.75, a public water system subject to the requirements of this subpart that provides conventional filtration treatment or direct filtration must report monthly to the State the information specified in paragraphs (a) and (b) of this section beginning December 17, 2001. In addition to the reporting and recordkeeping requirements in § 141.75, a public water system subject to the requirements of this subpart that provides filtration approved under § 141.173(b) must report monthly to the State the information specified in paragraph (a) of this section beginning December 17, 2001. The reporting in paragraph (a) of this section is in lieu of the reporting specified in § 141.75(b)(1).

(a) Turbidity measurements as required by § 141.173 must be reported within 10 days after the end of each month the system serves water to the public. Information that must be reported includes:

(1) The total number of filtered water turbidity measurements taken during the month.

(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in § 141.173(a) or (b).

(3) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration, or which exceed the maximum level set by the State under § 141.173(b).

(b) Systems must maintain the results of individual filter monitoring taken under § 141.174 for at least three years. Systems must report that they have conducted individual filter turbidity monitoring under § 141.174 within 10 days after the end of each month the system serves water to the public. Systems must report individual filter turbidity measurement results taken under § 141.174 within 10 days after the end of each month the system serves water to the public only if measurements demonstrate one or more of the conditions in paragraphs (b)(1) through (4) of this section. Systems that use lime softening may apply to the State for alternative exceedance levels for the levels specified in paragraphs (b)(1) through (4) of this section if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(1) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(2) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within 7 days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(3) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of three consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(4) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each of two consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must arrange for the conduct of a comprehensive performance evaluation by the State or a third party approved by the State no later than 30 days following the exceedance and have the evaluation completed and submitted to the State no later than 90 days following the exceedance.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

12. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

13. Section 142.14 is amended by revising paragraphs (a)(3), (a)(4)(i), and (a)(4)(ii) introductory text, and adding paragraph (a)(7) to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(3) Records of turbidity measurements must be kept for not less than one year. The information retained must be set forth in a form which makes possible comparison with the limits specified in §§ 141.71, 141.73, 141.173 and 141.175 of this chapter. Until June 29, 1993, for any public water system which is providing filtration treatment and until December 30, 1991, for any public water system not providing filtration treatment and not required by the State to provide filtration treatment, records kept must be set forth in a form which makes possible comparison with the limits contained in § 141.13 of this chapter.

* * * * *

(4)(i) Records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness in accordance with §§ 141.72 and 141.74 of this chapter and

the reporting requirements of §§ 141.75 and 141.175 of this chapter must be kept for not less than one year.

(ii) Records of decisions made on a system-by-system and case-by-case basis under provisions of part 141, subpart H or subpart P of this chapter, must be made in writing and kept at the State.

* * * * *

(7) Any decisions made pursuant to the provisions of part 141, subpart P of this chapter.

(i) Records of systems consulting with the State concerning a modification to disinfection practice under § 141.172(c) of this chapter, including the status of the consultation.

(ii) Records of decisions that a system using alternative filtration technologies, as allowed under § 141.173(b) of this chapter, can consistently achieve a 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. The decisions must include State-set enforceable turbidity limits for each system. A copy of the decision must be kept until the decision is reversed or revised. The State must provide a copy of the decision to the system.

(iii) Records of systems required to do filter self-assessment, CPE, or CCP under the requirements of § 141.175 of this chapter.

* * * * *

14. Section 142.15 is amended by adding paragraph (c)(5) to read as follows:

§ 142.15 Reports by States.

* * * * *

(c) * * *

(5) Sanitary surveys. A list of subpart H systems that have had a sanitary survey completed during the previous year and an annual evaluation of the State's program for conducting sanitary surveys under § 141.16(b)(3) of this chapter.

* * * * *

15. Section 142.16 is amended by redesignating paragraph (b)(1) as (b)(1)(i), and adding paragraphs (b)(1)(ii), (b)(3), and (g) to read as follows:

§ 142.16 Special primacy requirements.

* * * * *

(b) * * *

(1) Enforceable requirements. (i)

* * *

(ii) States must have the appropriate rules or other authority to assure that PWSs respond in writing to significant deficiencies outlined in sanitary survey reports required under paragraph (b)(3) of this section no later than 45 days after receipt of the report, indicating how and on what schedule the system will address significant deficiencies noted in the survey.

(iii) States must have the appropriate rules or other authority to assure that PWSs take necessary steps to address significant deficiencies identified in sanitary survey reports required under paragraph (b)(3) of this section, if such deficiencies are within the control of the PWS and its governing body.

* * * * *

(3) Sanitary survey. In addition to the general requirements for sanitary surveys contained in § 142.10(b)(2), an application must describe how the State will implement a sanitary survey program that meets the requirements in paragraphs (b)(3)(i) through (v) of this section. For the purposes of this paragraph, ''sanitary survey'' means an onsite review of the water source (identifying sources of contamination using results of source water assessments where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(i) The State must conduct sanitary surveys for all surface water systems (including groundwater under the influence) that address the eight sanitary survey components listed in paragraphs (b)(3)(i)(A) through (H) of this section no less frequently than every three years for community systems and no less frequently than every five years for noncommunity systems. The State may allow sanitary surveys conducted after December 1995 to serve as the first set of required sanitary surveys if the surveys address the eight sanitary survey components listed in paragraphs (b)(3)(i)(A) through (H) of this section.

(A) Source.

(B) Treatment.

(C) Distribution system.

(D) Finished water storage.

(E) Pumps, pump facilities, and controls.

(F) Monitoring and reporting and data verification.

(G) System management and operation.

(H) Operator compliance with State requirements.

(ii) For community systems determined by the State to have outstanding performance based on prior sanitary surveys, subsequent sanitary surveys may be conducted no less than every five years. In its primacy application, the State must describe how it will decide whether a system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency.

(iii) Components of a sanitary survey may be completed as part of a staged or phased state review process within the established frequency.

(iv) When conducting sanitary surveys for systems required to comply with the disinfection profiling requirements in § 141.172 of this chapter, the State must also review the disinfection profile as part of the sanitary survey.

(v) In its primacy application, the State must describe how it will decide whether a deficiency identified during a sanitary survey is significant for the purposes of paragraph (b)(1)(ii) of this section.

* * * * *

(g) Requirements for States to adopt 40 CFR part 141, subpart P Enhanced Filtration and Disinfection. In addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State provisions are no less stringent than the federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart P Enhanced Filtration and Disinfection, must contain the information specified in this paragraph:

(1) *Enforceable requirements.* States must have the appropriate rules or other authority to require PWSs to conduct a Composite Correction Program (CCP) and to assure that PWSs implement any followup recommendations that result as part of the CCP. The CCP consists of two elements—a Comprehensive Performance Evaluation (CPE) and Comprehensive Technical Assistance (CTA). A CPE is a thorough review and analysis of a plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. A CTA is the performance improvement phase that is implemented if the CPE results indicate improved performance potential. During the CTA phase, the system must identify and systematically address plant-specific factors. The CTA is a combination of utilizing CPE results as a basis for followup, implementing process control priority-setting techniques and maintaining long-term involvement to systematically train staff and administrators.

(2) *State practices or procedures.* (i) Section 141.172(a)(3) of this chapter—How the State will approve a more representative annual data set than the data set determined under § 141.172 (a)(1) or (2) of this chapter for the purpose of determining applicability of the requirements of § 141.172 of this chapter.

(ii) Section 141.172(b)(5) of this chapter—How the State will approve a method to calculate the logs of inactivation for viruses for a system that uses either chloramines or ozone for primary disinfection.

(iii) Section 141.172(c) of this chapter—How the State will consult with PWSs to evaluate modifications to disinfection practice.

(iv) Section 141.173(b) of this chapter—For filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, how the State will determine that a public water system may use a filtration technology if the PWS demonstrates to the State, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of § 141.172(b) of this chapter, consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts. For a system that makes this demonstration, how the State will set turbidity performance requirements that the system must meet 95 percent of the time and that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts, 99.99 percent removal and/or inactivation of viruses, and 99 percent removal of *Cryptosporidium* oocysts.

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Part VI

Federal Election Commission

11 CFR Part 9003 et al.

Public Financing of Presidential Primary and General Election Candidates; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 9003, 9004, 9007, 9008, 9032, 9033, 9034, 9035, 9036 and 9038

[Notice 1998–18]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of the Presidential Election Campaign Fund Act (''Fund Act'') and the Presidential Primary Matching Payment Account Act (''Matching Payment Act''), which establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed campaigns and seek repayment where appropriate. The proposed rules reflect the Commission's experience in administering this program during the 1996 election cycle and also seek to anticipate some questions that may arise during the 2000 Presidential election cycle. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information which follows.

DATES: Comments must be received on or before February 1, 1999.

ADDRESSES: All comments should be addressed to Ms. Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow up. Electronic mail comments should be sent to publicfund@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Electronic comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, at (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is considering revising parts of its regulations governing the public financing of Presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the year 2000 election cycle. These rules implement 26 U.S.C. 9001 *et seq.* and 26 U.S.C. 9031 *et seq.* The Commission is publishing this Notice of Proposed Rulemaking to invite comments on the amendments proposed.

Please note that some revisions would affect only primary elections or only general elections, while other changes would affect both. The discussion of these proposals which follows is arranged by topic. However, the draft rules, themselves, are set out in numerical order.

A. Coordination Between Publicly Funded Presidential Candidates and Their Political Parties

The 1996 election cycle gave rise to a number of instances in which national party committees conducted advertising campaigns and other activities focused on the party's presumptive Presidential nominee. The acceleration of the primary schedule makes it quite likely that parties will again face a situation in 2000 in which the likely nominees are known well in advance of the nominating conventions, and in which those likely nominees may have reached or nearly reached their pre-nomination spending limits under 2 U.S.C. 441a(b)(1)(A). In 1996, the national committees of the two major political parties are alleged to have made impermissible contributions to their Presidential candidates by coordinating extensive advertising campaigns, sharing polling data, and bearing expenses for advertising, staff, consultants, travel, polling and other services intended to benefit their presumptive nominees. Section 441a(d) of the FECA limits the amount party committees may spend on the general election campaigns of their Presidential nominees regardless of whether those nominees accept federal funds for either their primary or general election campaigns. In the past, the Commission has permitted coordinated expenditures to be made before the date of the primary election. While not prejudging decisions related to those 1996 allegations, the Commission wishes to solicit comments on rules to provide clearer guidance on political party activities coordinated with or related to their presumptive presidential nominees, and on proposals to provide some relief to presidential candidates who may have both secured the nomination and reached their spending limit for the primary well in advance of the party convention. Please note, however, that specific proposals are not reflected in the attached rules which follow. The effect of party committee coordinated activities on their publicly funded candidates' repayment obligations is discussed in part E, below.

On May 5, 1997, the Commission issued a Notice of Proposed Rulemaking to address a wide variety of issues involving coordinated expenditures and independent expenditures, including those made on behalf of Congressional candidates. *See* Notice of Proposed Rulemaking, 62 F.R. 24367 (May 5, 1997). That rulemaking, which was initiated in response to a petition for rulemaking, is still pending.

1. Relief for Presumptive Nominees Who Have Reached Their Spending Limits

The Commission is without authority to relax or expand pre-nomination spending limits applicable to Presidential candidates receiving primary or general election funding. The Commission does, however, offer for comment a proposal to permit national committees of political parties to raise and spend funds on behalf of a presumptive nominee when, in the party's determination, the identity of the nominee is clear. However, any such expenditures would count against the party's general election coordinated spending limit, and funds would have to be raised and spent in compliance with rules otherwise applicable to such coordinated party spending. *E.g.* 2 U.S.C. 441a(d) and 11 CFR 110.7. Even in the event that a party nominates a person other than a presumptive nominee in whose behalf coordinated expenditures were made, any pre-convention party spending in behalf of any presidential candidate will be counted against that party's coordinated expenditure limit for the general election.

2. Standards for Allocating Spending by Political Parties Related to the Party's Publicly-Funded Presidential Candidates

In *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996), the Supreme Court ruled that party expenditures which are not coordinated with candidates cannot be construed to be contributions to a candidate. The plurality opinion noted explicitly, however, ''Since this case involves only the provision [limiting party expenditures] concerning congressional races, we do not address

issues that might grow out of the public funding of Presidential campaigns.'' *Id.* at 612. Furthermore, the most significant controversies over 1996 party activities involve activities which were alleged to be coordinated with Presidential candidates or campaigns, but which, the political parties argue, may be exempt from the definition of expenditure under section 431(9) of the FECA.

The public funding provisions of Title 26, United States Code, were intended to limit spending by publicly funded Presidential candidates, and by their party committees. Those provisions also provide for, and indeed presuppose coordination between parties and their nominees. As a result, the Commission wishes to obtain comment on the proposals described below, which are intended to clarify what activities of political parties will be considered expenditures on behalf of Presidential nominees or candidates for nomination.

3. Advertising Which Clearly Identifies a Presidential Candidate

Under the proposal, expenses by a political party for ''general public political advertising'' (*see* 11 CFR 110.11) which clearly identifies a Presidential candidate who has accepted public funding pursuant to 11 CFR Part 9004 or Part 9034 will be considered to be expenditures in behalf of that candidate unless the following three conditions are met: (1) The advertisement is focused on a legislative or public policy issue; (2) The advertisement is addressed to an audience that would normally be affected by the legislation or proposal (e.g. ads on proposals in a particular state would not normally be addressed to residents of a different state); and (3) Mention of a candidate in the advertisement is incidental and related to the candidate's role as sponsor, proponent, or leading opponent to the proposal (e.g. ''the President's plan'' or ''the Smith bill''). Costs for advertisements which identify multiple candidates would continue to be allocated pursuant to 11 CFR 106.1.

Costs for general public political advertising by a political party which clearly identify a Presidential candidate of another party (except under the incidental mention/legislative or public policy exemption above) would be considered to be expenditures in behalf of the sponsoring party's nominee or eventual nominee, whether or not such nominee accepts public funds for either the primary or the general election or both.

The Commission also solicits comments on whether a standard other than ''clearly identified candidate,'' such as express advocacy or electioneering message, should be applied to determine when advertising by a political party should be treated as an expenditure in behalf of a publicly funded Presidential candidate.

4. Polling, Media Production and Consulting Services

Comments are also sought as to whether the Commission should issue new regulations to provide that spending by a political party for polling, media production or consulting services shall be considered to be coordinated expenditures in behalf of a publicly funded Presidential candidate under either of the following two conditions: (1) Such activities are carried on jointly and/or costs are shared between the party and a candidate under a single contract or arrangement; or (2) Polling, scripts or other contract deliverables relate to a clearly identified candidate, and *either:* (a) The results of the polling or other services are provided to the Presidential campaign, its employees or agents (except for polling in which questions about a Presidential candidate(s) are only one of numerous issues and for which the Presidential candidate is not the principal focus); or,

(b) The candidate, campaign, employees or agents are consulted in advance about the contract or services, including polling questions, scripts or other deliverables.

5. Transfer or Sharing of Employees

In addition, the Commission requests comments on whether to promulgate rules providing that spending by a political party for salary, travel and expenses of employees who, during the same election cycle have been employees of a publicly funded Presidential campaign, shall be considered to be expenditures in behalf of the Presidential candidate. However, any such rules would contain two exceptions to cover situations where either the Presidential candidate is no longer an active candidate under 11 CFR 9033.5 or the employee's duties are substantially different than those performed for the Presidential candidate.

B. Qualified Campaign Expenses

1. ''Bright Line'' Distinction Between Primary and General Election Expenses

The Fund Act, the Matching Payment Act, and the Commission's regulations require that publicly financed Presidential candidates use primary election funds only for expenses incurred in connection with primary elections, and that they use general election funds only for general election expenses. 26 U.S.C. 9002(11), 9032(9); 11 C.F.R. 9002.11 and 9032.9. These requirements are necessary to effectuate the spending limits for both the primary and the general election, as set forth at 2 U.S.C. 441a(b) and 26 U.S.C. 9035(a). *See also* 11 CFR 110.8(a) and 9035.1(a)(1).

In 1995, the Commission promulgated 11 CFR 9034.4(e) to provide more specific guidance as to which expenses should be attributed to a candidate's primary campaign and which ones should be considered general election expenses. This provision specifies that the costs of goods or services used exclusively for the primary must be attributed to the primary. Similarly, any expenditures for goods or services used exclusively for the general election must be attributed to the general election. The revisions to the regulations also established a number of specific attribution rules for expenses such as polling, travel, media production and distribution costs, etc., which are largely based on the timing of the expenditure. One of the primary purposes of these rules was to eliminate much of the time- and labor-intensive work of examining thousands of individual expenditures, thereby helping to streamline the audit process. While there may be situations in which the bright line approach may not accurately reflect the relative impact of specific expenditures, these differences should balance themselves out over the course of a lengthy campaign. During the last Presidential election cycle, several questions were raised regarding the application of these ''bright line'' rules. Accordingly, the Commission seeks comments on the following proposed modifications to and clarifications of these provisions.

First, a sentence would be added to paragraph (e)(1) of section 9034.4 to clarify which provisions apply to expenditures for goods and services that are used in both a candidate's primary and general election campaigns. With some exceptions, expenditures for goods or services that may benefit both the primary and the general election campaigns must be attributed on the basis of whether they were used before or after the candidate received the nomination.

Second, paragraph (e)(3) of section 9034.4 would be modified to resolve questions that have come up regarding the cost of the use of campaign offices prior to the candidate's nomination. Currently, such expenses must be attributed to the primary election unless the office is used by persons working exclusively on general election

preparations. ''Exclusive use'' is not defined in the rules, and questions have been raised as to whether the term means several hours, or days, or weeks. The draft rules which follow would change this exception so that it would apply to periods when the campaign office is used only by persons working ''full time'' on general election campaign preparation. In the alternative, comments are sought on dropping this exclusive use exception with regard to overhead and salary expenses. The general rule regarding overhead and payroll expenses would also be reworded for purposes of clarification.

Please note that other issues involving the transfer or sale of assets from a federally financed candidate's primary election committee to the general election committee are discussed below.

2. Winding Down Costs

The regulations at 11 CFR 9034.4(a)(3) permit candidates to receive contributions and matching funds, and to make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility (''DOI''). However, after the implementation of the ''bright line'' rules in 1995, questions have arisen as to whether all salary and overhead incurred after the date of the candidate's nomination must be attributed to the general election, including those associated with winding down the primary campaign. *See* 11 CFR 9034.4(d)(3). Accordingly, the Commission seeks comments on revising section 9034.4(a)(3)(i) and (iii) to clarify that for candidates who win their parties' nominations, no salary and overhead expenses may be treated as winding down costs until after the end of the expenditure report period, which is thirty days after the general election takes place. This clarification would recognize that under the ''bright line rules,'' the costs incurred for winding down the primary campaign during the general election period will be offset by pre-convention general election expenses.

C. Compliance and Fundraising Costs

1. Legal and Accounting Costs for the Primary Election

The rules at 11 CFR 9035.1(c)(1) currently set forth an exemption from the overall spending limit for legal and accounting compliance costs incurred by federally financed Presidential primary committees. To claim this exemption, campaign committees must keep detailed records of salary and overhead expenses, including records indicating which duties are considered compliance and the percentage of time each person spends on such activities. The Commission is considering amending this regulation to provide a simpler and easier method of calculating the compliance exemption. Proposed paragraph (c)(1) of section 9035.1 would state that an amount equal to 10% of all operating expenditures for each report period may be treated as compliance expenses not subject to the candidate's spending limit. This ''standard deduction'' could be readily derived from line 23, Operating Expenses, on the committee's reports. Note that the proposed rule would not permit committees to demonstrate that they have actually incurred a higher amount. The change in the regulations is intended to decrease the time it takes for the Commission to verify compliance costs during the audit process. It should also reduce the resources campaign committees must devote to tracking compliance costs.

Please note that the Commission is also proposing to modify the title of section 9035.1 and to add subheadings for each paragraph to assist readers in locating the material in this section more easily.

2. Pre-nomination Formation of a General Election Legal and Accounting Compliance Fund (GELAC)

Currently, section 9003.3 contemplates that a nominee of a major political party who accepts public financing may establish a privately funded General Election Legal and Accounting Compliance Fund (''GELAC'') for certain limited purposes. A GELAC may be set up before the candidate is actually nominated for the office of President or Vice President. The Commission is seeking comments on several changes to this section to address problems that have arisen when primary candidates have formed GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination. One difficulty is that candidates who do not receive their party's nomination must return all private contributions received by the GELAC. However, if some of those funds have been used to defray overhead expenses or to solicit additional contributions for the GELAC, a total refund has presented difficulties. Another difficulty is that the GELAC could be improperly used to make primary election expenditures. This problem may also affect candidates who win their parties' nominations, particularly when those candidates have almost exhausted their spending limits for the primary.

To avoid a recurrence of these situations, the Commission is considering several alternatives. Please note, however, that these proposals are not reflected in the attached rules which follow. One alternative is to amend paragraph (a)(1)(i) of section 9003.3 to specify that contributions shall not be solicited for a GELAC prior to the candidate's nomination at the party's national nominating convention. Under this approach, a committee could establish a GELAC before the date of nomination, but only for the limited purpose of receiving correctly redesignated contributions that would otherwise have to be refunded as excessive primary contributions. The Commission anticipates that overhead and reporting expenses incurred by the GELAC could be defrayed from interest received on the account.

A second alternative is to bar GELAC fundraising before a specified date, such as April 15 of the Presidential election year. Under this alternative, starting on April 15 of the Presidential election year, candidates could begin soliciting contributions for the GELAC. However, if the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, would have to be refunded within sixty (60) days of the candidate's date of ineligibility. Such refunds would be consistent with the Commission's decision in the last Presidential election cycle to require refunds within 60 days of the date on which the political party of the unsuccessful primary candidate selects its nominee. These refunds would also be consistent with the policies applicable to non-publicly funded Congressional candidates who accept designated general election contributions, but who thereafter lose their parties' primaries. *See* 11 CFR 102.9(e)(2), and Advisory Opinions 1992–15 and 1986–17.

The third alternative under consideration is to allow GELAC fundraising beginning 90 days before each candidate's date of nomination. This approach would mean that the nominees of the two major parties would begin GELAC fundraising on different dates.

The fourth alternative is to bar Presidential candidates from establishing a GELAC until the date of the last Presidential primary before the national nominating convention. A variation on this approach would be to allow the eventual nominee to form a GELAC at an earlier point, but to prohibit GELAC fundraising before the last Presidential primary.

The fifth alternative is to allow any Presidential primary candidate to establish and to raise funds for a GELAC at any time. Under this approach, those who do not win their party's nomination would not have to return all the funds they raise. Instead, they could offset their fundraising and administrative expenses, and would only need to refund the amount remaining in their account as of the date their party selects a nominee. Comments are sought as to whether all contributors should receive a proportional refund or whether a first-in-first-out method should be used to determine which contributions have been spent, with refunds going to the most recent contributors. Please note that this alternative would be a significant departure from the treatment of general election contributions received by losing primary candidates in Congressional races.

3. Joint Primary/GELAC Solicitations

Paragraph (e)(6)(i) of section 9034.4 addresses situations where a candidate's GELAC and his or her primary committee issue joint solicitations for contributions. Currently, the costs of such solicitations are divided equally between the two committees, regardless of how much money is actually raised for each. One difficulty with the current approach is that in some situations it enables the GELAC to absorb a relatively high portion of fundraising costs while receiving a relatively low proportion of the funds raised. Thus, this provision is at odds with the joint fundraising rules applicable to other types of joint fundraising conducted by publicly funded Presidential primary committees under 9034.8. In effect, section 9034.4(e)(6)(i) could permit the GELAC to subsidize fundraising expenses that would otherwise be paid by the primary committee and subject to spending limits. Another difficulty is that under the current rules, questions have been raised as to whether the cost of a solicitation, or the cost of a fundraiser, should include staff salaries, consulting fees, catering, facilities rental, and the candidate's travel to the event site.

Consequently, the Commission is considering several alternatives to paragraph (e)(6)(i). One possibility is to state that the allocation of solicitation expenses and the distribution of net proceeds from the fundraiser would be made in the same manner as described in 11 CFR 9034.8(c)(8)(i) and (iii). These are the provisions that apply to unaffiliated committees. When these committees conduct a joint fundraiser, they apportion their costs using the percentage of contributions each committee receives from the event. Given the unique relationship between the primary campaign and the GELAC, and the fact that the candidate's primary committee receives public financing in exchange for voluntary compliance with spending limits, it is important to ensure that costs are correctly apportioned and net proceeds are properly distributed. Under this alternative, for example, if the GELAC receives 25% of the net proceeds, it may only pay 25% of the fundraising expenses, and no more than that amount.

The second approach would be to prohibit joint fundraising between the primary and the GELAC. If each committee performed its own fundraising, the difficulties inherent in apportioning expenses would not arise. This approach would also recognize that there may be some situations in which the recipient committees do not know which of several solicitation letters or fundraising events generated a given contribution.

The third alternative is to treat all expenses incurred by the GELAC prior to the candidate's date of ineligibility or date of nomination as qualified campaign expenses for the primary election. This approach would avoid GELAC subsidization of the primary campaign. It may also be easier for campaigns and for the Commission to work with than the current system.

The fourth alternative would be to provide greater specificity in section 9003.3(a)(2)(i)(E) as to what types of costs may be paid for by the GELAC when it solicits GELAC contributions. Comments are sought as to whether the list of solicitation expenses should be relatively narrow to avoid funding campaign events. Under this approach, solicitation costs would cover printing invitations and solicitations, as well as mailing, postage and telemarketing expenses. However, solicitation costs would not include items such as catering, facilities rental, fundraising consultants, employee salaries, and travel to the event site.

Please note that the draft rules which follow do not incorporate any of the alternative approaches to the fundraising rules discussed above.

4. Transfers from the Primary to the GELAC

The regulations at 9003.3(a)(1)(i) through (v) place certain restrictions on transferring funds from a Presidential candidate's primary committee to a GELAC. These limitations have been promulgated to ensure that the GELAC is not used as a way to increase a candidate's entitlement to matching funds or to decrease a candidate's repayment obligations. The Commission is seeking suggestions as to how these provisions could be strengthened, and whether it is advisable to do so.

D. Modifying the Audit and Repayment Processes

In 1995, the Commission revised sections 9007.2 and 9038.2 to reduce the amount of time it takes to audit publicly funded Presidential committees, to make repayment determinations and to complete the enforcement process for these committees. These steps were taken to ensure adherence to the three year time period specified in 26 U.S.C. 9007(c) and 9038(c) for notifying publicly funded committees of repayment determinations. Having operated under the streamlined procedures during the 1996 election cycle, the Commission is examining further changes to ensure these processes are completed as fairly and expeditiously as possible.

1. Audit Procedures

The Commission is considering two alternatives to the current audit procedures. Please note that neither of these is reflected in the draft rules which follow. One alternative would be to return to the audit procedures used for the 1992 Presidential candidates who received primary or general election funding. Under the previous system, the Commission's Audit Division conducted an exit conference at the close of audit fieldwork to discuss its preliminary findings and recommendations. However, no written exit conference memorandum was prepared or presented to the committee during the exit conference. Instead, an interim audit report containing a preliminary calculation of future repayment obligations was subsequently prepared for approval by the Commission. After that, the committee had an opportunity to submit materials disputing or commenting on matters contained in the initial audit report. Next, the Audit Division prepared a final audit report containing initial repayment determinations. The final audit report was considered by the Commission in an open session. Twenty four hours before the final audit report was released to the public, copies were provided to the candidate and the committee.

The previous system had the advantage of enabling committees to see what matters were of concern to the Commission before responding to the interim audit report prepared by the Commission's staff. It also enabled committees to resolve these disputes

early in the process before they became public. However, one disadvantage of the previous procedure was that campaign committees did not have an opportunity to rebut the interim audit report until after the Commission approved the report. Another problem was that sometimes it could be difficult for the Commission to meet the statutory requirement that any notification of a repayment be made no later than three years after the end of the matching payment period or after the date of the general election. 26 U.S.C. 9007(c) and 9038(c). In *Dukakis* v. *Federal Election Commission,* 53 F.3d 361 (D.C. Cir. 1995) and *Simon* v. *Federal Election Commission,* 53 F.3d 356 (D.C. Cir. 1995), the court determined that the preliminary calculation contained in the interim audit report did not constitute sufficient notification of repayment obligations. Thus, the court concluded that the Commission's previous regulation at 11 CFR 9038.2(a)(2), which stated that the interim audit report constitutes notification, was inconsistent with the statute. *Simon* at 360.

The second alternative would be to retain many of the current audit procedures, with the exception that the exit conference memorandum would incorporate a legal analysis and would be approved by a majority vote of four Commissioners in executive session before it is presented to the candidate's committee during the exit conference. This approach would have the advantage of enabling committees to see what matters are of concern to the Commission before responding to the exit conference memorandum prepared by the Commission's staff. However, the disadvantage is that the Commission would not have the benefit of considering the committee's views on the factual and legal issues at hand before approving the exit conference memorandum. Moreover, this approach may slow the audit process down, thereby jeopardizing the Commission's ability to notify candidates and their committees of repayment obligations within the three year period mandated by the law.

In addition to these alternatives, the Commission seeks comments on retaining its current audit procedures. One advantage of the present system is that, in comparison to the above alternatives, the current rules may result in faster resolution of the audits, as well as more efficient use of Commission and committee resources. Thus, it is not as difficult to meet the statutory deadline for notifying candidates of repayment determinations as it was under the prior rules. However, one disadvantage of the current procedures is that committees do not have an opportunity to address all issues raised in the audit report until after the Commission has made its determination and released the report to the public. Another difficulty is that by publicly releasing the audit report before the Commission's consideration of it, the public and the press may mistakenly conclude that the report represents the views of a majority of the members of the Commission. It may be possible to correct this misperception through public education and by including in each audit report a statement that the report is a staff document and does not necessarily reflect the Commission's views or determinations before it is approved by majority vote.

2. Repayment Determination Procedures

The current regulations in paragraphs (c) and (d) of sections 9007.2 and 9038.2 contemplate a two step repayment process. First, the Commission provides the candidate with a written notice of the repayment determination, which has been approved by an affirmative vote of four of its members, and which is included in the audit report. The candidate has the option of making the repayment or requesting an administrative review. In the latter case, the candidate must submit legal and factual materials supporting no repayment or a lesser repayment. The candidate may also request an oral hearing. At the conclusion of the administrative review, the current rules in paragraphs (c)(3) of these sections indicate that the Commission may decide whether to revise the repayment determination.

The question has arisen regarding the consequences of a failure to approve a repayment determination after the administrative review. The current rule could be interpreted to mean that the prior repayment determination remains in effect. However, that result would undermine the candidate's opportunity for a meaningful review of any new facts or arguments raised. The Commission is obligated to issue a written statement of reasons to justify its repayment determination. One purpose of the statement of reasons is to respond to the significant points raised by the candidate during the administrative review. If the Commission's repayment determination is challenged in court, the statement of reasons is also needed to provide a reasoned basis for the Commission's actions. *See, Robertson* v. *FEC,* 45 F.3d 486, 493 (D.C. Cir. 1995). Consequently, the Commission has recently concluded that no post-administrative review repayment determination may be issued absent an affirmative vote of four of its members following the consideration of the candidate's written materials and oral presentation. *See* Agenda Document #97–84–C (March 27, 1998).

Consistent with this practice, the attached rules would amend paragraphs (c)(3) and (d)(2) of sections 9007.2 and 9038.2 to clearly indicate that post-administrative review repayment determinations must be approved by an affirmative vote of four members of the Commission. In addition, draft paragraphs (c)(3) of these sections would be changed to indicate that the Commission is not voting on whether to revise a repayment determination, but rather is deciding whether to issue a repayment determination.

Also, please note that in paragraph (c)(2)(ii) of both sections, the references to paragraph (c)(2)(ii) would be changed to paragraph (c)(2)(i) to clarify the subject matter of oral hearings.

E. Bases for Repayment Determinations

The Commission is considering whether to delete paragraph (b)(2)(ii)(A) of section 9038.2 from its regulations. This is the provision which permits the Commission to order a repayment of primary matching funds based on a determination that the candidate or authorized committee has made expenditures in excess of the primary spending limits. The argument has been raised that this provision is without statutory basis, and that the reading implied in the current regulation is effectively prohibited by the statute. This argument is discussed below, as well as several countervailing considerations. As noted above in part A, this issue has arisen in the context of whether certain coordinated expenditures made by party committees should be treated as in-kind contributions to the party's presumptive nominee, and thus count against that publicly funded primary candidate's spending limits.

Section 9038 of the Matching Payment Act (26 U.S.C. 9038) provides three bases for determining repayments of primary matching funds: (1) Payments in excess of entitlement; (2) payments used for other than qualified campaign expenses; and (3) excess funds remaining six months after the end of the matching payment period. In contrast, section 9007 of the Fund Act (26 U.S.C 9007) provides four bases for determining repayments of general election funds: (1) Payments in excess of entitlement; (2) an amount equal to any excess qualified campaign expenses; (3) an amount equal to any contributions

accepted; and (4) payments used for other than qualified campaign expenses.

The provisions on ''payments in excess of entitlement'' and ''other than qualified campaign expenses'' are nearly identical between the two chapters. Inasmuch as Congress specified ''excess expenses'' as a repayment basis separate from ''other than qualified campaign expenditures'' in the general election statute, an argument exists that the nearly identical provision on ''other than qualified campaign expenses'' in the primary statute cannot reasonably be read to include excess expenses.

The argument against treating ''excess'' campaign expenditures as ''non qualified'' is buttressed by the text of the ''Qualified campaign expense limitation'' (Sec. 9035) itself, which prohibits candidates from ''knowingly incur[ing] qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2.'' First, one can argue that it is impossible to read this section other than as treating ''excess'' spending as ''qualified.'' Second, this provision states clearly that violation of the primary spending limits is a Title 2 violation, which would be addressed in the FEC's enforcement process, rather than a Title 26 violation, which could be addressed in the audit/repayment process.

Alternatively, it can be argued that there is statutory support for 11 CFR 9038.2(b)(2)(ii)(A) and that this provision should not be deleted. While section 9007(b)(2) of the Fund Act clearly states that repayments can be sought from general election candidates who incur expenses in excess of the aggregate payments to which they are entitled, the Matching Payment Act can be interpreted to set forth repayment requirements for primary candidates that are the equivalent of that general election provision.

A qualified campaign expense of a primary election committee is an expense where ''neither the incurring nor payment * * * constitutes a violation of any law of the United States * * *.'' 26 U.S.C. 9032(9). A Presidential primary candidate who exceeds the expenditure limitations violates two laws, 26 U.S.C. 9035 and 2 U.S.C. 441a(b)(1)(A). Section 9035 of the Matching Payment Act states that ''no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitations applicable under section 441a(b)(1)(A) of title 2 * * *.'' Section 441a(b)(1) of the FECA states that ''no candidate for the Office of President who is eligible'' to receive public funds may make expenditures in excess of the statutorily prescribed limitations. 2 U.S.C. 441a(b)(1). Thus, one reading of this language is that expenses in excess of expenditure limitations for publicly funded primary candidates are non-qualified because they violate the law. Consequently, it can be argued that they are repayable under 26 U.S.C. 9038(b)(2). On the other hand, the counter-argument is that this interpretation of 26 U.S.C. 9035 must be incorrect because the language of this provision specifically contemplates that amounts spent in excess of the expenditure limitations can constitute qualified campaign expenses. However, in attempting to read the two statutes together, section 9035 may mean that candidates shall not incur expenses that would otherwise be qualified except for the fact that they exceed the section 441a expenditure limitations.

Additionally, it can be argued that the Fund Act and the Matching Payment Act mandate identical results—namely, the repayment of expenditures exceeding the spending limits—albeit in slightly different ways. Arguably, there is no provision in the general election Fund Act corresponding to section 9035 of the Matching Payment Act. Consequently, it can be argued that this may be the reason why 26 U.S.C. 9007(b)(2) specifically mandates repayments from general election committees for spending amounts that exceed their entitlements. Under this interpretation, language corresponding to section 9007(b)(2) is not needed in the Matching Payment Act because repayments are already required when primary election committees make non-qualified campaign expenses by violating the law, which they do whenever they exceed the spending limits set forth in 2 U.S.C. 441a(b)(1) and 26 U.S.C. 9035.

This argument is supported by the court decision in *John Glenn Presidential Committee* v. *FEC*, 822 F.2d 1097 (D.C. Cir. 1987) (upholding the Commission's repayment determination against a publicly funded primary election candidate for exceeding the state-by-state expenditure limitations in the face of a constitutional challenge). The *Glenn* opinion stated that ''campaign expenses are not ''qualified'' if they exceed the limits Congress set, including the limits on spending in each state. 26 U.S.C. 9035(a).'' *Id.* at 1099. *See also, Kennedy for President Committee* v. *FEC*, 734 F.2d 1558, 1560 n. 1 (D.C. Cir. 1984) (holding that ''[u]nder 26 U.S.C. 9035, campaign expenditures are not ''qualified'' if they exceed certain spending limits, including limitations on spending in each state during the presidential primaries''). The state-by-state spending limits at issue in these two cases are in section 441a(b)(1)(A) and (g) of the FECA. As discussed below, these court decisions arguably require the Commission to order repayments of matching funds used for unqualified purposes. *Glenn* at 1099, *Kennedy* at 1561.

The counter-argument is that the *Glenn* and *Kennedy* cases are not dispositive because they did not involve alleged in-kind contributions by third parties such as political party committees, and that such contributions are not necessarily in the same pool of funds from which a publicly funded campaign makes expenditures. The *Glenn* court indicated that it was not ruling on a repayment determination involving private funds. *Glenn* at 1098. However, on the other hand, in-kind contributions to candidates are simultaneously treated as expenditures by those candidates under section 431(8)(A)(i) and (9)(A)(i) of the FECA, and must be reported as both contributions and expenditures under 11 CFR 104.13. In the past, the Commission has considered in-kind contributions to be commingled with a publicly financed candidate's other expenditures and subject to the candidate's expenditure limitations.

F. Net Outstanding Campaign Obligations—Capital Assets

In determining a Presidential primary committee's net outstanding campaign obligations (''NOCO''), section 9034.5(c)(1) permits candidates to deduct 40% of the original cost of capital assets for depreciation. Similarly, section 9004.9(d)(1) provides for a straight 40% depreciation figure for capital assets purchased by general election campaign committees for purposes of the general election committee's statement of net outstanding qualified campaign expenses (''NOQCE''). At one time, the Commission had permitted all Presidential candidates to demonstrate that a higher depreciation was appropriate for capital assets. In 1995, as part of an effort to streamline the audit process and to establish ''bright lines'' between primary expenses and general election expenses, the Commission adopted the straight 40% depreciation figure for all assets purchased after the change in the regulations took effect. It was believed that situations where the 40% figure was too low would be counterbalanced by situations where the figure was too high. Experience during the 1996 Presidential audits has shown that the 40% depreciation figure is

unrealistically low for capital assets such as vehicles, computer systems, telephone systems, and other equipment that is heavily used during a Presidential primary campaign.

Accordingly, the Commission seeks comments on the attached changes to section 9034.5(c)(1), which would allow primary candidates to demonstrate a higher depreciation figure through documentation of the fair market value. However, the proposed amendment to this rule would not permit a fair market value below 60% of the purchase price to be claimed by the primary committee of a candidate that transfers or sells capital assets to his or her publicly financed general-election committee. This proposal recognizes that capital assets such as computer systems or telecommunications systems are customized or configured specifically to meet the needs of that particular campaign organization. It also takes into account the added value to the campaign staff of continuing to work with familiar equipment, and avoiding the disruption that would occur if new equipment were obtained, instead.

Under a parallel change proposed for 11 CFR 9004.9(d), when the general election campaign is over, the general election committee may demonstrate that its capital assets have depreciated by more than 40% of the original cost. However, in the case of assets transferred or sold to it by the candidate's primary committee, the proposed rules indicate that the purchase price must be 60% of the original cost of such assets to the candidate's primary committee. Once the campaign is over, the draft regulations would indicate that the fair market value listed on the NOQCE statement must be 20% of the original cost to the primary committee. Under this approach, campaigns would not have the option of demonstrating that an amount less than 20% is appropriate. Based on past experience, the Commission believes that a 20% residual value is a realistic figure for equipment that has been used throughout both the primary and general election campaigns.

The second change included in these sections is a clarification of the term ''capital asset.'' A new sentence would be added to sections 9004.9(d) and 9034.5(c)(1) to indicate that when the components of a system such as a computer system or a telecommunications system are used together and the total cost of the components exceeds $2000, the entire system will be considered a capital asset. This proposal conforms with the Commission's previous interpretation of its rules. *See* Explanation and Justification for 11 CFR 9034.5, 60 F.R. 31868 (June 16, 1995). In addition, comments are sought on whether computer software should be treated as a capital asset. In this regard, a primary committee may lawfully transfer its computer programs to its general election counterpart, but software licensing agreements may restrict the resale of the software to third parties.

G. Transportation and Services Provided to the Media

Sections 9004.6 and 9034.6 contain provisions governing expenditures by federally financed committees for transportation and other services provided to representatives of the news media covering the Presidential primary and general election campaigns. These rules indicate that expenditures for these purposes will, in most cases, be treated as qualified campaign expenses subject to the overall spending limitations of sections 9003.2 and 9035.1.

However, sections 9004.6 and 9034.6 also allow committees to accept limited reimbursement for these expenses from the media, and to deduct any reimbursements received from the amount of expenditures subject to the overall expenditure limitation. These rules set limits on the amount of reimbursement that a committee can accept, and require committees to repay a portion of any reimbursement that exceeds those limits to the U.S. Treasury. Paragraphs (b) of these sections limit the reimbursements to 110% of the media representative's *pro rata* share of the actual cost of the transportation and services made available. The regulations specify that the *pro rata* share is calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. Under these provisions, the total number of individuals includes committee staff, media personnel, Secret Service and others.

During the last Presidential election cycle, questions arose regarding both the types of ground services that could be charged to the press and the reasonableness of the amounts billed to them. Consequently, comments are sought as to whether these rules should be revised to include lists of allowable and nonallowable expenses for ground costs. Disputed items have included security services for the press, sound and lighting equipment, press risers and camera platforms, carpeting, bunting, skirts, railings, flags, and electrical service for the press platforms. Also, comments are sought as to whether further clarifications are needed to convey that Presidential campaign committees may only charge a media representative for his or her own *pro rata* share for meals, chairs on the press platform, seats on buses and vans, and telephone lines in filing centers, and that media representatives must not be expected to pay for services made available to other members of the press or to campaign staff, volunteers, local elected officials or others. The Commission recognizes that it may not be as easy for campaigns to charge members of the press who do not travel on the press plane because a local reporter, or other media representative who is not traveling with the campaign, would not have provided the campaign committee with a credit card number for billing purposes. Please note that specific changes are not included in the proposed rules which follow.

H. Documentation of Disbursements

Sections 9003.5(b)(1) and 9033.11(b)(1) set forth the documentation publicly financed committees must provide for disbursements in excess of $200. The documentation includes a canceled check that has been negotiated by the payee. However, paragraphs (b)(1)(iv) of these sections refer back to this canceled check without specifically restating that it must be negotiated by the payee. To avoid possible confusion, the attached rules which follow would change sections 9003.5(b)(1)(iv) and 9033.11(b)(1)(iv) by adding the words ''negotiated by the payee.'' This change is consistent with the recent judicial decision in *Fulani* v. *Federal Election Commission*, 147 F.3d 924 (D.C. Cir. 1998).

Comments are also sought on revising sections 9003.5(b)(3)(ii) and 9033.11(b)(3(ii) to include a cross reference to the reporting provisions that list examples of acceptable and unacceptable descriptions of ''purpose.'' *See* 11 CFR 104.3(b)(3)(i)(B).

I. Matching Fund Documentation

During the 1996 Presidential election cycle, the Commission instituted a new program whereby primary campaign committees may submit contributions for matching fund payments through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. The Commission is considering expanding this program in several respects. First, new language would be added to section 9036.1(b)(3) permitting the use of digital imaging for committees' threshold submissions.

Second, proposed changes to section 9036.2(b)(1)(vi) would enable primary committees to submit digital images of contributor redesignations, reattributions and supporting statements and materials to establish the matchability of contributions.

A corresponding change to 11 CFR 9038.1(b)(1) would add a requirement that the primary committees maintain the original documentation for possible Commission inspection during either the matching fund stage or the subsequent audit. Campaign committees should already have this documentation on hand. Consequently, maintaining and producing this documentation upon request should not be burdensome.

J. Pre-Nomination Vice Presidential Committees

The Commission is seeking comments on a possible new rule to clarify the status of expenditures made by political committees formed by Vice Presidential candidates prior to their official nomination at their parties' conventions. It has been the Commission's policy in the past to permit such committees to make expenditures for the purpose of defraying the travel, lodging and subsistence expenses of the eventual Vice Presidential nominee and his or her entourage during the nominating convention. However, in the most recent Presidential election cycle, concerns have been raised that such committees have raised substantially more money than what is needed for those purposes. The Commission is concerned that Vice Presidential committees could be used prior to the date of their nomination to supplement the limited amounts that publicly funded Presidential candidates may spend on their primary campaigns. Another concern is that some of those who have made the maximum contribution permitted by the FECA to a Presidential primary candidate may seek to evade these statutory limits by making additional contributions to the campaign committee of the person chosen to be that candidate's Vice Presidential running mate.

For this reason, the Commission is proposing to add new section 9035.3 to specify when the expenditures of Vice Presidential committees should be treated as expenditures by the primary campaign of their party's eventual nominee. Paragraph (a) of this new section would provide that the payment of expenses incurred in connection with seeking the nomination of a political party for the office of Vice President of the United States shall be considered expenditures by the candidate who obtains that political party's nomination for the office of President of the United States. This new rule would apply only to the campaign expenditures made by a candidate who becomes the Vice Presidential nominee of his or her party, and not to others who lose the Vice Presidential nomination. Comments are sought as to whether the proposed regulation should be further restricted only to those situations where the Vice Presidential candidate or that candidate's campaign committee has acted in concert with the eventual Presidential nominee or the Presidential nominee's primary committee.

Paragraph (b) of the new section would contain an exception to permit a Vice Presidential candidate and his or her family and staff to attend their party's nominating convention without having the cost of their transportation, lodging, and subsistence attributed to the party's Presidential candidate. The costs of raising funds for these limited travel and subsistence expenses would also be excluded from the definition of expenditure. Please note, if a Vice Presidential committee has excess funds after the nomination, 11 CFR 113.2 would govern the use of these funds.

Comments on alternative approaches are also sought. The Commission notes that 2 U.S.C. 441a(b)(2) treats expenditures made on behalf of Vice Presidential candidates as expenditures on behalf of their party's Presidential nominee. *See, also* 11 CFR 110.8(f). However, this provision is not applicable prior to the nomination of the Vice Presidential candidate. At the time the FECA was enacted, Congress may not have anticipated that both the Presidential candidates and their running mates may be known well before the actual date of nomination. In recent years the primaries in many states have been moved to earlier dates in the election year. This means that Presidential candidates may reach their primary spending limits earlier in the election year, which may encourage the creation of Vice Presidential campaign committees at an earlier stage of the process.

K. Nominating Conventions and Host Committees

1. Lost or Misplaced Items

Comments are sought on adding new paragraph (c) to section 9008.7 to address situations where equipment in the possession of convention committees is lost or damaged. The proposed rule indicates that as a general matter, the cost of lost or misplaced items may not be defrayed with public funds. However, the Commission recognizes that there are varying degrees of responsibility in this area. Accordingly, the proposed rules would also provide that certain factors should be considered, such as whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost. This approach is consistent with the Commission's treatment of items lost or misplaced by publicly funded candidates. See 11 CFR 9004.4(b)(8) and 9034.4(b)(8). Consequently, these provisions applicable to candidate committees for the primary and general elections also contain similar language to take into consideration whether a police report was filed.

2. Donations to Host Committees, Government Agencies, and Municipalities

The Commission seeks comments on parallel amendments to section 9008.52(c)(1), which addresses the receipt of donations by host committees, and section 9008.53(b)(1), which addresses the receipt of donations by government agencies and municipal corporations. One change would be to specifically allow local banks to donate funds and make in-kind donations for the limited purposes described in these rules. These amendments would supersede, in part, Advisory Opinions 1995–31 and 1995–32.

The second set of parallel changes to sections 9008.52(c)(1) and 9008.53(b)(1) would be to add the word ''local'' prior to ''individual,'' to clarify that only those who reside in the metropolitan area of the convention city may donate funds or make in-kind donations to host committees, government agencies and municipal corporations. Please note that the new language is consistent with AO 1995–32 with respect to donations by individuals.

3. Permissible Host Committee Expenses

During the audits of the 1996 convention and host committees, questions have been raised as to the scope of expenses that may be paid by a host committee instead of a convention committee. Section 9008.52(c)(1) enumerates the types of expenses that host committees may defray with donated funds. Section 9008.7(a) lists the types of convention expenses that may be paid for using public funds. These two sections of the regulations are not mutually exclusive. Nor do they cover every conceivable type of expense that may arise.

Consequently, comments are sought as to whether one or both of these provisions should be revised to provide greater specificity as to allowable or nonallowable expenses for convention or host committees. Disputed items have included: (1) Badges, passes or other types of credentials used to gain entry to the convention hall or specific locations within the hall; (2) electronic vote tabulation systems; and (3) lighting and rigging costs, including paying stagehands, riggers, projectionists, electricians, and producers. With respect to lighting and rigging expenses, in particular, it can be difficult to distinguish between the costs associated with improving the infrastructure of the convention hall and the costs of producing and broadcasting the convention proceedings to the general public or to those within the convention hall.

The Commission is aware that the major political parties are currently in the process of selecting the locations for their next presidential nominating conventions, and that the party committees are expected to enter into contractual agreements with the sites selected before this rulemaking is completed. Thus, comments are sought as to whether it would be preferable to defer consideration of this topic until after the 2000 Presidential elections. Please note that specific changes are not included in the proposed rules which follow.

L. Technical and Conforming Amendments

Three technical changes are also proposed. First, the definition of ''State'' in section 9032.11 would be updated by deleting the Canal Zone and by adding American Samoa, which holds Presidential primaries consisting of caucuses. Please note there is no corresponding provision in the general election rules.

In section 9008.14, the term ''final repayment determinations'' would be replaced by ''repayment determinations.'' In paragraph (f)(3) of section 9038.1, the phrase ''publicly released audit report'' would be used instead of ''final audit report.'' These amendments would conform with the changes in terminology made when the rules setting out audit and repayment procedures were last revised in 1995.

Please note that the Commission has also initiated a rulemaking to revise and reorganize the recordkeeping and reporting rules currently located in 11 CFR 102.9, 104.3, and part 108. *See* Notice of Proposed Rulemaking, 62 F.R. 50708 (Sept. 27, 1997). Accordingly, it may be necessary to amend the citations found throughout the public funding rules in subchapters E and F of Title 11, Code of Federal Regulations, that refer back to these recordkeeping and reporting regulations.

In addition, the Commission has published separately final rules modifying the candidate agreement provisions so that federally-financed Presidential committees must electronically file their reports. *See* Explanation and Justification, 63 F.R. 45679 (August 27, 1998). The effective date for those regulations is November 13, 1998.

The Commission welcomes comments on the foregoing proposed amendments to the public financing regulations, the issues raised in this notice, and other aspects of the public financing process that could be addressed in these regulations. No final decision has been made by the Commission concerning any of the proposals contained in this notice.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these proposed rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR part 9004

Campaign funds.

11 CFR part 9007

Administrative practice and procedure, Campaign funds.

11 CFR part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR part 9032

Campaign funds.

11 CFR parts 9033, 9034 and 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR part 9038

Administrative practice and procedure, Campaign funds.

For the reasons set out in the preamble, it is proposed to amend Subchapters E and F of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for Part 9003 would continue to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

2. In § 9003.5, paragraphs (b)(1)(iv) and (b)(3)(ii) would be revised to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

* * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9004— ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

3. The authority citation for Part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

4. In § 9004.4, paragraph (b)(8) would be revised to read as follows:

§ 9004.4 Use of payments.

* * * * *

(b) * * *

(8) *Lost or misplaced items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee

sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

5. In § 9004.9, paragraph (d)(1) would be revised to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

* * * * *

(d)(1) *Capital assets.*

(i) For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under paragraph (d)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the date of ineligibility must be valued at their fair market value on the date acquired. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value.

(ii) If capital assets are obtained from the candidate's primary election committee, the purchase price shall be 60% of the original cost of such assets to the candidate's primary election committee. For purposes of the statement of net outstanding campaign expenses filed after the end of the expenditure report period, the fair market value of capital assets obtained from the candidate's primary election committee shall be considered to be 20% of the original cost of such assets to the candidate's primary election committee.

* * * * *

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

6. The authority citation for Part 9007 would continue to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

7. In § 9007.2, the introductory material to paragraph (c), and paragraphs (c)(1), (c)(2), (c)(2)(i), (d)(1) and (d)(3) would be republished, and paragraphs (c)(2)(ii), (c)(3) and (d)(2) would be revised to read as follows:

§ 9007.2 Repayments.

* * * * *

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(i) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* Before voting on whether to issue any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) of this section and any oral hearing conducted under paragraph (c)(2)(ii) of this section, and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount must be approved by an affirmative vote of four (4) members of the Commission. The determination will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s) and has approved by an affirmative vote of four (4) of its members a post-administrative review repayment determination. Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United

States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961(a) and (b); or

(ii) The amount actually earned on the funds set aside or to be repaid under this section.

* * * * *

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

8. The authority citation for Part 9008 would continue to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008 and 9009(b).

9. In § 9008.7, new paragraph (c) would be added, to read as follows:

§ 9008.7 Use of funds.

* * * * *

(c) *Lost or misplaced items.* The cost of lost or misplaced items may not be defrayed with public funds under certain circumstances. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

10. Section 9008.14 would be revised to read as follows:

§ 9008.14 Petitions for rehearing; stays of repayment determinations.

Petitions for rehearing following the Commission's repayment determination and requests for stays of repayment determinations will be governed by the procedures set forth at 11 CFR 9007.5 and 9038.5. The Commission will afford convention committees the same rights as are provided to publicly funded candidates under 11 CFR 9007.5 and 9038.5.

11. In § 9008.52, the heading of paragraph (c) would be republished and the introductory language of paragraph (c)(1) would be revised to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

* * * * *

(c) *Receipt of donations from local businesses and organizations.*

(1) Local businesses (including banks), local labor organizations, and other local organizations or local individuals may donate funds or make in-kind donations to a host committee to be used for the following purposes:

* * * * *

12. In § 9008.53, the heading of paragraph (b) would be republished and the introductory language of paragraph (b)(1) would be revised to read as follows:

§ 9008.53 Receipts and disbursements of government agencies and municipal corporations.

* * * * *

(b) *Receipt of donations to a separate fund or account.*

(1) Local businesses (including banks), local labor organizations, and other local organizations or local individuals may donate funds or make in-kind donations to a separate fund or account of a government agency or municipality to pay for expenses listed in 11 CFR 9008.52(c), provided that:

* * * * *

PART 9032—DEFINITIONS

13. The authority citation for Part 9032 would continue to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

14. Section 9032.11 would be revised to read as follows:

§ 9032.11 State.

State means each State of the United States, Puerto Rico, American Samoa, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

15. The authority citation for Part 9033 would continue to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

16. In § 9033.11, paragraphs (b)(1)(iv) and (b)(3)(ii) would be revised to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9034—ENTITLEMENTS

17. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

18. In § 9034.4, paragraphs (a)(3)(i), (a)(3)(iii), (b)(8), (e)(1), and (e)(3) would be revised to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) * * *

(3) * * *

(i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination, or after the date of the party's nominating convention, if he or she has not withdrawn before the convention, or after the end of the expenditure report period, if the candidate wins the nomination, whichever is later.

* * * * *

(iii) For purposes of the expenditure limitations set forth in 11 CFR 9035.1, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility, or after the end of the expenditure report period, if the candidate wins the nomination, whichever is later, may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility or after the end of the expenditure report period, whichever is later. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of

ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign.

* * * * *

(b) * * *

(8) *Lost or misplaced items.* The cost of lost or misplaced items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

* * * * *

(e) * * *

(1) *General rule.* Any expenditure for goods or services that are used exclusively for the primary election campaign shall be attributed to the limits set forth at 11 CFR 9035.1. Any expenditure for goods or services that are used exclusively for the general election campaign shall be attributed to the limits set forth at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.9(c). All expenditures for goods and services that are used for both the primary and the general election campaigns shall be attributed in accordance with paragraphs (e)(2) through (e)(7) of this section.

* * * * *

(3) *State or national campaign offices.* Overhead expenditures incurred in connection with state or national campaign offices shall be attributed according to when the usage of the office occurs. Payroll costs shall be attributed according to when the work is performed. For purposes of this section, overhead expenditures shall have the same meaning as set forth in 11 CFR 106.2(b)(2)(iii)(D). Expenses for usage of offices or work performed on or before the date of the candidate's nomination shall be attributed to the primary election, except for periods when the office is used only by persons working full time on general election campaign preparations.

* * * * *

19. In § 9034.5, paragraph (c)(1) would be revised to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(c)(1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as ''other assets'' under paragraph (c)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value. If the candidate receives public funding for the general election, a lower fair market value shall not be claimed under this section for any capital assets transferred or sold to the candidate's general election committee.

* * * * *

PART 9035—EXPENDITURE LIMITATIONS

20. The authority citation for Part 9035 would continue to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

21. Section 9035.1, is revised to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) *Spending limit.* (1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) *Allocation.* Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) *Compliance and fundraising exemptions.* (1) A candidate may exclude from the overall expenditure limitation of this section an amount equal to 10% of all operating-expenditures for each report period as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15).

(2) A candidate may exclude from the overall expenditure limitation of this section the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) *Candidates not receiving matching funds.* The expenditure limitations of this section shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

22. Section 9035.3 would be added to read as follows:

§ 9035.3 Expenditures by Vice Presidential candidates.

(a) In the case of a candidate who obtains a political party's nomination for the office of Vice President of the United States, any expenditures made in connection with seeking that Vice Presidential nomination shall be considered expenditures by the publicly funded candidate who obtains that political party's nomination for the office of President of the United States, except as provided in paragraph (b) of this section.

(b) The payment of expenses incurred by a Vice Presidential candidate, the candidate's family, and the candidate's authorized committee's staff to attend a political party's national nominating convention, including the cost of transportation, lodging, and subsistence, and the costs of raising funds for these expenses, will not be considered an expenditure by the candidate who obtains that political party's nomination for the office of President of the United States.

23. The title of part 9036 would be revised to read as follows:

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

24. The authority citation for Part 9036 would continue to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

25. In § 9036.1, paragraph (b)(3) would be revised to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(3) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips. In lieu of submitting photocopies, the candidate may submit digital images of checks and other materials in accordance with the procedures specified in 11 CFR 9036.2(b)(1)(vi). Digital images of contributions do not need to be segregated alphabetically by contributor within each State.

* * * * *

26. In § 9036.2, paragraph (b)(1)(vi) would be revised to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list. In lieu of submitting photocopies, the candidate may submit digital images of checks, written instruments and deposit slips as specified in the Computerized Magnetic Media Requirements. The candidate may also submit digital images of contributor redesignations, reattributions and supporting statements and materials needed to verify the matchability of contributions. The candidate shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and shall include digital images of every contribution received and imaged on or after the date of the previous matching fund request. Contributions and other documentation not imaged shall be submitted in photocopy form. The candidate shall maintain the originals of all contributor redesignations, reattributions and supporting statements and materials that are submitted for matching as digital images.

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

27. The authority citation for Part 9038 would continue to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

28. In § 9038.1, a new sentence would be added to the end of paragraph (b)(1) introductory text, and paragraph (f)(3) would be revised, to read as follows:

§ 9038.1 Audit.

* * * * *

(b) * * *

(1) * * * Upon request, the committee shall produce the originals of all contributor redesignations, reattributions and supporting statements and materials that were submitted for matching as digital images under 11 CFR 9036.2(b), in addition to the materials required under 11 CFR 110.1(l).

* * * * *

(f) * * *

(3) Within 30 days of service of the publicly released Audit Report, the committee shall submit a check to the United States Treasury for the total amount of any excessive or prohibited contributions not refunded, reattributed or redesignated in a timely manner in accordance with 11 CFR 103.3(b)(1), (2) or (3); or take any other action required by the Commission with respect to sample-based findings.

29. In § 9038.2, the introductory material to paragraph (c), and paragraphs (c)(1), (c)(2), (c)(2)(i), (d)(1), and (d)(3) would be republished, and paragraphs (c)(2)(ii), (c)(3) and (d)(2) would be revised, to read as follows:

§ 9038.2 Repayments.

* * * * *

(c) *Repayment determination procedures.* The Commission's repayment determination will be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(3) of this section.

(1) *Repayment determination.* The Commission will provide the candidate with a written notice of its repayment determination(s). This notice will be included in the Commission's audit report prepared pursuant to 11 CFR 9038.1(d), or inquiry report pursuant to 11 CFR 9039.3, and will set forth the legal and factual reasons for such determination(s), as well as the evidence upon which any such determination is based. The candidate shall repay to the United States Treasury in accordance with paragraph (d) of this section, the amount which the Commission has determined to be repayable.

(2) *Administrative review of repayment determination.* If a candidate disputes the Commission's repayment determination(s), he or she may request an administrative review of the determination(s) as set forth in paragraph (c)(2)(i) of this section.

(i) *Submission of written materials.* A candidate who disputes the Commission's repayment determination(s) shall submit in writing, within 60 calendar days after service of the Commission's notice, legal and factual materials demonstrating that no repayment, or a lesser repayment, is required. Such materials may be submitted by counsel if the candidate so desires. The candidate's failure to timely raise an issue in written materials presented pursuant to this paragraph will be deemed a waiver of the candidate's right to raise the issue at any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a).

(ii) *Oral hearing.* A candidate who submits written materials pursuant to paragraph (c)(2)(i) of this section may at the same time request in writing that the Commission provide such candidate with an opportunity to address the Commission in open session to demonstrate that no repayment, or a lesser repayment, is required. The candidate should identify in this request the repayment issues he or she wants to address at the oral hearing. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral hearing. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2)(i) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(3) *Repayment determination upon review.* Before voting on whether to

issue any repayment determination(s) following an administrative review pursuant to paragraph (c)(2) of this section, the Commission will consider any submission made under paragraph (c)(2)(i) of this section and any oral hearing conducted under paragraph (c)(2)(ii), and may also consider any new or additional information from other sources. A determination following an administrative review that a candidate must repay a certain amount must be approved by an affirmative vote of four (4) members of the Commission. The determination will be accompanied by a written statement of reasons supporting the Commission's determination(s). This statement will explain the legal and factual reasons underlying the Commission's determination(s) and will summarize the results of any investigation(s) upon which the determination(s) are based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate requests an administrative review of the Commission's repayment determination(s) under paragraph (c)(2) of this section, the time for repayment will be suspended until the Commission has concluded its administrative review of the repayment determination(s) and has approved by an affirmative vote of four (4) of its members a post-administrative review repayment determination. Within 30 calendar days after service of the notice of the Commission's post-administrative review repayment determination(s), the candidate shall repay to the United States Treasury the amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(3) Interest shall be assessed on all repayments made after the initial 90-day repayment period established at paragraph (d)(1) of this section or the 30-day repayment period established at paragraph (d)(2) of this section. The amount of interest due shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961(a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

* * * * *

Dated: December 11, 1998.

Scott E. Thomas,

Acting Chairman, Federal Election Commission.

[FR Doc. 98–33316 Filed 12–15–98; 8:45 am]

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