2–3–99
Vol. 64 No. 22
Pages 5149–5584

Federal Register

Wednesday
February 3, 1999

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WASHINGTON, DC

WHEN: February 23, 1999 at 9:00 am.

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

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 64, No. 22

Wednesday, February 3, 1999

Separate Parts In This Issue

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–73–AD; Amendment 39–11019; AD 99–03–05]

RIN 2120–AA64

Airworthiness Directives; Textron Lycoming Model O–540–F1B5 Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Textron Lycoming Model O–540–F1B5 reciprocating engines. This action requires the removal and replacement of the crankshaft gear retaining bolts. This amendment is prompted by 2 reported failures of the crankshaft gear retaining bolts. The actions specified in this AD are intended to prevent failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing.

DATES: Effective February 18, 1999.

Comments for inclusion in the Rules Docket must be received on or before April 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–73–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.gov''. Comments sent via the Internet must contain the docket number in the subject line.

Information regarding this AD may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Rocco Viselli, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth St., 3rd Floor, Valley Stream, NY 11581–1200; telephone (516) 256–7531, fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received reports of 2 failures of the crankshaft gear retaining bolts on Textron Lycoming Model O–540–F1B5 reciprocating engines, installed on Robinson R44 series rotorcraft. The investigation revealed that the head of the retaining bolts sheared off allowing the crankshaft gear to disengage. The crankshaft gear drives both magnetos and the camshaft. Failure of the retaining bolt results in total loss of power without prior warning. The FAA has determined that the 2 crankshaft gear bolts to fail in service failed from a condition known as hydrogen embrittlement. This condition results from the underbaking process during manufacturing, which leads to incomplete hydrogen relief, and as such, the bolts can be susceptible to hydrogen embrittlement. Therefore, the FAA has determined that this condition affects only a specific population of retaining bolts, and has identified by serial number the specific engines that require replacement of the suspect bolts. This condition, if not corrected, could result in failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing.

The suspect crankshaft gear retaining bolts must be replaced by either Textron Lycoming or Robinson Helicopter company maintenance personnel. In order to allow the removal and replacement of the suspect bolts without removing the engine from the helicopter, a complex procedure is required. This procedure requires removal of the accessory gear case without removal of the oil sump, which is beyond the scope of current engine service instructions.

Since an unsafe condition has been identified that is likely to exist or develop on engines of the same type design, this AD is being issued to prevent crankshaft gear retaining bolt failure. This AD requires removal and replacement of the crankshaft gear retaining bolts. The actions are required to be accomplished in accordance with the service documents described previously.

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 98–ANE–73–AD.'' The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

99–03–05 Textron Lycoming: Amendment 39–11019. Docket 98–ANE–73–AD.

Applicability: Textron Lycoming Model O–540–F1B5 reciprocating engines, with the following Textron Lycoming Engine Serial Numbers, installed on but not limited to Robinson Helicopters Co. Model R–44 rotorcraft.

L–24545–40A	L–24628–40A
L–24766–40A	L–24772–40A
L–25050–40A	L–25052–40A
L–25053–40A	L–25054–40A
L–25063–40A	L–25064–40A
L–25065–40A	L–25066–40A
L–25067–40A	L–25068–40A
L–25069–40A	L–25070–40A
L–25071–40A	L–25072–40A
L–25073–40A	L–25074–40A
L–25075–40A	L–25076–40A
L–25077–40A	L–25078–40A
L–25080–40A	L–25081–40A
L–25083–40A	L–25084–40A
L–25085–40A	L–25086–40A
L–25087–40A	L–25088–40A
L–25089–40A	L–25090–40A
L–25091–40A	L–25092–40A
L–25093–40A	L–25094–40A
L–25095–40A	L–25096–40A
L–25097–40A	L–25098–40A
L–25099–40A	L–25100–40A
L–25101–40A	L–25102–40A
L–25103–40A	L–25104–40A
L–25105–40A	L–25106–40A
L–25116–40A	L–25117–40A
L–25118–40A	L–25119–40A
L–25120–40A	L–25121–40A
L–25122–40A	L–25123–40A
L–25124–40A	L–25125–40A
L–25126–40A	L–25127–40A
L–25128–40A	L–25129–40A
L–25130–40A	L–25131–40A
L–25132–40A	L–25133–40A
L–25134–40A	L–25135–40A
L–25136–40A	L–25137–40A
L–25138–40A	L–25139–40A
L–25140–40A	L–25141–40A
L–25142–40A	L–25143–40A
L–25144–40A	L–25145–40A
L–25146–40A	L–25149–40A
L–25150–40A	L–25154–40A
L–25155–40A	L–25156–40A
L–25157–40A	L–25158–40A
L–25159–40A	L–25160–40A
L–25161–40A	L–25162–40A
L–25164–40A	L–25166–40A
L–25167–40A	L–25168–40A
L–25169–40A	L–25170–40A
L–25171–40A	L–25172–40A
L–25173–40A	L–25174–40A
L–25175–40A	L–25176–40A
L–25177–40A	L–25178–40A
L–25179–40A	L–25180–40A
L–25181–40A	L–25182–40A
L–25183–40A	L–25184–40A
L–25185–40A	L–25186–40A
L–25188–40A	L–25189–40A
L–25190–40A	L–25191–40A
L–25192–40A	L–25193–40A
L–25198–40A	L–25200–40A
L–25201–40A	L–25202–40A
L–25204–40A	L–25206–40A
L–25207–40A	L–25208–40A
L–25211–40A	L–25212–40A
L–25213–40A	L–25214–40A
L–25216–40A	L–25217–40A
L–25218–40A	L–25219–40A
L–25221–40A	L–25222–40A
L–25223–40A	L–25228–40A
L–25229–40A	L–25230–40A
L–25231–40A	L–25232–40A
L–25233–40A	L–25234–40A
L–25235–40A	L–25236–40A
L–25237–40A	L–25238–40A
L–25239–40A	L–25240–40A
L–25242–40A	L–25243–40A
L–25244–40A	L–25246–40A
L–25249–40A	L–25250–40A
L–25251–40A	L–25252–40A
L–25257–40A	

Note 1: This airworthiness directive (AD) applies to each engine 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 engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the crankshaft gear retaining bolts, which can result in engine failure and subsequent autorotation and forced landing, accomplish the following:

(a) Within 10 hours time in service, or 3 days after the effective date of this AD, whichever occurs first, have the crankshaft gear retaining bolt, part number STD–2209, replaced by Textron Lycoming or Robinson Helicopter Company.

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

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

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

(d) This amendment becomes effective on February 18, 1999.

Issued in Burlington, Massachusetts, on January 27, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–2474 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–10]

Establishment of Class E Airspace; Oroville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a Class E airspace area at Oroville, CA. The establishment of a Global Positioning

System (GPS) Standard Instrument Approach Procedure (SIAP) To Runway (RWY) 1 at Oroville Municipal Airport has made this action necessary. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 1 SIAP to Oroville Municipal Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Oroville Municipal Airport, Oroville, CA.

EFFECTIVE DATE: 0901 UTC March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On December 17, 1998, the FAA proposed to amend 14 CFR part 71 by establishing a Class E airspace area at Oroville, CA (63 FR 242). Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY I SIAP at Oroville Municipal Airport. This action will provide adequate controlled airspace for IFR operations at Oroville Municipal Airport, Oroville, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes a Class E airspace at Oroville, CA. Controlled airspace extending upward from 700 feet above the surface is required for aircraft executing the GPS RWY 1 SIAP at Oroville Municipal Airport. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 1 SIAP at Oroville Municipal Airport, Oroville, CA.

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

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120: E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

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

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

* * * * *

AWB CA E5 Oroville, CA [New]

Oroville Municipal Airport, CA
(Lat. 39°29′16″ N, long. 121°37′19″ W)
Richvale Airport, CA
(Lat. 39°29′52″ N, long. 121°46′17″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Oroville Municipal Airport, excluding the Maryville, CA, Class E airspace area, and excluding that airspace within a 1-mile radius of the Richvale Airport.

* * * * *

Issued in Los Angeles, California on January 25, 1999.

Harvey R. Riebel,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–2502 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWP–22]

Establishment of Class E Airspace; Metropolitan Oakland International Airport, CA; Correction

AGENCY: Federal Aviation Administration.

ACTION: Final rule; correction.

SUMMARY: On December 24, 1998, the FAA published a final rule in the **Federal Register** that established E3 airspace at Metropolitan Oakland International Airport, CA. The airspace description contained two inadvertent errors. This document corrects those errors, and has no substantive effect on the action.

EFFECTIVE DATE: This correction is effective on March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Specialist, AWP–520.11, Federal Aviation Administration, Western-Pacific Region, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone: (310) 725–6611.

SUPPLEMENTARY INFORMATION: The following correction is an editorial change.

Correction to Final Rule

In FR Doc. 98–34167, on page 71217 in the **Federal Register** issue of Thursday, December 24, 1998 make the following correction in the last section of the third column: ''AWPCA E3'' should read ''AWP CA E3'', and ''8.5'' should read ''9.0''.

Issued in Los Angeles, California on January 22, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–2501 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; SFAR–50–2; Amendment 93–76]

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On December 31, 1996, the FAA published a final rule that codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. On February 21, 1997, the FAA delayed the implementation of certain portions of that final rule. Specifically, that action delayed the effective date for 14 CFR 93.301, 93.305, and 93.307 of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or the other portions of the rule. This amendment will delay the effective date for 14 CFR 93.301, 93.305, and 93.307 of the December 31, 1996 final rule until January 31, 2000. Additionally, this rule will amend the expiration date of those portions of SFAR No. 52–2 that were reinstated in the February 21, 1997 final rule and extended in the rule published on December 17, 1997.

EFFECTIVE DATE: January 29, 1999.

FOR FURTHER INFORMATION CONTACT: Ellen Crum, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking (NPRM), and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to further reduce the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP Special Flight Rules Area; established new and modifies existing flight-free zones (FFZ's); established new and modifies existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP Special Flight Rules Area. These provisions originally were to become effective on May 1, 1997.

On February 21, 1997, the FAA issued a final rule and request for comments that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, that action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the Special Flight Rules Area, flight-free zones, and flight corridors, respectively sections 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to address concerns about the air tour routes possible, implementation was delayed to allow the FAA and the Department of the Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule. This delay was subsequently extended until January 31, 1999 (62 FR 66248; December 17, 1997).

By Notice No. 98–18 (63 FR 67544; December 7, 1998) the FAA proposed to further extend the effective date for certain portions of the final rule until January 31, 2000.

Discussion of Comments

The FAA received four comments on the proposed extension. The Grand Canyon Air Tour Council (GCATC) comments that the rulemaking effort would require operators to undertake extensive aerial investigation and operational and environmental familiarization, by January 31, 2000, on routes that have not yet been announced. For a typical fixed wing operator this would require 60 plus training flights. Operators would also have to develop and disseminate new marketing information, programs, and promotion with little advance notice. GCATC describes the FAA's record of rulemaking in GCNP as a ''four year environment of regulatory uncertainty and exclusion.'' GCATC recommends that FAA reschedule the implementation of the final rule to January 31, 2001, and that the FAA undertake a stakeholders' negotiated rulemaking for 60–90 days.

United States Air Tour Association (USATA) supports GCATC's comments and argues that the FAA and NPS have expended far more resources in its patchwork of rulemaking than it would on a 60–90 day negotiated rulemaking effort. USATA notes that impending, yet unannounced additional rulemaking efforts will force small business entities with the choice of meeting impossible time frames for readiness and compliance or simply not being able to prepare and face serious economic harm to their businesses. USATA recommends that the FAA hold in abeyance the implementation of the final rules on the air tour routes, flight free zones, and flight corridors, and instead a formal Aviation Rulemaking Advisory Committee process with a limit of 60–90 days.

Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority (Clark County) comment that a stay of the effective date is necessary to ensure that the new flight-free zones are implemented without serious risks to aviation safety and the many direct and indirect jobs that impact GCNP air tour opportunities. This commenter notes that without other proposed routes, the implementation of the FFZ's would leave operators only with a choice between the unscenic Blue Direct route and the Blue 2 route that will quickly become oversaturated. Without a replacement route, Clark County argues that the ability of air tour operators to market a product that brings millions of dollars to the Las Vegas economy will be seriously reduced.

Clark County also questions the FAA's ability to validate or predict noise levels in the Grand Canyon, saying that the noise modeling may do a poor job of reflecting actual conditions. This places an uncertainty around the actual need for additional

control measures. The commenter sees, as essential, the need to possess validated noise models prior to promulgating extensive new regulations; otherwise, the regulations are at risk for being deemed arbitrary and capricious by the courts. Clark County urges that the FAA initiate a stakeholder-based negotiated rulemaking, and comments that the FAA's excuses for not doing so are neither compelling nor with substance.

Eagle Jet Charter, Inc. (EJC) supports the 1-year delay in the effective date of the final rule. EJC asks that the FAA incorporate its comments filed January 23, 1998, that an amendment for operations conducted under IFR above 15,000 feet MSL be proposed and adopted concurrently with other modifications to the GCNP airspace.

FAA Response

As stated in the notice, the FAA continues to believe that substantial progress has been made in restoring natural quiet to the GCNP. This has been accomplished through the curfew and a limit on the number of aircraft that can be operated in the SFRA. In addition, the reporting requirement has given the FAA and NPS valuable data on the actual number of operations that currently exist in GCNP.

Although commenters suggest that a 60–90 day negotiated rulemaking effort would bring about a successful conclusion to the many issues and competing interests, it has been the FAA's experience that controversial negotiated rulemaking efforts may take years rather than months to reach a conclusion. Both the FAA and NPS are unwilling to incur this type of additional delay for GCNP. However, if all affected parties agree to a proposal, then the proposal should be forwarded to FAA and NPS. Although commenters are correct in pointing out that the regulatory process for GCNP has been time consuming, the lessons learned in the process are not inconsiderable, and should make future work efficient.

It is reasonable for air tour operators to expect that the FAA must propose an air tour route system for the west end of GCNP that safely replaces the Blue 1 route, and that this must be done in a timely manner for purposes of training and marketing. A route proposal and corresponding rulemaking effort is underway.

In response to Clark County's comment on the need for validated noise models, the Integrated Noise Model (INM), as refined by FAA to reflect the terrain and expanded to reflect the size of the area surrounding the Grand Canyon, produces reasonably accurate predictions of the aircraft noise exposure in the GCNP. The INM, as refined and applied, complies with all recommended practices for the prediction of aircraft noise. The FAA verified the reasonableness of the predicted noise levels using data obtained from actual measurements in the Grand Canyon. See, December 1996 Final Environmental Assessment at p. 4–5 and Appendix C. Actual measured data correlated closely with the results predicted using the INM.

NPS, however, uses a newer, different computer model for analyzing audibility of aircraft in park environments, called the National Park Service Overflight Decision Support System. To address NPS concerns about the differences between the two models, both agencies have agreed to jointly conduct a noise model validation study. A group of experts will be convened to develop a plan for evaluating and validating models to be followed by field verification.

Immediate Effective Date

The FAA finds that good cause exists under 5 U.S.C. 553(d) for this final rule to become final rule upon issuance. The FAA and NPS must implement new air tour routes, flight-free zones, and flight corridors at the same time in order to transition to a new operating environment in GCNP. Currently, the effective date for the Grand Canyon final rule (62 FR 69301; December 31, 1996) is extended until January 31, 1999. If this final rule had not been issued, and made effective, by that date, the new flight-free zones and flight corridors would go into effect, resulting in considerable chaos, as some air tour routes would disappear. This would not only be burdensome to air tour operators and the traveling public, but it could also impose possible safety problems in GCNP. To preclude these conflicts, this amendment is effective upon issuance.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket Number 28537. That economic evaluation was later revised based on new information received on the number of aircraft being operated in the SFRA. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the FFZs will be temporarily cost relieving for air tour operators.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Federalism Implications

This amendment 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 amendment would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

The Amendment

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Sec. 9. *Termination date.* Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0901 UTC, January 31, 2000.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

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

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new §§ 93.301, 93.305, and 93.307 to be added to 14 CFR Chapter 1, is delayed until 0901 UTC, January 31, 2000.

Issued in Washington, DC, on January 29, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–2493 Filed 1–29–99; 11:46 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29455; Amdt. No. 1912]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on January 22, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 1.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	SIAP
01/07/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0127	NDB RWY 13, AMDT 5...
01/11/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0169	VOR/DME OR GPS RWY 13, AMDT 3...
01/12/99	NJ.	ROBBINSVILLE	TRENTON-ROBBINSVILLE	FDC 9/0195	VOR RWY 29 AMDT 10A...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0233	VOR/DME OR GPS–A, AMDT 1...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0234	NDB RWY 36, AMDT 6...
01/13/99	MO.	CAMERON	CAMERON MEMORIAL	FDC 9/0215	NDB OR GPS RWY 35, AMDT 1A...
01/13/99	NE.	LINCOLN	LINCOLN MUNI	FDC 9/0231	VOR OR GPS RWY 17L, AMDT 6A...
01/14/99	NE.	SCOTTSBLUFF	WILLIAM B. HEILIG	FDC 9/0245	LOC BC RWY 12, AMDT 8A...
01/14/99	WI.	MANITOWOC	MANITOWOC COUNTY	FDC 9/0246	VOR OR GPS RWY 17, AMDT 14A...
01/19/99	TX.	AUSTIN	ROBERT MUELLER MUNI	FDC 9/0332	GPS RWY 13R, ORIG...
01/20/99	AL.	HUNTSVILLE	HUNTSVILLE INTL–CARL T. JONES FIELD.	FDC 9/0203	ILS RWY 18L AMDT 2...
01/20/99	AL.	MONTGOMERY	MONTGOMERY REGIONAL (DANNELLY FIELD).	FDC 9/0353	ILS RWY 28, AMDT 8B...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0360	NDB RWY 36, ORIG...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0361	GPS RWY 36, ORIG...
01/20/99	TN.	SMYRNA	SMYRNA	FDC 9/0359	NDB RWY 32 AMDT 8...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8263	VOR/DME RWY 6 ORIG...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8264	NDB OR GPS RWY 6 AMDT 17B...

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC Number	SIAP
01/07/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0127	NDB RWY 13, AMDT 5...
01/11/99	TX.	JACKSONVILLE	CHEROKEE COUNTY	FDC 9/0169	VOR/DME OR GPS RWY 13, AMDT 3...
01/12/99	NJ.	ROBBINSVILLE	TRENTON-ROBBINSVILLE	FDC 9/0195	VOR RWY 29 AMDT 10A...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0233	VOR/DME OR GPS–A, AMDT 1...
01/13/99	IN.	SULLIVAN	SULLIVAN COUNTY	FDC 9/0234	NDB RWY 36, AMDT 6...
01/13/99	MO.	CAMERON	CAMERON MEMORIAL	FDC 9/0215	NDB OR GPS RWY 35, AMDT 1A...
01/13/99	NE.	LINCOLN	LINCOLN MUNI	FDC 9/0231	VOR OR GPS RWY 17L, AMDT 6A...
01/14/99	NE.	SCOTTSBLUFF	WILLIAM B. HEILIG	FDC 9/0245	LOC BC RWY 12, AMDT 8A...
01/14/99	WI.	MANITOWOC	MANITOWOC COUNTY	FDC 9/0246	VOR OR GPS RWY 17, AMDT 14A...
01/19/99	TX.	AUSTIN	ROBERT MUELLER MUNI	FDC 9/0332	GPS RWY 13R, ORIG...

FDC Date	State	City	Airport	FDC Number	SIAP
01/20/99	AL.	HUNTSVILLE	HUNTSVILLE INTL–CARL T. JONES FIELD.	FDC 9/0203	ILS RWY 18L AMDT 2...
01/20/99	AL.	MONTGOMERY	MONTGOMERY REGIONAL (DANNELLY FIELD).	FDC 9/0353	ILS RWY 28, AMDT 8B...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0360	NDB RWY 36, ORIG...
01/20/99	NC.	MOUNT AIRY	MOUNT AIRY/SURRY COUNTY	FDC 9/0361	GPS RWY 36, ORIG...
01/20/99	TN.	SMYRNA	SMYRNA	FDC 9/0359	NDB RWY 32 AMDT 8...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8263	VOR/DME RWY 6 ORIG...
11/26/98	NJ.	TETERBORO	TETERBORO	FDC 8/8264	NDB OR GPS RWY 6 AMDT 17B...

[FR Doc. 99–2504 Filed 2–2–99; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23670; IS–1179; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for certain amendments to the rule under the Investment Company Act that governs the custody of investment company assets outside the United States.

EFFECTIVE DATES: The *effective* date of the rule amendments published on May 16, 1997 (62 FR 26923) remains June 16, 1997. Effective February 1, 1999, the *compliance* date for the rule amendments, except for the amended definition of an ''eligible foreign custodian,'' is extended from February 1, 1999, to May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Mail Stop 5–6, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission is extending the compliance date for certain amendments to rule 17f–5 [17 CFR 270.17f–5] under the Investment Company Act of 1940 [15 U.S.C. 80a].

I. Discussion

The Commission adopted amendments to rule 17f–5 under the Investment Company Act in 1997 (the ''1997 Amendments'').[1] The release that adopted the 1997 Amendments provided that the amendments would become effective on June 16, 1997, and that registered management investment companies (''funds'') must bring their foreign custody arrangements into compliance with the amended rule by June 16, 1998.[2] In May 1998, in anticipation that funds and custodian banks would recommend additional amendments to the rule, the Commission extended the compliance date for certain of the 1997 Amendments to February 1, 1999.[3]

On June 30, 1998, representatives of funds and of custodian banks submitted to the Commission a joint proposal to further amend rule 17f–5.[4] The Commission's staff has studied the joint proposal and continues to gather information about related issues. The staff is preparing recommendations to the Commission on whether to propose further amendments to rule 17f–5 based on the joint proposal or other possible approaches. Additional time beyond February 1, 1999 will be necessary for the staff to complete its analysis and make its recommendations. The Commission therefore is extending until May 1, 1999 the compliance date for certain of the 1997 Amendments.[5] In the interim, a fund may continue to operate its foreign custody arrangements either under the 1997 Amendments, or under rule 17f–5 as it existed prior to the 1997 Amendments, but subject to the amended definition of eligible foreign custodian.[6]

II. Certain Findings

The Commission for good cause finds that, based on the reasons cited above, notice and solicitation of comment regarding the extension of the compliance date for certain of the 1997 Amendments is impracticable, unnecessary, and contrary to the public interest.[7] The Commission notes that the February 1, 1999 compliance date is imminent, that many funds may not be in a position to comply with the 1997 Amendments, and that a limited extension will aid the Commission in considering whether additional amendments are necessary. Fund representatives have stated that if the compliance date is not extended, some funds may have to withdraw assets from foreign custodians or sell foreign assets, which could increase costs for investors or otherwise harm investors.[8] The Commission notes that the 1997 Amendments were submitted for public notice and comment, and that any amendments that may be considered in the future will be submitted for notice and comment.

In analyzing the costs and benefits of this action, the Commission believes that the extension of the compliance date for certain of the 1997 Amendments will not impose costs on funds, but will enable funds to avoid the costs of attempting to comply with certain rule provisions that they assert may be unworkable. The Commission

[1] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) [62 FR 26923 (May 16, 1997)].

[2] *Id.* at text following n.86.

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23201 (May 21, 1998) [63 FR 29345 (May 29, 1998)].

[4] *See* Letter to Barry P. Barbash, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (June 30, 1998) (placed in File No. S7–23–95).

[5] The compliance date for the amended definition of an ''eligible foreign custodian'' was June 16, 1998. *See* Investment Company Act Release No. 23201, *supra* note 3, at n.7 and accompanying text. The extension of the compliance date for the other 1997 Amendments is effective without 30-day advance notice because the extension ''grants or recognizes an exemption or relieves a restriction.'' 5 U.S.C. 553(d)(1).

[6] *See* Investment Company Act Release No. 23201, *supra* note 3, at text preceding n.9. The fund may apply either of these alternative frameworks separately to each foreign custodian or subcustodian it uses. The fund's arrangement with a particular foreign custodian or subcustodian should comply in its entirety either with old rule 17f–5 (subject to the amended definition of eligible foreign custodian), or with the rule as amended by all of the 1997 Amendments.

[7] *See* section 553(b)(3)(B) of the Administrative Procedure Act [U.S.C. 553(b)(3)(B)] (an agency may dispense with prior notice and comment when it finds, for good cause, that notice and comment are ''impracticable, unnecessary, or contrary to the public interest'').

[8] *See* Investment Company Act Release No. 23201, *supra* note , at nn.4–6 and accompanying text.

believes that the extension will produce potential benefits by continuing to permit funds to choose between two alternative ways to comply with the rule.

Dated: January 28, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2531 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–010; Order No. 587–J]

Standards For Business Practices of Interstate Natural Gas Pipelines

Issued January 28, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing and clarification of Order No. 587–I, 63 FR 53565, with respect to the procedures pipelines must follow in maintaining parity between transactions offered on interactive Internet web sites and transactions provided using electronic file transfer.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2294

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–1283

Kay Morice, Office of Pipeline Regulation, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0507

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426. The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

Order No. 587–J; Order Granting Rehearing and Clarification

On October 29, 1998, the Interstate Natural Gas Association of America (INGAA) filed a request for clarification or rehearing of Order No. 587–I[1] with respect to the policy for achieving parity between interactive Internet web sites and electronic file transfers. The Commission grants rehearing and provides clarification as discussed below.

Background

In Order No. 587–I, the Commission, in relevant part, adopted a dual approach to communications with interstate pipelines. Shippers were given the choice of transacting business with pipelines either through an interactive Internet web site[2] or through standardized computer-to-computer file transfers. The Commission has incorporated by reference into its regulations standards governing electronic file transfers promulgated by the Gas Industry Standards Board (GISB).[3] These standards employ a format using ASC X12 electronic data interchange (EDI).[4] To ensure a level playing field for those using interactive web sites and EDI file transfers, the Commission sought to ensure that shippers could conduct the same transactions and receive the same response priority regardless of the format used.[5]

The Commission further recognized that pipelines might have a need to update and offer new services on their interactive web sites. In order to maintain equality between interactive web sites and EDI file transfers, the Commission established a process to ensure that, whenever feasible, newly-developed transactions available on interactive web sites will also be available through EDI file transfers:

> when pipelines are developing new services for their interactive web sites, they must also consider the method for implementing the business practice using EDI and, in compliance with standard 1.2.2, provide advance notice of their proposed EDI solution to GISB for review. Before initiating the new service, pipelines should file under section 4 of the NGA at least 30 days prior to the proposed implementation date detailing the efforts they have made to develop a standardized file transfer. If the pipeline has complied with the requirement to provide GISB with advance notice of their proposed EDI solution, it would be permitted to implement its new service on schedule. This approach should not inhibit development of new interactive solutions while at the same time helping to ensure that those using file transfers are not denied a

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 (Sep. 29, 1998).

[2] Interactive web sites permit shippers to view information on-line and transmit information to the pipelines by filling in on-line forms.

[3] GISB is a private, not-for-profit standards organization with membership drawn from all segments of the natural gas industry, including pipelines, local distribution companies, producers, end-users, and service providers (including gas marketers). Its standards must be approved by a consensus of the industry segments.

[4] Standards for EDI are promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12.

[5] Order No. 587–I, 63 FR at 53571, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,740.

reasonable opportunity to obtain the same service.[6]

INGAA contends the Commission has established a new procedural requirement for pipeline filings and seeks clarification of the advance notice requirement. INGAA maintains that the Commission introduced this new procedure without seeking industry comment. It further argues that the new procedure is unworkable because it may require pipelines to provide special notice to GISB prior to making a filing under section 4 of the Natural Gas Act (NGA). INGAA maintains that providing advance notice only to some customers could be discriminatory. INGAA requests clarification that pipelines should provide notice to GISB within a reasonable time after they file a notice of a new service with the Commission under section 4 of the NGA. In the alternative, INGAA requests rehearing of the advance notice requirement.

Discussion

In Order No. 587-I, the Commission's goal was to provide shippers with the ability to choose the communication methodology that best fits their business needs. The Commission, therefore, required pipelines to permit shippers to conduct transactions either through on-line transactions via the pipelines' proprietary interactive web site or by using computer-to-computer standardized EDI file transfers. To ensure that both types of shippers are treated without discrimination, the Commission required that all transactions conducted on the pipelines' interactive web site must, whenever feasible, also be available through EDI file transfers. As described in Order No. 587-I, the Commission and GISB already have started a process to ensure that all current transactions that are conducted on pipeline web sites can be accomplished, when feasible, through interactive file transfers.[7]

But that leaves the procedure to be followed when pipelines, in the future, develop new electronic transactions to be conducted on their interactive web sites. The Commission's policy, as articulated in Order No. 587-I, is that whenever pipelines begin to develop new interactive transactions, they must at the same time develop a method by which the transactions can be accomplished using EDI file transfer so that shippers using EDI are given a comparable opportunity to accomplish the transactions electronically. Moreover, in order to ensure consistency in the standardized EDI file transfers, pipelines must keep GISB informed of the pipelines' proposed EDI solutions during the course of development, so that GISB can review the pipelines' proposed approaches to ensure that they are consistent with GISB's standards.

In Order No. 587–I, the Commission stated that the pipelines should file, pursuant to section 4 of the Natural Gas Act, whenever they propose to implement a new electronic transaction. Upon reconsideration, however, the Commission has determined that it is not necessary for pipelines to make a section 4 filing to effectuate the Commission's policy. Instead, pipelines must post on their interactive web sites a notice of the new transaction along with the method of accomplishing that transaction using EDI file transfer. Pipelines also must make an informational filing with the Commission when they implement the new transaction and should, in that filing, detail the efforts they have made to develop an acceptable EDI file transfer capability, including the amount of advance notice they have provided to GISB of the file transfer capability they have proposed.

The Commission can use this informational filing to monitor the pipelines' compliance with Commission policy to determine whether the policy is working or whether further Commission action is necessary. In addition, shippers who are unable to use, or are having difficulty with, pipeline EDI file transfers can make use of the Commission's Enforcement Hotline or the complaint process to bring these to the Commission's attention.

In its rehearing request, INGAA contends that providing GISB with notice of a pipeline's electronic transactions before the pipeline makes its section 4 filing is improper because it would prematurely disclose to certain parties the contents of the section 4 filing. Since the Commission is no longer requiring pipelines to make section 4 filings to implement new electronic transactions, INGAA's concern about premature disclosure of a pipeline's section 4 filing is no longer material.

INGAA further contends that GISB, not the pipelines, should be responsible for developing EDI file transfers. The Commission disagrees. Pipelines must be actively involved in developing file transfer capability and cannot leave that process solely in GISB's hands. When a pipeline is developing a new transaction for its Internet web site, it is responsible for reviewing the current file transfer datasets and determining how its proposed transaction can best be handled through EDI file transfer. The pipeline is the most familiar with its new electronic offering and, therefore, is in the best position to develop a file transfer approach to handling that transaction. The pipeline would then inform GISB of its proposed solution so that GISB can review the pipeline's approach to ensure the approach is the most effective means of integrating the transaction into the standardized datasets.[8]

The Commission Orders

Rehearing is granted and clarification is provided as discussed in the body of the order.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2528 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–P

[6] Order No. 587–I, 63 FR at 53571, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,740.

[7] Order No. 587–I, 63 FR at 53570–71, III FERC Stats. & Regs. Regulations Preambles ¶ 31,067 at 30,738, 30,740.

[8] This is similar to the process under GISB standard 1.2.2, where the pipeline and a shipper mutually agreed to datasets which they then submit to GISB for review and implementation. 18 CFR 284.10(b)(1)(i), Nominations Related Standards 1.2.2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs for Use in Animal Feeds; Monensin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health, Division of Eli Lilly & Co. The supplemental NADA provides for use of monensin Type A medicated articles to make Type B and C medicated cattle feeds to be fed at 0.14 to 0.42 milligram per pound (mg/lb) of body weight per day, to revise feeding directions, to provide added uses for monensin Type C medicated feeds for prevention and control of coccidiosis, and to amend the residue tolerances for monensin residues.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Estella Z. Jones, Center for Veterinary Medicine (HFV–135), Food and Drug

Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7575.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed supplemental NADA 95–735 that provides for using Rumensin® (20, 30, 45, 60, 80, and 90.7 grams per pound (g/lb) monensin sodium) Type A medicated articles to make monensin Type B and C medicated cattle feeds. The monensin Type B and C medicated feeds are fed to cattle at 0.14 to 0.42 mg/lb of body weight per day, for feedlot cattle at a maximum of 360 mg/head/day for prevention and control of coccidiosis, for pasture cattle at 50 to 200 mg/head/day for increased rate of weight gain, for mature reproducing beef cattle at 50 to 200 mg/head/day for improved feed efficiency, and for nonveal calves at 50 to 200 mg/head/day for prevention and control of coccidiosis. The supplemental NADA is approved as of December 16, 1998, and the regulations are amended in 21 CFR 558.355(d)(7)(ii), (f)(3)(iii), (f)(3)(vi), and (f)(3)(vii), and by adding (f)(3)(xi), to reflect the approval.

In addition, an acceptable daily intake (ADI) for residues of monensin in edible tissues of cattle has not been previously established, therefore, 21 CFR 556.420 is amended to provide an ADI for monensin residues.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under 21 U.S.C. 360b(c)(2)(F)(iii), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning December 16, 1998, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, for food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies only to use for prevention and control of coccidiosis in pasture cattle, mature reproducing beef cows, and nonveal calves.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.420 is revised to read as follows:

§ 556.420 Monensin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of monensin is 12.5 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Cattle and goats.* A tolerance of 0.05 part per million is established for negligible residues of monensin in edible tissues of cattle and goats.

(2) *Chickens, turkeys, and quail.* A tolerance for residues of monensin in chickens, turkeys, and quail is not needed.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

4. Section 558.355 is amended by revising paragraphs (d)(7)(ii), (f)(3)(iii)(*a*) and (f)(3)(iii)(*b*), (f)(3)(vi)(*a*) and (f)(3)(vi)(*b*), (f)(3)(vii)(*a*) and (f)(3)(vii)(*b*), and by adding paragraph (f)(3)(xi) to read as follows:

§ 558.355 Monensin.

* * * * *

(d) * * *

(7) * * *

(ii) Feeding undiluted or mixing errors resulting in high concentrations of monensin has been fatal to cattle.

* * * * *

(f) * * *

(3) * * *

(iii) * * *

(*a*) *Indications for use.* For increased rate of weight gain; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii.*

(*b*) *Limitations.* Feed to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers). For increased rate of weight gain, feed at a rate of 50 to 200 milligrams monensin per head per day in not less than 1 pound of feed or, after the 5th day, feed at a rate of 400 milligrams per head per day every other day in not less than 2 pounds of feed. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending on severity of challenge, up to 200 milligrams per head per day. During first 5 days of feeding, cattle should receive no more than 100 milligrams per day in not less than 1 pound of feed.

* * * * *

(vi) * * *

(*a*) *Indications for use.* For improved feed efficiency; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii.*

(*b*) *Limitations.* Feed to mature reproducing beef cows. Feed as supplemental feed, either hand-fed in a minimum of 1 pound of feed or mixed in a total ration. For improved feed efficiency, feed continuously at a rate of 50 to 200 milligrams monensin per head per day. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending upon severity of challenge, up to a maximum of 200 milligrams per head per day. During first 5 days of feeding, cattle should receive no more than 100 milligrams per head per day.

(vii) * * *

(*a*) *Indications for use.* For improved feed efficiency; for prevention and control of coccidiosis due to *E. bovis* and *E. zuernii.*

(*b*) *Limitations.* For feedlot cattle, feed continuously to provide 50 to 360 milligrams monensin per head per day. For prevention and control of coccidiosis, feed at a rate of 0.14 to 0.42 milligram per pound of body weight per day, depending upon the severity of challenge, up to maximum of 360 milligrams per head per day.

* * * * *

(xi) *Amount per ton.* Monensin, 10 to 200 grams.

(*a*) *Indications for use.* For prevention and control of coccidiosis due to *E. bovis* and *E. zuernii.*

(*b*) *Limitations.* For calves excluding veal calves. Feed at a rate of 0.14 to 1.0

milligram monensin per pound of body weight per day, depending upon the severity of challenge, up to maximum of 200 milligrams per head per day.

* * * * *

Dated: January 13, 1999.

Andrew J. Beaulieu,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–2507 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 54 and 602

[TD 8812]

RIN 1545–AI93

Continuation Coverage Requirements Applicable to Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule.

SUMMARY: The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) added health care continuation requirements that apply to group health plans. Coverage required to be provided under those requirements is referred to as COBRA continuation coverage. Proposed regulations interpreting the COBRA continuation coverage requirements were published in the **Federal Register** of June 15, 1987 and of January 7, 1998. This document contains final regulations based on these two sets of proposed regulations. The final regulations also reflect statutory amendments to the COBRA continuation coverage requirements since COBRA was enacted. A new set of proposed regulations addressing additional issues under the COBRA continuation coverage provisions is being published elsewhere in this issue of the **Federal Register.** The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: *Effective Date:* These regulations are effective February 3, 1999.

Applicability Dates: Sections 54.4980B–1 through 54.4980B–8 apply to group health plans with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. See the *Effective Date* portion of this preamble and Q&A–2 of § 54.4980B–1.

FOR FURTHER INFORMATION CONTACT: Yurlinda Mathis, 202–622–4695. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1581. Responses to these collections of information are mandatory in some cases and required in order to obtain a benefit in other cases. Group health plans are required to provide certain individuals a notice of their COBRA continuation coverage rights when certain qualifying events occur and are required to inform health care providers who contact the plan to confirm the coverage of certain individuals of the individuals' complete rights to coverage. To obtain COBRA continuation coverage or extended coverage, certain individuals are required to notify the plan administrator of certain events or that they are electing COBRA continuation coverage, and plans are required to notify certain individuals of insignificant underpayments if the plan wishes to require the individuals to pay the deficiency. This information will be used to advise employers and plan administrators of their obligation to offer COBRA continuation coverage, or an extended period of such coverage; to advise qualified beneficiaries of their right to elect COBRA continuation coverage and of insignificant errors in payment; and to inform health care providers of individuals' rights to COBRA continuation coverage.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated average annual burden per respondent varies from 30 seconds to 330 hours, depending on individual circumstances, with an estimated average of 14 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to these collections of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On June 15, 1987, proposed regulations (EE–143–86) relating to continuation coverage requirements applicable to group health plans were published in the **Federal Register** (52 FR 22716). A public hearing was held on November 4, 1987. Written comments were also received. A supplemental set of proposed regulations (REG–209485–86) was published in the **Federal Register** of January 7, 1998 (63 FR 708). No public hearing was requested or held after the publication of the supplemental proposed regulations; written comments were received. After consideration of these comments, after review of the reported court decisions under the parallel COBRA continuation coverage provisions of the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act, and based on the experience of the IRS in administering the COBRA continuation coverage requirements, a portion of the regulations proposed by EE–143–86 and REG–209485–86 is adopted as revised by this Treasury decision. The revisions are summarized in the explanation below. Also being published elsewhere in this issue of the **Federal Register** is a new set of proposed regulations, which addresses additional issues.

Explanation of Provisions

Overview

The regulations are intended to provide clear, administrable rules regarding COBRA continuation coverage. The regulations give comprehensive guidance on many questions under COBRA, with a view to enhancing the certainty and reliance available to all parties—including employees, qualified beneficiaries, employers, employee organizations, and group health plans—in determining their COBRA rights and obligations. The guidance is designed to further the protective purposes of COBRA without undue administrative burdens or costs on employers, employee organizations, or group health plans.

For example, the regulations:

- Prevent group health plans from terminating COBRA continuation coverage on the basis of other coverage that a qualified beneficiary had prior to electing COBRA continuation coverage, in accordance with the Supreme Court's

decision in *Geissal* v. *Moore Medical Corp*.

- Give employers and employee organizations significant flexibility in determining, for purposes of COBRA, the number of group health plans they maintain. This will reduce burdens on employers and employee organizations by permitting them to structure their group health plans in an efficient and cost-effective manner and to satisfy their COBRA obligations based upon that structure.
- Provide baseline rules for determining the COBRA liabilities of buyers and sellers of corporate stock and corporate assets and permit buyers and sellers to reallocate and carry out those liabilities by agreement. This will significantly enhance employers' ability to negotiate and to plan appropriately for the treatment of qualified beneficiaries in connection with mergers and acquisitions, while protecting the rights of qualified beneficiaries affected by the transactions.
- Limit the application of COBRA for most health flexible spending arrangements. This will ensure that COBRA continuation coverage under health flexible spending arrangements is available in appropriate cases without requiring continuation coverage where that would not serve the statutory purposes.
- Eliminate the requirement that group health plans offer qualified beneficiaries the option to elect only core (health) coverage under a group health plan that otherwise provides both core and noncore (vision and dental) coverage.
- Give employers, in determining whether the small-employer plan exception applies, the option of counting by pay period rather than by every business day, and provide, for that exception, for the consistent treatment of part-time employees through the use of full-time equivalents.

The COBRA continuation coverage requirements enacted on April 7, 1986 have been amended by the Omnibus Budget Reconciliation Act of 1986 (OBRA 1986), the Tax Reform Act of 1986 (TRA 1986), the Technical and Miscellaneous Revenue Act of 1988 (TAMRA), the Omnibus Budget Reconciliation Act of 1989 (OBRA 1989), the Omnibus Budget Reconciliation Act of 1990 (OBRA 1990), the Small Business Job Protection Act of 1996 (SBJPA), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA).[1] These amendments made numerous clarifications and modifications to the COBRA continuation coverage requirements, moved the requirements from section 162(k) to section 4980B, added various other features, such as the disability extension to the required period of coverage, and significantly altered the sanctions imposed on employers and plans for failing to comply with the requirements. The specific changes made by these amendments are discussed below in connection with the provisions of the regulations that relate to them.

The legislative history of COBRA provides that the Department of the Treasury has the authority to interpret the coverage and tax sanction provisions of COBRA and that the Department of Labor has the authority to interpret the reporting and disclosure provisions. Accordingly, these regulations apply in interpreting the coverage provisions of COBRA in Title I of ERISA, as well as those in the Internal Revenue Code. With minor exceptions, the final regulations and the new proposed regulations being published today do not address the notice provisions of the COBRA continuation coverage requirements.

Organization

The final regulations being published today follow the structure of the 1987 proposed regulations, with related questions-and-answers grouped into topics. Each topic is now in a separate section, and sections have been added to the new proposed regulations being published today for (1) business reorganizations and employer withdrawals from multiemployer plans and (2) the interaction of the Family and Medical Leave Act of 1993 (FMLA) and COBRA. The substance of the 1998 proposed regulations has been integrated into the questions-and-answers of the 1987 proposed regulations. The ordering of some of the questions-and-answers has changed, and all of the questions-and-answers relating to the original statutory effective date have been deleted. In addition, in a few cases, the content of two separate questions-and-answers in the 1987 proposed regulations has been combined into a single question-and-answer; in other cases the content of a single question-and-answer has been expanded to two or more questions-and-answers. These changes have resulted in the renumbering of the questions-and-answers. The new proposed regulations being published today are designed to fill gaps designated in the final regulations as reserved.

Effective Date

The 1987 proposed regulations provide that they will be effective upon publication as final regulations. Some commenters suggested that the final regulations should have a delayed effective date. The final regulations follow this suggestion; they apply with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. For any period before the effective date of the final regulations, the plan and the employer must operate in good faith compliance with a reasonable interpretation of the requirements in section 4980B. For the period before the effective date of the final regulations, the IRS will consider compliance with the proposed regulations in § 1.162–26 (the 1987 proposed regulations) and § 54.4980B–1 (the 1998 proposed regulations) to constitute good faith compliance with a reasonable interpretation of the statutory requirements for the topics that those proposed regulations address, except to the extent inconsistent with a statutory amendment adopted after the dates the proposed regulations were issued, during the period the amendment is effective, or with a decision of the United States Supreme Court released after the proposed regulations were issued, during the period after the decision is released. For any period beginning on or after the effective date of the final regulations with respect to topics not addressed in the final regulations, such as how to calculate the applicable premium, the plan and the employer must operate in good faith compliance with a reasonable interpretation of the requirements in section 4980B.

Compliance with the new proposed regulations will constitute good faith compliance with a reasonable interpretation of the statutory requirements addressed in the new proposed regulations until the new proposed regulations are finalized. In addition, actions inconsistent with the terms of the new proposed regulations will not necessarily constitute a lack of good faith compliance with a reasonable interpretation of the statutory requirements addressed in the new proposed regulations; whether there has been good faith compliance with a reasonable interpretation of the statutory requirements will depend on

[1] The COBRA continuation coverage requirements have also been affected by an amendment made to the definition of group health plan by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993). OBRA 1993 amended the definition of group health plan in section 5000(b)(1), which the COBRA continuation coverage provisions of the International Revenue Code incorporate by reference.

all the facts and circumstances of each case.

The IRS will not assess the excise tax with respect to a plan that operates in good faith compliance with a reasonable interpretation of the statutory requirements, as described in the preceding two paragraphs. Note, however, that in the case of lawsuits brought by qualified beneficiaries to enforce their COBRA continuation coverage rights under ERISA or the Public Health Service Act, the courts generally have not applied any good faith compliance standard.

Plans That Must Comply

The final regulations provide rules regarding which group health plans are subject to COBRA. These rules are generally similar to those set forth in the 1987 proposed regulations. However, the rules for determining, for purposes of the COBRA continuation coverage requirements, the number of group health plans maintained by an employer have been deleted, and the new proposed regulations set forth substantially different rules, which provide that employers and employee organizations generally have broad discretion to determine the number of group health plans that they maintain. Other significant changes to the 1987 proposed regulations on this point (some of which are set forth in the 1998 proposed regulations) include exceptions for long-term care services and medical savings accounts and new rules regarding the small-employer plan exception.

As in the 1987 proposed regulations, the final regulations provide that, in general, all group health plans are subject to the COBRA continuation coverage requirements. However, small-employer plans (discussed below), church plans (within the meaning of section 414(e)), and governmental plans (within the meaning of section 414(d)) are not subject to COBRA. (The final regulations refer to these as plans excepted from COBRA.) Plans excepted from COBRA are generally not subject to the COBRA continuation coverage requirements or the COBRA excise tax, although group health plans maintained by state or local governments are subject to parallel continuation coverage requirements in the Public Health Service Act (which is administered by the Department of Health and Human Services). Also, the Federal Employees Health Benefit Program is subject to generally similar, although not parallel, temporary continuation of coverage provisions under the Federal Employees Health Benefits Amendments Act of 1988.

The final regulations define *group health plan* in a manner generally similar to that in the 1987 proposed regulations. However, certain changes in terminology have been made to reflect the statutory cross-reference to section 5000(b)(1) set forth in section 4980B(g)(2) (such as the use of the term *health care* and the definition of *employee*). Additionally, the final regulations, in accordance with section 4980B(g)(2), provide that a plan is not a group health plan if substantially all the coverage provided under the plan is for qualified long-term care services (as defined in section 7702B(c)). The final regulations allow plans to use any reasonable method in determining whether a plan satisfies this exception. The final regulations also provide, in accordance with section 106(b)(5), that amounts contributed by an employer to a medical savings account (as defined in section 220(d)) are not considered part of a group health plan for purposes of COBRA (although a high-deductible health plan will not fail to be a group health plan simply because it covers a holder of a medical savings account).

Under the final regulations, a *group health plan* is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to the families of such individuals. In accordance with section 5000(b)(1), these individuals include employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship. The final regulations generally refer to all individuals covered under a plan by virtue of the performance of services or by virtue of membership in an employee organization as employees. (As discussed below, the term *employee* has a narrower meaning for purposes of the small-employer plan exception.) The final regulations use the term *employer* to refer to a person for whom an individual performs services. Pursuant to section 414(t), the term *employer* also includes, with respect to such a person, any member of a group described in section 414(b), (c), (m), or (o) that includes the person (a controlled group) as well as any successor of the person or of a member of the controlled group.

Under the final regulations, as under the 1987 proposed regulations, a plan generally is considered to provide health care whether it does so directly or through insurance, reimbursement, or other means and whether it does so through an on-site facility or a cafeteria or other flexible benefit arrangement. Insurance includes group insurance policies and one or more individual policies under an arrangement maintained by the employer or employee organization to provide health care to two or more employees. Under the final regulations, as under the 1987 proposed regulations, in the case of a cafeteria plan or other flexible benefit arrangement, the COBRA continuation coverage requirements apply only to the health care benefits under the cafeteria plan or other flexible benefit arrangement that an employee has actually chosen to receive.

Many commenters on the 1987 proposed regulations requested clarification of the application of COBRA to health care benefits provided under flexible spending arrangements (health FSAs). Some commentators argued that health FSAs should not be subject to COBRA. Health FSAs satisfy the definition of group health plan in section 5000(b)(1) and, accordingly, are generally subject to the COBRA continuation coverage requirements. However, COBRA is intended to ensure that a qualified beneficiary has guaranteed access to coverage under a group health plan and that the cost of that coverage is no greater than 102 percent of the applicable premium.

The IRS and Treasury believe that the purposes of COBRA are not furthered by requiring an employer to offer COBRA for a plan year if the amount that the employer could require to be paid for the COBRA coverage for the plan year would exceed the maximum benefit that the qualified beneficiary could receive under the FSA for that plan year and if the qualified beneficiary could not avoid a break in coverage, for purposes of the HIPAA portability provisions,[2] by electing COBRA coverage under the FSA. Accordingly, the new proposed regulations contain a rule limiting the application of the COBRA continuation coverage requirements in the case of health FSAs.

Under this rule, if the health FSA satisfies two conditions, the health FSA need not make COBRA continuation coverage available to a qualified beneficiary for any plan year after the plan year in which the qualifying event occurs. The first condition that the health FSA must satisfy for this exception to apply is that the health FSA is not subject to the HIPAA portability provisions in sections 9801

[2] Under HIPAA, a qualified beneficiary who maintains coverage after termination of employment under a group health plan that is subject to HIPAA can avoid a break in coverage and thereby avoid becoming subject to a preexisting condition exclusion upon later becoming covered by another group health plan.

though 9833 because the benefits provided under the health FSA are excepted benefits. (See sections 9831 and 9832.)[3] The second condition is that, in the plan year in which the qualifying event of a qualified beneficiary occurs, the maximum amount that the health FSA could require to be paid for a full plan year of COBRA continuation coverage equals or exceeds the maximum benefit available under the health FSA for the year. It is contemplated that this second condition will be satisfied in most cases.

Moreover, if a third condition is satisfied, the health FSA need not make COBRA continuation coverage available with respect to a qualified beneficiary at all. This third condition is satisfied if, as of the date of the qualifying event, the maximum benefit available to the qualified beneficiary under the health FSA for the remainder of the plan year is not more than the maximum amount that the plan could require as payment for the remainder of that year to maintain coverage under the health FSA.

A plan is maintained by an employer or employee organization even if the employer or employee organization does not directly or indirectly contribute to it if coverage under the plan would not be available to an individual at the same cost if the individual did not have an employment-related connection to the employer or employee organization. The final regulations, for purposes of the definition of a group health plan, use the term *health care* instead of the term *medical care* (which was used in the 1987 proposed regulations). This change reflects the change in the definition of group health plan made by OBRA 1989. However, the final regulations provide that *health care* has the same meaning as the term *medical care* under section 213(d). Like the 1987 proposed regulations, the final regulations set forth a summary of items that do and do not constitute health care.

The final regulations, generally following the 1987 proposed regulations, set forth rules for determining whether a group health plan is a small-employer plan. In general, a group health plan other than a multiemployer plan is a small-employer plan if it is maintained for a calendar year by an employer that normally employed fewer than 20 employees during the preceding calendar year, and a group health plan that is a multiemployer plan is a small-employer plan if each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. Whether the plan is a multiemployer plan or not, the term *employer* includes all members of a controlled group. An example in the final regulations clarifies that the controlled group includes foreign members, and thus a U.S. subsidiary with fewer than 20 employees is subject to COBRA if the controlled group has 20 or more employees world-wide. The final regulations set forth additional rules for the application of the small-employer plan exception to multiemployer plans, and the new proposed regulations contain the same definition of multiemployer plan that is in section 414(f).

Under the final regulations, an employer is considered to have normally employed fewer than 20 employees during a particular calendar year if it had fewer than 20 employees on at least 50 percent of its typical business days during that year. This rule differs from the rule in the 1987 proposed regulations in two ways. First, the 1987 proposed regulations use the term *working days*, whereas the final regulations use the statutory term *typical business days*.

The second difference relates to the term *employee*. Under the 1987 proposed regulations, self-employed individuals and independent contractors are counted as employees for purposes of the small-employer plan exception if they are covered under a plan of the employer. Commenters argued that only common law employees should be counted for this purpose. Unlike the definition of *covered employee* (amended by OBRA 1989 to make clear that individuals who are not common law employees but who are covered under the group health plan of an employer or employee organization by virtue of the performance of services are still considered covered employees) and the definition of *group health plan* (amended by OBRA 1993 to make clear that a health plan covering individuals who are not common law employees of the employer or employee organization, and who are not family members of common law employees, is still a group health plan) the reference to employees for purposes of the small-employer plan exception have not been amended to include individuals who are not common law employees. Consequently, under the final regulations, only common law employees are taken into account for purposes of the small-employer plan exception; self-employed individuals, independent contractors, and directors are not counted.

Although a small-employer plan is generally excepted from COBRA, a plan that is not a small-employer plan for a period remains subject to COBRA for qualifying events that occurred during that period, even if it subsequently becomes a small-employer plan.

In determining whether a plan is eligible for the small-employer plan exception, part-time employees, as well as full-time employees, must be taken into account. Several commenters on the 1987 proposed regulations requested clarification of how to count part-time employees for the small-employer plan exception, and the new proposed regulations provide guidance on this issue. Under the new proposed regulations, instead of each part-time employee counting as a full employee, each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee works for the employer divided by the number of hours that an employee must work in order to be considered a full-time employee. The number of hours that must be worked to be considered a full-time employee is determined in a manner consistent with the employer's general employment practices, although for this purpose not more than eight hours a day or 40 hours a week may be used. An employer may count employees for each typical business day or may count employees for a pay period and attribute the total number of employees for that pay period to each typical business day that falls within the pay period. The employer must use the same method for all employees and for the entire year for which the small-employer plan determination is made.

In determining whether a multiemployer plan satisfies the requirements for the small-employer plan exception, the 1987 proposed regulations provide a special rule permitting the multiemployer plan to be considered a small-employer plan for a year if any contributing employer that grew to be too large to qualify for the exception during the preceding year ceases to contribute to the plan by February 1 of the current year. Questions have been raised about the need for and the authority for this special rule, and one commenter pointed out the uncertainty of how to

[3] The IRS and Treasury, together with the U.S. Department of Labor and the U.S. Department of Health and Human Services, have issued a notice (62 FR 67688) holding that a health FSA is exempt from HIPAA because the benefits provided under it are excepted benefits under sections 9831 and 9832 if the employer also provides another group health plan, the benefits under the other plan are not limited to excepted benefits, and the maximum reimbursement under the health FSA is not greater than two times the employee's salary reduction election (or if greater, the employee's salary reduction election plus five hundred dollars.)

deal with a qualified beneficiary experiencing a qualifying event under such a plan in January of the current year if the qualified beneficiary needed confirmation of coverage for urgent services before it was clear that the too-large employer would cease contributing to the multiemployer plan by February 1. Based on these concerns, the final regulations eliminate this special rule for multiemployer plans.

The new proposed regulations provide guidance, for purposes of the COBRA continuation coverage requirements, on how to determine the number of group health plans that an employer or employee organization maintains. Under these rules, the employer or employee organization is generally permitted to establish the separate identity and number of group health plans under which it provides health care benefits to employees. Thus, if an employer or employee organization provides a variety of health care benefits to employees, it generally may aggregate the benefits into a single group health plan or disaggregate benefits into separate group health plans. The status of health care benefits as part of a single group health plan or as separate plans is determined by reference to the instruments governing those arrangements. If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits (other than those for qualified long-term care services) provided by a single entity (determined without regard to the controlled group) constitute a single group health plan.

Under the new proposed regulations, a multiemployer plan and a plan other than a multiemployer plan are always separate plans. In addition, any treatment of health care benefits as constituting separate group health plans will be disregarded if a principal purpose of the treatment is to evade any requirement of law. Of course, an employer's flexibility to treat benefits as part of separate plans may be limited by the operation of other laws, such as the prohibition in section 9802 on conditioning eligibility to enroll in a group health plan on the basis of any health factor of an individual.

The final regulations modify the rules set forth in the 1987 proposed regulations for determining the plan year of a group health plan under COBRA. These modifications are made to be consistent with the rules in the temporary regulations under HIPAA. The definition of plan year is important in applying, for example, the effective date provisions under the final regulations and the rules for health FSAs under the new proposed regulations. Under the final regulations, the plan year is the year designated as such in the plan documents. If the plan documents do not designate a plan year (or if there are no plan documents), the plan year is the deductible/limit year used by the plan. If the plan does not impose deductibles or limits on an annual basis, the plan year is the policy year. If the plan does not impose deductibles or limits on an annual basis and the plan is not insured (or the insurance policy is not renewed annually), the plan year is the taxable year of the employer. In any other case, the plan year is the calendar year.

The final regulations reflect the statutory provisions that provide for the imposition of an excise tax in the event of a failure by a group health plan to comply with the COBRA continuation coverage requirements of section 4980B(f). In the case of a multiemployer plan, the excise tax is imposed on the plan;[4] in the case of any other plan, the excise tax is imposed on the employer maintaining the plan. In certain circumstances, the excise tax can be imposed on other persons involved with the provision of benefits under the plan, such as an insurer providing benefits under the plan or a third party administrator administering claims under the plan. Separate, non-tax remedies may be available in the case of a plan that fails to comply with the COBRA continuation coverage requirements in ERISA.

Qualified Beneficiaries

The rules in the final regulations for determining who is a qualified beneficiary generally follow those set forth in the 1987 proposed regulations, as well as those set forth in the 1998 proposed regulations regarding the status of newborn and adopted children as qualified beneficiaries. However, certain provisions have been added to the final regulations to reflect the special statutory rules that apply in the case of bankruptcy of the employer as a qualifying event. Modifications have also been made to reflect the decision of the Supreme Court in *Geissal* v. *Moore Medical Corp.*, 118 S. Ct. 1869 (1998), which held that an individual covered under another group health plan at the time she or he elects COBRA continuation coverage cannot be denied COBRA continuation coverage on the basis of that other coverage.

Under the final regulations, a qualified beneficiary is, in general: (1) any individual who, on the day before a qualifying event, is covered under a group health plan either as a covered employee, the spouse of a covered employee, or the dependent child of a covered employee; or (2) any child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage. (The final regulations retain the definitions of the terms *placement for adoption* and *being placed for adoption* that were in the 1998 proposed regulations.) For a qualifying event that is the bankruptcy of the employer, any covered employee who retired on or before the date of any substantial elimination of group health plan coverage is a qualified beneficiary; the spouse, surviving spouse, or dependent child of the retired covered employee is also a qualified beneficiary if the spouse, surviving spouse, or dependent child was a beneficiary under the plan on the day before the bankruptcy qualifying event. The final regulations add a provision clarifying that if an individual is denied coverage under a group health plan in violation of applicable law (including HIPAA) and experiences an event that would be a qualifying event if the coverage had not been wrongfully denied, the individual is considered a qualified beneficiary.

A covered employee can be a qualified beneficiary only in connection with a qualifying event that is the termination (or reduction of hours) of the covered employee's employment or the employer's bankruptcy. As under the 1987 proposed regulations, the final regulations provide that a covered employee is not a qualified beneficiary if her or his status as a covered employee is attributable to certain periods in which she or he was a nonresident alien (in which case the covered employee's spouse and dependent children are also not qualified beneficiaries). Although a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is a qualified beneficiary, a child born to or placed for adoption with a qualified beneficiary other than the covered employee after a qualifying event, or a person who becomes the spouse of a qualified beneficiary (regardless of whether the qualified beneficiary is the covered employee) after a qualifying event is not a qualified

[4] In this regard, the U.S. Department of labor has advised the IRS and Treasury that to the extent a plan fiduciary subjects a plan to liability for the COBRA excise tax on account of her or his imprudent actions, the plan fiduciary may be held personally liable under Title I of ERISA for the amount of the tax.

beneficiary. The final regulations retain the rule of the 1987 proposed regulations under which an individual is not a qualified beneficiary if, on the day before the qualifying event, the individual is covered under the group health plan solely because of another individual's election of COBRA continuation coverage. However, consistent with *Geissal*, the final regulations eliminate the rule in the 1987 proposed regulations that an individual is not a qualified beneficiary if, on the day before the qualifying event, the individual was entitled to Medicare benefits.

An individual ceases to be a qualified beneficiary if she or he does not elect COBRA continuation coverage by the end of the election period (discussed below). The final regulations clarify that an individual who elects COBRA continuation coverage ceases to be a qualified beneficiary once the plan's obligation to provide COBRA continuation coverage has ended.

The term *covered employee* is defined in the final regulations in a manner substantially the same as in the 1987 proposed regulations. Although some commenters on the 1987 proposed regulations objected to the inclusion in this definition of individuals other than common law employees, the statutory definition was amended by OBRA 1989 to include such individuals.

Under the final regulations, a covered employee generally includes any individual who is or has been provided coverage under a group health plan (other than one excepted from COBRA as of the date of what would otherwise be a qualifying event) because of her or his present or past performance of services for the employer maintaining the group health plan (or by reason of membership in the employee organization maintaining the plan). Thus, retirees and former employees covered by a group health plan are covered employees if the coverage is provided in whole or in part because of the previous employment. Any individual who performs services for the employer maintaining the plan or who is a member of the employee organization maintaining the plan may be a covered employee. Thus, common law employees, self-employed individuals, independent contractors, and corporate directors can be covered employees. Generally, mere eligibility for coverage—as opposed to actual coverage—does not make an individual a covered employee. However, if an individual who otherwise would be a covered employee is denied coverage under a group health plan in violation of applicable law (including HIPAA), the individual is considered a covered employee.

Qualifying Events

The rules regarding qualifying events under the final regulations generally are the same as those in the 1987 proposed regulations. Under the final regulations, a qualifying event is any of a set of specified events that occurs while a group health plan is subject to COBRA and that causes a covered employee (or the spouse or dependent child of the covered employee) to lose coverage under the plan. These specified events are: the death of a covered employee; the termination (other than by reason of gross misconduct), or reduction of hours, of a covered employee's employment; the divorce or legal separation of a covered employee from the covered employee's spouse; a covered employee's becoming entitled to Medicare benefits under Title XVIII of the Social Security Act; a dependent child's ceasing to be a dependent child of the covered employee under the plan; and a proceeding in bankruptcy under Title 11 of the United States Code with respect to an employer from whose employment a covered employee retired at any time. The addition of employer bankruptcy as a qualifying event reflects the amendments made to COBRA by OBRA 1986.

The reasons for which an employee has a termination of employment or a reduction of hours of employment generally are not relevant in determining whether the termination or reduction of hours is a qualifying event. Thus, a voluntary termination, a strike, a lockout, a layoff, or an involuntary discharge each may constitute a qualifying event. However, if an employee is discharged for gross misconduct, the termination of employment does not constitute a qualifying event. The final regulations clarify that a reduction of hours of a covered employee's employment includes any decrease in the number of hours that a covered employee works or is required to work that does not constitute a termination of employment. Thus, if a covered employee takes a leave of absence, is laid off, or otherwise performs no hours of work during a period, the covered employee has experienced a reduction in hours that, if the other applicable requirements are satisfied, constitutes a qualifying event. (But see Notice 94–103 (1994–2 C.B. 569) and the new proposed regulations, described below, for special rules regarding FMLA leave.) A covered employee's loss of coverage by reason of a failure to work the minimum number of hours required for coverage constitutes a reduction of hours of employment.

Under the final regulations, *to lose coverage* means to cease to be covered under the same terms and conditions as in effect immediately before the event. The final regulations clarify that a loss of coverage includes an increase in an employee premium or contribution resulting from one of the events described above. The loss of coverage need not be concurrent with the event; it is enough that the loss of coverage occur at any time before the end of the maximum coverage period (described below). For employer bankruptcies, the term *to lose coverage* also includes a substantial elimination of coverage that occurs within 12 months before or after the date on which the bankruptcy proceeding begins.

Under the final regulations, as under the 1987 proposed regulations, reductions or eliminations in coverage in anticipation of an event are disregarded in determining whether the event results in a loss of coverage. Although several commenters objected to this rule, the final regulations retain the provision in order to protect qualified beneficiaries from being deprived of their COBRA rights because an employer or employee organization transposes a loss or reduction of coverage to a time before the qualifying event. This rule also applies in cases where a covered employee discontinues the coverage of a spouse in anticipation of a divorce or legal separation. In such a case, upon receiving notice of the divorce or legal separation, a plan is required to make COBRA continuation coverage available, effective on the date of the divorce or legal separation (but not for any period before the date of the divorce or legal separation).

Under the final regulations, as under the 1987 proposed regulations, an event must occur while the group health plan is subject to COBRA in order to constitute a qualifying event. A plan that is excepted from COBRA (for example, by reason of the small-employer plan exception) and that later becomes subject to COBRA is not required to provide COBRA continuation coverage to individuals who experienced what would otherwise be a qualifying event during the period when the plan was not subject to COBRA.

Finally, in the case of a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the qualifying event that gives rise to that period of COBRA continuation coverage is the qualifying event applicable to that child. Thus, if a second qualifying event has

occurred before such a child is born (for example, if the covered employee dies), the second qualifying event also applies to the newborn child.

COBRA Continuation Coverage

The 1987 proposed regulations generally refer to the coverage that a qualified beneficiary is entitled to as the coverage that was in effect on the day before the qualifying event. While that is generally true, the final regulations have been revised to incorporate the statutory standard that a qualified beneficiary is entitled to the coverage made available to similarly situated beneficiaries with respect to whom a qualifying event has not occurred. The final regulations generally use as a shorthand for this statutory language the phrase ''similarly situated nonCOBRA beneficiaries'' instead of the phrase ''similarly situated active employees'' used in the 1987 proposed regulations. In certain contexts in the final regulations, though, the phrase ''similarly situated active employees'' is still used because in those contexts—such as the right to make an independent election for COBRA continuation coverage—qualified beneficiaries who are spouses and dependent children of covered employees are entitled to the rights that employees have (and in those contexts, spouses and dependent children who are not qualified beneficiaries typically do not have the rights that employees have).

The 1987 proposed regulations address in a separate question-and-answer the type of coverage that must be made available to qualified beneficiaries if a change is made in the coverage provided to similarly situated nonCOBRA beneficiaries. The final regulations include this rule in the question-and-answer that defines COBRA continuation coverage. In doing so, the final regulations delete several specific requirements in the 1987 proposed regulations. For example, if coverage for the similarly situated nonCOBRA beneficiaries is changed or eliminated, the 1987 proposed regulations require that qualified beneficiaries be permitted to elect coverage under any remaining plan made available to the similarly situated active employees. Many commenters objected that in the case of a mere change in benefits, the requirement to give qualified beneficiaries an election among other plans would give them greater rights than those active employees might have. The final regulations follow the suggestion of the commenters in providing that the general principle—that qualified beneficiaries have the same rights as similarly situated nonCOBRA beneficiaries—applies in this situation. The same principle also applies in determining whether credit for deductibles must be carried over from a discontinued plan to a new plan. Nevertheless, if an employer or employee organization providing more than one plan to a group of similarly situated nonCOBRA beneficiaries eliminates benefits under one plan without giving the similarly situated nonCOBRA beneficiaries the right to enroll in another plan, that option would still have to be made available to qualified beneficiaries if the employer continued to maintain a group health plan because of the employer's obligation to continue to make COBRA continuation coverage available.

The 1987 proposed regulations include detailed rules requiring that qualified beneficiaries generally be offered the option of electing only core coverage or both core and noncore coverage. These rules were based on a reference in the conference report to the Tax Reform Act of 1986. Many commenters expressed the opinion that the reference in the conference report is an insufficient basis for including this concept in the regulations when nothing in the statute itself suggests a distinction between core and noncore coverage. Commenters also contended that the core/noncore distinction would create undue administrative complexity and promote adverse selection. After careful consideration, the IRS and Treasury have decided not to include in either the final or the new proposed regulations any such requirement to offer for core coverage separately. However, comments are invited on whether such a requirement should be adopted.

The 1987 proposed regulations establish standards for determining the deductibles and limits that apply to COBRA continuation coverage in a period in which an individual or a group of family members has coverage that is not COBRA continuation coverage and then elects COBRA continuation coverage. (Of course, during a period in which an individual or group of family members had only COBRA continuation coverage, the rules for deductibles and limits would apply to them in the same manner as they would to similarly situated nonCOBRA beneficiaries.) Some commenters objected to the provisions of the 1987 proposed regulations for computing deductibles or limits on a family basis in the case of a qualifying event (such as divorce) that splits a family into two (or more) units. The 1987 proposed regulations would require that each resulting family unit be credited with all the expenses incurred by the entire family before the qualifying event. The final regulations revise this rule. Under the final regulations, in computing deductibles and limits for the family unit receiving COBRA coverage, the plan is required to take into account only those expenses incurred before the qualifying event by family members who are part of the resulting family unit after the qualifying event.

The 1987 proposed regulations provide that qualified beneficiaries moving outside the area served by a region-specific plan must be given the right to obtain other coverage from the employer maintaining the region-specific plan. The rule conditions the right to other coverage on the employer having employees in the area to which the qualified beneficiary is moving. This proposed rule unduly limits the application of the rule in the case of an employer or employee organization that could provide other coverage to the qualified beneficiary without having to establish a new plan or enter into a new group insurance contract even though the employer did not have employees or the employee organization did not have members in the area that the qualified beneficiary was moving to. This might be the case, for example, if the employer or employee organization maintained a self-insured plan or maintained an insured plan through an insurance company licensed to provide that same product in the area that the qualified beneficiary was moving to. The final regulations eliminate the condition that an employer have employees in the area to which the qualified beneficiary is moving and instead require that coverage be made available to the qualified beneficiary if the employer or employee organization would be able to provide coverage to the qualified beneficiary under one of its existing plans. Generally the coverage that must be made available is that made available to the similarly situated nonCOBRA beneficiaries. If, however, the coverage made available to the similarly situated nonCOBRA beneficiaries cannot be made available in the area that the qualified beneficiary is moving to, then the coverage that must be made available is coverage provided to other employees.

The 1987 proposed regulations require, in the case of a plan providing open enrollment rights, that open enrollment rights be extended to qualified beneficiaries if an employer maintains two or more plans. Thus, that rule, by its terms, does not require that open enrollment rights be given if an

employer maintains a single plan and allows active employees during open enrollment to switch between categories of coverage such as single and family or among categories such as employee-only, employee-plus-one-dependent, or employee-plus-two-or-more-dependents. The final regulations eliminate the condition that an employer or employee organization maintain two or more plans for a qualified beneficiary to have open enrollment rights. Thus, open enrollment rights must be extended to qualified beneficiaries in any case in which they are extended to similarly situated active employees. (Note that the open enrollment right of employees to enroll when not previously enrolled would not have to be extended to individuals who previously did not elect to receive COBRA continuation coverage because an individual ceases to be a qualified beneficiary if COBRA continuation coverage is not elected.)

The 1987 proposed regulations require that qualified beneficiaries be given the same right to add new family members that similarly situated active employees have. Many commenters objected to this rule, arguing that it requires more than a mere continuation of coverage. However, COBRA continuation coverage is more than just a continuation of the coverage a qualified beneficiary had before the qualifying event; it includes the same procedural rights to expand or change coverage that similarly situated active employees have. Moreover, the policy behind the 1987 proposed regulations is reflected in the HIPAA amendment to COBRA creating special qualified beneficiary status for certain newborn and adopted children as well as in the HIPAA special enrollment rights in section 9801(f) for new spouses and for newborn and adopted children. Accordingly, the final regulations provide guidance on the application of the HIPAA special enrollment rights to qualified beneficiaries and retain the rule in the 1987 proposed regulations regarding the right of qualified beneficiaries to add new family members (even though not eligible for the HIPAA special enrollment rights) to the same extent that active employees are permitted to add new family members.

Electing COBRA Continuation Coverage

The final regulations set forth rules regarding elections of COBRA continuation coverage by qualified beneficiaries. In general, a group health plan is required to offer a qualified beneficiary the opportunity to elect COBRA continuation coverage at any time during the election period. The election period begins not later than the date the qualified beneficiary would lose coverage by reason of a qualifying event and ends not earlier than 60 days after the later of that date or 60 days after the date on which the qualified beneficiary is provided notice of her or his right to elect COBRA continuation coverage. For purposes of determining whether a qualified beneficiary's election of COBRA continuation coverage is timely, the election is deemed to be made on the date it is sent to the employer or plan administrator. The final regulations clarify that a qualified beneficiary need not herself or himself elect COBRA continuation coverage; that election can be made on behalf of the qualified beneficiary by a third party (including a third party that is not a qualified beneficiary).

Generally, the employer or plan administrator must determine when a qualifying event has occurred, and a qualified beneficiary is not required to give notice of the event. However, a covered employee or qualified beneficiary is required to notify the plan administrator of a qualifying event that is a divorce or legal separation of the covered employee or a dependent child's ceasing to be a dependent child under the plan terms. The 1987 proposed regulations prescribe that the notification should be given to the employer or other plan administrator. The final regulations simply require that the notice be provided to the plan administrator.

The notice must be provided within 60 days after the date of the qualifying event or the date on which the qualified beneficiary would lose coverage because of the qualifying event, whichever is later. If the notice is not provided, the group health plan is not required to make COBRA continuation coverage available to the qualified beneficiary.[5] In the case of the covered employee's divorce or legal separation, a single notice sent by or on behalf of the covered employee or any one of the qualified beneficiaries (that is, the spouse or a dependent child) satisfies the notice requirement for all those who become qualified beneficiaries as a result of the divorce or legal separation.

The group health plan must make COBRA continuation coverage available for the entire election period if the qualified beneficiary elects coverage prior to the end of the period (except in the case of a revoked waiver, as discussed below). An employer or employee organization maintaining a group health plan using an indemnity or reimbursement arrangement can satisfy this requirement by continuing the qualified beneficiary's coverage during the election period or by discontinuing the coverage until the qualified beneficiary elects COBRA and then retroactively reinstating the qualified beneficiary's coverage. Under the final regulations, as under the 1987 proposed regulations, the date of the qualifying event (and thus, the beginning of the maximum coverage period) is not delayed merely because a plan provides coverage during the election period. Claims incurred by the qualified beneficiary during the election period do not have to be paid until COBRA continuation coverage is elected and any payment required for coverage is made.

For a group health plan providing health services—including a health maintenance organization or a walk-in clinic—a qualified beneficiary who has not elected and paid for COBRA continuation coverage can be required to choose either to elect and to pay for coverage or to pay a reasonable and customary charge for plan services (but only if the qualified beneficiary will be reimbursed for that charge within 30 days after she or he elects COBRA continuation coverage and makes any payment for coverage). Alternatively, the plan can treat the qualified beneficiary's use of the plan's health services as a constructive election of COBRA continuation coverage and, if it so notifies the qualified beneficiary prior to the use of services, can require payment for COBRA continuation coverage.

The final regulations adopt the position in *Communications Workers of America* v. *NYNEX Corp.*, 898 F.2d 887 (2d Cir. 1989), regarding the responses that a group health plan must make with respect to the rights of a qualified beneficiary during that qualified beneficiary's election period. Specifically, the final regulations require that the plan make a complete response to any inquiry from a health care provider regarding the qualified beneficiary's right to coverage under the plan during the election period. Thus, if the qualified beneficiary has not yet elected COBRA continuation coverage

[5] The U.S. Department of Labor has advised the IRS and Treasury that, if a covered employee or qualified beneficiary has not been adequately informed of the obligation to provide notice in the case of a qualifying event that is the divorce or legal separation of the covered employee or that is a dependent child's ceasing to be covered under the generally applicable requirements of the plan, the covered employee's or qualified beneficiary's failure to provide timely notice to the plan administrator will not affect the plan's obligation to make continuation coverage available upon receiving notice of such event.

but remains covered under the plan during the election period (subject to retroactive cancellation if no election is made), the plan must so inform the health care provider. Conversely, if the qualified beneficiary is not covered during the election period prior to her or his election, the plan must inform the health care provider that the qualified beneficiary does not have current coverage but will have retroactive coverage if COBRA continuation coverage is elected. (The final regulations also include similar requirements with respect to inquiries made by health care providers during the 30- and 45-day grace periods for paying for COBRA continuation coverage.)

A qualified beneficiary who waives COBRA continuation coverage during the election period can revoke the waiver before the end of the election period, but the group health plan is not then required to provide coverage as of any date prior to the revocation. Although several commenters objected to the rule in the 1987 proposed regulations allowing the revocation during the election period of any previous waiver, the final regulations retain this rule. If the rule permitted irrevocable waivers, plans might induce qualified beneficiaries to execute waivers hastily before becoming fully informed of their rights and having the opportunity to carefully consider whether to elect COBRA. As with the election of COBRA continuation coverage, a waiver or a revocation of a waiver is deemed to be made on the date sent. The employer or employee organization maintaining the group health plan is not permitted to withhold money, benefits, or anything else to which the qualified beneficiary is entitled under any law or agreement in order to induce a qualified beneficiary to make payment for COBRA continuation coverage or to surrender any rights under COBRA. Any waiver of COBRA continuation coverage rights obtained through such means will be invalid. However, the general rules for coverage during the election period apply in the case of waivers and revocations of waivers. Thus, in the case of an indemnity arrangement, the plan can deny coverage for claims until payment for the coverage has been made (as can also be done with those health maintenance organizations or walk-in clinics that adopt this method for complying with the COBRA continuation coverage requirements during the election period).

A group health plan must offer each qualified beneficiary the opportunity to make an independent election to receive COBRA continuation coverage and, during an open enrollment period, to choose among any options available to similarly situated active employees. This requirement also applies to any child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage. (An election for a minor child may be made by the child's parent or legal guardian.) If a covered employee or the spouse of a covered employee elects COBRA continuation coverage and the election does not specify whether the election is for self-only coverage, the election is deemed to include an election of COBRA continuation coverage on behalf of other qualified beneficiaries with respect to that qualifying event.

Duration of COBRA Continuation Coverage

The 1987 proposed regulations incorporate the statutory bases for terminating COBRA continuation coverage except the rule (added by OBRA 1989 and amended by HIPAA) that COBRA coverage can be terminated in the month that is more than 30 days after a final determination that a qualified beneficiary is no longer disabled. The new proposed regulations add this statutory basis for terminating COBRA coverage, with two clarifications. First, the new proposed regulations clarify that a determination that a qualified beneficiary is no longer disabled allows termination of COBRA continuation coverage for all qualified beneficiaries who were entitled to the disability extension by reason of the disability of the qualified beneficiary who has been determined to no longer be disabled. Second, the new proposed regulations clarify that such a determination does not allow termination of the COBRA continuation coverage of a qualified beneficiary before the end of the maximum coverage period that would apply without regard to the disability extension.

Section 4980B(f)(2)(B)(iv) provides that a qualified beneficiary's right to COBRA continuation coverage may be terminated when the qualified beneficiary ''first becomes,'' after the date of the COBRA election, covered under another group health plan (subject to certain additional conditions) or entitled to Medicare benefits. The final regulations add two new questions-and-answers that provide guidance on this provision.

The 1987 proposed regulations substitute ''is'' for the statutory phrase ''first becomes.'' The effect of this substitution was to permit an employer to cut off a qualified beneficiary's right to COBRA continuation coverage based upon other group health plan coverage that the qualified beneficiary first became covered under before she or he elected COBRA coverage. In the case of entitlement to Medicare benefits, the 1987 proposed regulations not only shift the statutory ''becomes'' to ''is,'' they also exclude from the definition of *qualified beneficiary* anyone who is entitled to Medicare benefits on the day before the qualifying event. After careful consideration, the IRS and Treasury concluded that the better interpretation of the statute is that other group health plan coverage that a qualified beneficiary has before the COBRA election is not a basis for cutting off the qualified beneficiary's right to COBRA continuation coverage. (The same rule applies for entitlement to Medicare benefits.)

Based upon the recommendation of the IRS, the Solicitor General filed an amicus brief before the Supreme Court urging this position, which was unanimously adopted by the Supreme Court in *Geissal* v. *Moore Medical Corp.*, 118 S. Ct. 1869 (1998). The final regulations adopt the position urged by the IRS and Treasury and adopted by the Court in *Geissal.* They provide that an employer may cut off the right to COBRA continuation coverage based upon other group health plan coverage or entitlement to Medicare benefits only if the qualified beneficiary first becomes covered under the other group health plan coverage or entitled to the Medicare benefits after the date of the COBRA election.

The statutory rule allowing a plan to discontinue COBRA continuation coverage on account of coverage under another group health plan was amended by OBRA 1989 to prohibit the discontinuance if the qualified beneficiary's other coverage was subject to a preexisting condition exclusion. This amendment was further modified by HIPAA to allow discontinuance of COBRA continuation coverage if the preexisting condition exclusion does not apply or is satisfied by reason of the limitations on preexisting condition exclusions in section 9801. The final regulations reflect this amendment and clarify that coverage under another group health plan includes coverage under a governmental plan.

Many commenters asked whether mere eligibility for Medicare justifies a discontinuance of COBRA continuation coverage. In addition, many inquiries have been received that ask whether the qualified beneficiary must be entitled to both Part A and B of Medicare. The final regulations clarify that entitlement to Medicare benefits means being enrolled

in Medicare and does not mean merely being eligible to enroll in Medicare. The final regulations also clarify that being entitled to either Part A or B is sufficient for the plan to discontinue COBRA continuation coverage (assuming that the entitlement to Medicare benefits first arises after COBRA continuation coverage has been elected).

The 1987 proposed regulations allow a plan to discontinue providing COBRA continuation coverage to a qualified beneficiary for cause on the same basis that the plan could terminate for cause the coverage of a similarly situated active employee (except for payments that would be untimely if made by a nonCOBRA beneficiary but that are made within the grace periods provided by COBRA). The final regulations provide that, for example, if a plan terminates the coverage of similarly situated active employees for the submission of a fraudulent claim, then the COBRA continuation coverage of a qualified beneficiary can also be terminated for the submission of a fraudulent claim.

The 1987 proposed regulations reflect the statutory rules that were then in effect for the maximum period that a plan is required to make COBRA continuation coverage available. Since then the statute has been amended to add the disability extension, to permit plans to extend the notice period if the maximum coverage period is also extended (referred to as the optional extension of the required periods), and to add a special rule in the case of Medicare entitlement preceding a qualifying event that is the termination or reduction of hours of employment. The new proposed regulations reflect these statutory changes. The maximum coverage period for a qualifying event that is the bankruptcy of the employer has also been added to the new proposed regulations.

The 1998 proposed regulations set forth the requirements for a disability extension to apply to a qualified beneficiary. Those requirements have been incorporated into the final regulations, with one clarification. One of the conditions for a disability extension to apply is that the qualified beneficiary be disabled during the first 60 days of COBRA continuation coverage. In the case of a qualified beneficiary who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the final regulations clarify that the 60-day period is measured from the date of the child's birth or placement for adoption.

The 1987 proposed regulations set forth standards for expanding the maximum coverage period in the case of multiple qualifying events. Since 1987, the statutory rules for multiple qualifying events have been affected by the addition of the disability extension and the optional extension of required periods. The final regulations reflect the statutory changes.

In addition, the final regulations clarify that a termination of employment following a qualifying event that is a reduction of hours of employment does not expand the maximum coverage period. *Accord, Burgess* v. *Adams Tool & Engineering, Inc.*, 908 F. Supp. 473 (W.D. Mich. 1995); *contra, Gibbs* v. *Anchorage School District*, 1995 U.S. LEXIS 6290 (D. Ark. 1995). The underlying pattern in the statute is generally to require 18 months (or 29 months, in the case of a disability extension) of coverage for qualifying events that are the termination or reduction of hours of a covered employee's employment and 36 months for other qualifying events. The statutory provision for expansion of the 18-month period to 36 months upon the occurrence of a second qualifying event generally follows this pattern by allowing a qualified beneficiary who would have been entitled to 36 months of coverage if the second qualifying event had occurred first to get a total of 36 months of COBRA continuation coverage. The statute lists six categories of qualifying events, and termination of employment and reduction of hours of employment are in the same category (just as divorce and legal separation are in the same category of qualifying event). Treating a reduction of hours of employment and a termination of employment as variations of a single qualifying event rather than as two distinct qualifying events is consistent with the overall design of the statute.

The 1987 proposed regulations address situations in which, following a qualifying event, an employer provides alternative coverage, rather than COBRA continuation coverage, to a former employee and her or his spouse and dependent children. The 1987 proposed regulations provide that if the alternative coverage does not satisfy the requirements for COBRA continuation coverage, each qualified beneficiary must be given the opportunity to elect COBRA continuation coverage instead of the alternative coverage. If, however, the alternative coverage would satisfy the requirements for COBRA continuation coverage, the 1987 proposed regulations provide that, at the time of the original qualifying event, the employee, spouse, and dependent children need not be provided with the opportunity to elect COBRA continuation coverage. The final regulations generally retain these rules but also clarify that if the employer increases the employee share of premiums upon the occurrence of a qualifying event, the qualified beneficiaries must be offered the opportunity to elect COBRA continuation coverage.

The 1987 proposed regulations further provide that, if the alternative coverage does not satisfy the requirements for COBRA continuation coverage and if, after the original qualifying event, a qualifying event occurs that would cause a spouse or dependent child to lose the alternative coverage, the spouse or child must be offered COBRA continuation coverage. However, if the alternative coverage satisfies the requirements for COBRA continuation coverage, and if another qualifying event that causes the spouse or dependent child to lose the alternative coverage occurs more than 18 months after the original qualifying event, the 1987 proposed regulations provide that the spouse or dependent child need not be offered COBRA continuation coverage. The final regulations modify the 1987 proposed regulations and provide that if an event such as the death of or divorce from the covered employee would end the right of a spouse or dependent child to receive the alternative coverage (whether during or after the first 18 months of COBRA continuation coverage), then that event is a qualifying event, regardless of whether the alternative coverage would satisfy the requirements for COBRA continuation coverage.

The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) gives certain members of the military reserves the right to up to 18 months of continuation coverage when they are called to active duty. Many people have asked if the USERRA and COBRA periods of continuation coverage run concurrently or consecutively. The final regulations clarify that USERRA coverage is alternative coverage. Thus, the periods run concurrently.

The 1987 proposed regulations include the statutory rule requiring that a conversion option otherwise made available under the plan be made available within 180 days before the end of the maximum coverage period. The final regulations adopt this rule without change.

Paying for COBRA Continuation Coverage

The 1987 proposed regulations identify the qualified beneficiary as the person that can be required to pay the

applicable premium. Many plans and employers have asked whether they must accept payment on behalf of a qualified beneficiary from third parties, such as a hospital or a new employer. Nothing in the statute requires the qualified beneficiary to pay the amount required by the plan; the statute merely permits the plan to require that payment be made. In order to make clear that any person may make the required payment on behalf of a qualified beneficiary, the final regulations modify the rule in the 1987 proposed regulations to refer to the payment requirement without identifying the person who makes the payment.

The 1998 proposed regulations address the amount that a plan can require to be paid for COBRA continuation coverage during the disability extension. This amount is 150 percent of the applicable premium instead of the limit of 102 percent of the applicable premium that applies for coverage outside the disability extension. The 1998 proposed regulations specifically reserve the issue of the amount a plan could require to be paid in a case where only nondisabled family members of the disabled individual receive COBRA continuation coverage during the disability extension. The preamble to the 1998 proposed regulations solicited comments on this issue. Commenters suggested that the 150 percent rate could be required if the disabled individual was part of the coverage group but that the limit could be the 102 percent rate if only nondisabled qualified beneficiaries were in the coverage group. The final regulations adopt this suggestion.

The 1987 proposed regulations provide that the amount required to be paid for a qualified beneficiary's COBRA continuation coverage must be fixed in advance for each 12-month determination period. Many commenters suggested exceptions that could be made to this general rule. Section 4980B(f)(4)(C) explicitly requires that the determination of the applicable premium be made for a period of 12 months and that the determination be made before the beginning. Therefore, the final regulations do not permit an increase in the applicable premium during the 12-month determination period. However, the final regulations do revise the general rule from the 1987 proposed regulations to recognize the difference between the applicable premium (which may not be increased during a 12-month determination period and which is the basis for calculating the maximum amount that the plan can require to be paid for COBRA continuation coverage) and the maximum amount that the plan can require to be paid for COBRA continuation coverage. Thus, the final regulations permit a plan to increase the amount it requires to be paid for COBRA continuation coverage during a determination period to take into account the permitted increases during the disability extension, to explicitly permit a plan that is requiring payment of less than the maximum permissible amount to increase the amount required to be paid during the 12-month determination period, and to permit an increase if a qualified beneficiary changes to more expensive coverage (but also to require a reduction if the qualified beneficiary changes to less expensive coverage).

The 1987 proposed regulations set forth the statutory requirement that qualified beneficiaries be allowed to pay for COBRA coverage in monthly installments. The 1987 proposed regulations add that plans may allow payment to be made at other intervals, and specifically mention quarterly or semiannual payment as examples. The final regulations adopt the rule in the 1987 proposed regulations, but the final regulations add weekly payment as an example to make clear that shorter than monthly installments are also permitted.

The 1987 proposed regulations provide that the first payment for COBRA continuation coverage does not apply prospectively only. In order to make clear that a plan is not precluded from allowing a qualified beneficiary to apply the first payment prospectively only, the final regulations provide that qualified beneficiaries need not be given the option of having the first payment for COBRA continuation coverage apply prospectively only.

The 1987 proposed regulations address the issue of timely payment for COBRA continuation coverage, including an interpretation of the statutory grace periods of 45 days for the initial payment and 30 days for all other payments. Commenters pointed out that the application of the statutory grace period rules could produce an anomalous result in some situations, such as allowing a plan to require payment for the third month of COBRA continuation coverage earlier than the plan could require payment for the first two months. OBRA 1989 amended the 45-day grace period rule to prevent this, and the final regulations conform to the OBRA 1989 change. The final regulations also clarify that payment is considered made on the date it is sent.

The final regulations also add a requirement (similar to the one described above for the election period) relating to the response that a plan must give when a health care provider, such as a physician, a hospital, or a pharmacy, contacts the plan to confirm coverage of a qualified beneficiary with respect to whom the required payment has not been made for the current period (but for whom any applicable grace period has not expired). In such a case, the plan is required to inform the health care provider of all of the details of the qualified beneficiary's right to coverage during the applicable grace periods.

Many individuals have inquired about a plan's right to discontinue their COBRA continuation coverage because the amount of the payment made was short by an amount that is not significant. Sometimes the error has been clearly one of transposed digits on a check tendered for payment; in other instances, payment has been short by such a small amount that it would be unreasonable to attribute the shortfall to anything other than mistake. The final regulations establish a mechanism for the treatment of payments that are short by an insignificant amount. Either the plan must treat the payment as satisfying the plan's payment requirement or it must notify the qualified beneficiary of the amount of the deficiency and grant the qualified beneficiary a reasonable period of time for the deficiency to be paid. The final regulations provide that, as a safe harbor, a period of 30 days is deemed to be a reasonable period for this purpose.

Business Reorganizations

The 1987 proposed regulations provide little direct guidance on the allocation of responsibility for COBRA continuation coverage in the event of corporate transactions, such as a sale of stock of a subsidiary or a sale of substantial assets. Commenters on the 1987 proposed regulations requested further guidance on corporate transactions, pointing out that the existing degree of uncertainty tends to drive up the costs and risks of a transaction to both buyers and sellers. The IRS and Treasury share this view and believe also that greater certainty helps to protect the rights of qualified beneficiaries in these transactions. The IRS has been contacted by many qualified beneficiaries whose COBRA continuation coverage has been dropped or denied in the context of a corporate transaction. In many cases, these qualified beneficiaries have been told by each of the buyer and the seller that the other party is the one responsible for providing them with COBRA continuation coverage.

The preamble to the 1998 proposed regulations requested comments on a possible approach to allocating responsibility for COBRA continuation coverage in corporate transactions. Commenters suggested that, in a stock sale, as in an asset sale, it would be consistent with standard commercial practice to provide that the seller retains liability for all existing qualified beneficiaries, including those formerly associated with the subsidiary being sold. The IRS and Treasury have studied the comments and given consideration to several alternatives with a view to establishing rules that will minimize the administrative burden and transaction costs for the parties to transactions while protecting the rights of qualified beneficiaries and maintaining consistency with the statute.

Accordingly, the new proposed regulations make clear that the parties to a transaction are free to allocate the responsibility for providing COBRA continuation coverage by contract, even if the contract imposes responsibility on a different party than would the new proposed regulations. So long as the party to whom the contract allocates responsibility performs its obligations, the other party will have no responsibility for providing COBRA continuation coverage. If, however, the party allocated responsibility under the contract defaults on its obligation, and if, under the new proposed regulations, the other party would have the obligation to provide COBRA continuation coverage in the absence of a contractual provision, then the other party would retain that obligation. This approach would avoid prejudicing the rights of qualified beneficiaries to COBRA continuation coverage based upon the provisions of a contract to which they were not a party and under which the employer with the underlying obligation under the regulations to provide COBRA continuation coverage could otherwise contract away that obligation to a party that fails to perform. Moreover, the party with the underlying responsibility under the regulations can insist on appropriate security and, of course, could pursue contractual remedies against the defaulting party.

The new proposed regulations provide, for both sales of stock and sales of substantial assets, such as a division or plant or substantially all the assets of a trade or business, that the seller retains the obligation to make COBRA continuation coverage available to existing qualified beneficiaries. In addition, in situations in which the seller ceases to provide any group health plan to any employee in connection with the sale whether such a cessation is in connection with the sale is determined on the basis of the facts and circumstances of each case and thus is not responsible for providing COBRA continuation coverage, the new proposed regulations provide that the buyer is responsible for providing COBRA continuation coverage to existing qualified beneficiaries. This secondary liability for the buyer applies in all stock sales and in all sales of substantial assets in which the buyer continues the business operations associated with the assets without interruption or substantial change.

A particular type of asset sale raises issues for which the new proposed regulations do not provide any special rules. (Thus, the general rules in the new proposed regulations for business reorganizations would apply to this type of transaction.) This type of asset sale is one in which, after purchasing a business as a going concern, the buyer continues to employ the employees of that business and continues to provide those employees exactly the same health coverage that they had before the sale (either by providing coverage through the same insurance contract or by establishing a plan that mirrors the one that provided benefits before the sale). The application of the rules in the new proposed regulations to this type of asset sale would require the seller to make COBRA continuation coverage available to the employees continuing in employment with the buyer (and to other family members who are qualified beneficiaries). Ordinarily, the continuing employees (or their family members) would be very unlikely to elect COBRA continuation coverage from the seller when they can receive the same coverage (usually at much lower cost) as active employees of the buyer.

Consideration is being given to whether, under appropriate circumstances, such an asset sale would be considered not to result in a loss of coverage for those employees who continue in employment with the buyer after the sale. A countervailing concern, however, relates to those qualified beneficiaries who might have a reason to elect COBRA continuation coverage from the seller. An example of such a qualified beneficiary would be an employee who continues in employment with the buyer, whose family is likely to have medical expenses that exceed the cost of COBRA coverage, and who has significant questions about the solvency of the buyer or other concerns about how long the buyer might continue to provide the same health coverage.

Under one possible approach, a loss of coverage would be considered not to have occurred so long as the purchasing employer in an asset sale continued to maintain the same group health plan coverage that the seller maintained before the sale without charging the employees any greater percentage of the total cost of coverage than the seller had charged before the sale. For this purpose, the coverage would be considered unchanged if there was no obligation to provide a summary of material modifications within 60 days after the change due to a material reduction in covered services or benefits under the rules that apply under Title I of ERISA. If these conditions were satisfied for the maximum coverage period that would otherwise apply to the seller's termination of employment of the continuing employees (generally 18 months from the date of the sale), then those terminations of employment would never be considered qualifying events. If the conditions were not satisfied for the full maximum coverage period, then on the date when they ceased to be satisfied the seller would be obligated to make COBRA continuation coverage available for the balance of the maximum coverage period.

Comments are invited on the utility of such a rule, either in situations in which the seller retains an ownership interest in the buyer after the sale (for example, a sale of assets from a 100-percent owned subsidiary to a 75-percent owned subsidiary) or, more generally, in situations in which the seller and the buyer are unrelated. Suggestions are also solicited for other rules that would protect qualified beneficiaries while providing relief to employers in these situations.

Although the new proposed regulations address how COBRA obligations are affected by a sale of stock (and a sale of substantial assets), the new proposed regulations do not address how the obligation to make COBRA continuation coverage available is affected by the transfer of an ownership interest in a noncorporate entity that causes the noncorporate entity to cease to be a member of a group of trades or businesses under common control (whether or not it becomes a member of a different group of trades or business under common control). Comments are invited on this issue.

Employer Withdrawals From Multiemployer Plans

The new proposed regulations also address COBRA obligations in connection with an employer's cessation of contributions to a multiemployer group health plan. The new proposed regulations provide that the multiemployer plan generally continues to have the obligation to make COBRA continuation coverage available to qualified beneficiaries associated with that employer. (There generally would not be any obligation to make COBRA continuation coverage available to continuing employees in this situation because a cessation of contributions is not a qualifying event.) However, once the employer provides group health coverage to a significant number of employees who were formerly covered under the multiemployer plan, or starts contributing to another multiemployer plan on their behalf, the employer's plan (or the new multiemployer plan) would have the obligation to make COBRA continuation coverage available to the existing qualified beneficiaries. This rule is contrary to the holding in *In re Appletree Markets, Inc.*, 19 F.3d 969 (5th Cir. 1994), which held that the multiemployer plan continued to have the COBRA obligations with respect to existing qualified beneficiaries after the withdrawing employer established a plan for the same class of employees previously covered under the multiemployer plan.

Interaction of FMLA and COBRA

The new proposed regulations set forth rules regarding the interaction of the COBRA continuation coverage requirements with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The rules under the new proposed regulations are substantially the same as those set forth in Notice 94–103. The last two questions-and-answers in that notice have not been included in the new proposed regulations because they relate to general subject matter that is addressed elsewhere in the regulations.

Under the new proposed regulations, the taking of FMLA leave by a covered employee is not itself a qualifying event. Instead, a qualifying event occurs when an employee who is covered under a group health plan immediately prior to FMLA leave (or who becomes covered under a group health plan during FMLA leave) does not return to work with the employer at the end of FMLA leave and would, but for COBRA continuation coverage, lose coverage under the group health plan. (As under the general rules of COBRA, this would also constitute a qualifying event with respect to the spouse or any dependent child of the employee.) The qualifying event is deemed to occur on the last day of the employee's FMLA leave, and the maximum coverage period generally begins on that day. (The new proposed regulations provide a special rule for cases where coverage is not lost until a later date and the plan provides for the optional extension of the required periods.) In the case of such a qualifying event, the employer cannot condition the employee's rights to COBRA continuation coverage on the employee's reimbursement of any premiums paid by the employer to maintain the employee's group health plan coverage during the period of FMLA leave.

Any lapse of coverage under the group health plan during the period of FMLA leave and any state or local law requiring that group health plan coverage be provided for a period longer than that required by the FMLA are disregarded in determining whether the employee has a qualifying event on the last day of that leave. However, the employee's loss of coverage at the end of FMLA leave will not constitute a qualifying event if, prior to the employee's return from FMLA leave, the employer has eliminated group health plan coverage for the class of employees to which the employee would have belonged if she or he had not taken FMLA leave.

Special Analyses.

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that employers with fewer than 20 employees are not subject to the requirements set forth in the final regulations and, thus, the very smallest employers are not affected by the collection of information requirements. Moreover, even for small entities with 20 or more employees who maintain group health plans and who, thus, are subject to the requirements of COBRA, the collections of information will not impose a substantial economic impact. The only collections of information imposed on small entities by the regulations are (1) to notify qualified beneficiaries of their right to elect COBRA continuation coverage upon the occurrence of a qualifying event and (2) to notify certain qualified beneficiaries that make insignificant payment errors of those errors. With respect to this first notice requirement, it is estimated that, on average, in a given year, qualifying events will occur with respect to approximately 10 percent of all covered employees. Thus, an employer with 100 employees would be required to send 10 notices to qualified beneficiaries each year. The average cost of sending such a notice is estimated to be $.50. Thus, the total estimated cost for 10 notices is $5.00, which is the estimated annual average burden on an employer with 100 employees. With respect to the second notice requirement, it is estimated that, on average, at any time, the number of qualified beneficiaries is approximately equal to two percent of an employer's workforce. Of that number, approximately 1 in 10 will make an insignificant error in payment each year that requires the employer to send such a notice. For example, an employer with 100 employees will have an average of two qualified beneficiaries at any time. Thus, the employer will receive an insignificant underpayment about once every five years. Even if the employer chose to send out a notice each time such an insignificant underpayment occurred, this would amount to only one notice every five years. The average cost of sending such a notice is estimated to be $5.00, resulting in an average annual burden of $1.00 for an employer with 100 employees. Thus, the total annual cost of these two notice requirements for an employer with 100 employees is $6.00, which is not a significant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, the 1998 notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of these regulations is Russ Weinheimer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 54 and 602 are amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended by adding the following entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980B–1 also issued under 26 U.S.C. 4980B.

Section 54.4980B–2 also issued under 26 U.S.C. 4980B.

Section 54.4980B–3 also issued under 26 U.S.C. 4980B.

Section 54.4980B–4 also issued under 26 U.S.C. 4980B.

Section 54.4980B–5 also issued under 26 U.S.C. 4980B.

Section 54.4980B–6 also issued under 26 U.S.C. 4980B.

Section 54.4980B–7 also issued under 26 U.S.C. 4980B.

Section 54.4980B–8 also issued under 26 U.S.C. 4980B. * * *

Par. 2. Sections 54.4980B–0, 54.4980B–1, 54.4980B–2, 54.4980B–3, 54.4980B–4, 54.4980B–5, 54.4980B–6, 54.4980B–7, and 54.4980B–8 are added to read as follows:

§ 54.4980B–0 Table of contents.

This section contains first a list of the section headings and then a list of the questions in each section in §§ 54.4980B–1 through 54.4980B–8.

List of Sections

List of Questions

§ 54.4980B–1 COBRA in general.

The COBRA continuation coverage requirements are described in general in the following questions-and-answers:

Q–1: What are the health care continuation coverage requirements contained in section 4980B of the Internal Revenue Code and in ERISA?

A–1: (a) Section 4980B provides generally that a group health plan must offer each qualified beneficiary who would otherwise lose coverage under the plan as a result of a qualifying event an opportunity to elect, within the election period, continuation coverage under the plan. The continuation coverage requirements were added to section 162 by the Consolidated

Omnibus Budget Reconciliation Act of 1985 (COBRA), Public Law 99–272 (100 Stat. 222), and moved to section 4980B by the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342). Continuation coverage required under section 4980B is referred to in §§ 54.4980B–1 through 54.4980B–8 as COBRA continuation coverage.

(b) COBRA also added parallel continuation coverage requirements to Part 6 of Subtitle B of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) (29 U.S.C. 1161–1168), which is administered by the U.S. Department of Labor. If a plan does not comply with the COBRA continuation coverage requirements, the Internal Revenue Code imposes an excise tax on the employer maintaining the plan (or on the plan itself), whereas ERISA gives certain parties—including qualified beneficiaries who are participants or beneficiaries within the meaning of Title I of ERISA, as well as the Department of Labor—the right to file a lawsuit to redress the noncompliance. The rules in §§ 54.4980B–1 through 54.4980B–8 apply for purposes of section 4980B and generally also for purposes of the COBRA continuation coverage requirements in Title I of ERISA. However, certain provisions of the COBRA continuation coverage requirements (such as the definitions of group health plan, employee, and employer) are not identical in the Internal Revenue Code and Title I of ERISA. In those cases in which the statutory language is not identical, the rules in §§ 54.4980B–1 though 54.4980B–8 nonetheless apply to the COBRA continuation coverage requirements of Title I of ERISA, except to the extent those rules are inconsistent with the statutory language of Title I of ERISA.

(c) A group health plan that is subject to section 4980B (or the parallel provisions under ERISA) is referred to as being subject to COBRA. (See Q&A–4 of § 54.4980B–2). A qualified beneficiary can be required to pay for COBRA continuation coverage. The term *qualified beneficiary* is defined in Q&A–1 of § 54.4980B–3. The term *qualifying event* is defined in Q&A–1 of § 54.4980B–4. COBRA continuation coverage is described in § 54.4980B–5. The election procedures are described in § 54.4980B–6. Duration of COBRA continuation coverage is addressed in § 54.4980B–7, and payment for COBRA continuation coverage is addressed in § 54.4980B–8. Unless the context indicates otherwise, any reference in §§ 54.4980B–1 through 54.4980B–8 to COBRA refers to section 4980B (as amended) and to the parallel provisions of ERISA.

Q–2: What is the effective date of §§ 54.4980B–1 through 54.4980B–8?

A–2: Sections 54.4980B–1 through 54.4980B–8 apply with respect to qualifying events occurring in plan years beginning on or after January 1, 2000. For purposes of section 4980B, with respect to qualifying events that occur in plan years beginning before that date, and with respect to qualifying events that occur in plan years beginning on or after that date for topics relating to the COBRA continuation coverage requirements of section 4980B that are not addressed in §§ 54.4980B–1 through 54.4980B–8 (such as methods for calculating the applicable premium), plans and employers must operate in good faith compliance with a reasonable interpretation of the statutory requirements in section 4980B.

§ 54.4980B–2 Plans that must comply.

The following questions-and-answers apply in determining which plans must comply with the COBRA continuation coverage requirements:

Q–1: For purposes of section 4980B, what is a group health plan?

A–1: (a) For purposes of section 4980B, a group health plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families. Individuals who have an employment-related connection to the employer or employee organization consist of employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship (including members of a union who are not currently employees). Health care is provided under a plan whether provided directly or through insurance, reimbursement, or otherwise, and whether or not provided through an on-site facility (except as set forth in paragraph (d) of this Q&A–1), or through a cafeteria plan (as defined in section 125) or other flexible benefit arrangement. For purposes of this Q&A–1, insurance includes not only group insurance policies but also one or more individual insurance policies in any arrangement that involves the provision of health care to two or more employees. A plan maintained by an employer or employee organization is any plan of, or contributed to (directly or indirectly) by, an employer or employee organization. Thus, a group health plan is maintained by an employer or employee organization even if the employer or employee organization does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer or employee organization. These rules are further explained in paragraphs (b) through (d) of this Q&A–1. An exception for qualified long-term care services is set forth in paragraph (e) of this Q&A–1, and for medical savings accounts in paragraph (f) of this Q&A–1.

(b) For purposes of §§ 54.4980B–1 through 54.4980B–8, *health care* has the same meaning as *medical care* under section 213(d). Thus, health care generally includes the diagnosis, cure, mitigation, treatment, or prevention of disease, and any other undertaking for the purpose of affecting any structure or function of the body. Health care also includes transportation primarily for and essential to health care as described in the preceding sentence. However, health care does not include anything that is merely beneficial to the general health of an individual, such as a vacation. Thus, if an employer or employee organization maintains a program that furthers general good health, but the program does not relate to the relief or alleviation of health or medical problems and is generally accessible to and used by employees without regard to their physical condition or state of health, that program is not considered a program that provides health care and so is not a group health plan. For example, if an employer maintains a spa, swimming pool, gymnasium, or other exercise/fitness program or facility that is normally accessible to and used by employees for reasons other than relief of health or medical problems, such a facility does not constitute a program that provides health care and thus is not a group health plan. In contrast, if an employer maintains a drug or alcohol treatment program or a health clinic, or any other facility or program that is intended to relieve or alleviate a physical condition or health problem, the facility or program is considered to be the provision of health care and so is considered a group health plan.

(c) Whether a benefit provided to employees constitutes health care is not affected by whether the benefit is excludable from income under section 132 (relating to certain fringe benefits). For example, if a department store provides its employees discounted prices on all merchandise, including health care items such as drugs or eyeglasses, the mere fact that the discounted prices also apply to health care items will not cause the program to

be a plan providing health care, so long as the discount program would normally be accessible to and used by employees without regard to health needs or physical condition. If, however, the employer maintaining the discount program is a health clinic, so that the program is used exclusively by employees with health or medical needs, the program is considered to be a plan providing health care and so is considered to be a group health plan.

(d) The provision of health care at a facility that is located on the premises of an employer or employee organization does not constitute a group health plan if—

(1) The health care consists primarily of first aid that is provided during the employer's working hours for treatment of a health condition, illness, or injury that occurs during those working hours;

(2) The health care is available only to current employees; and

(3) Employees are not charged for the use of the facility.

(e) A plan does not constitute a group health plan subject to COBRA if substantially all of the coverage provided under the plan is for qualified long-term care services (as defined in section 7702B(c)). For this purpose, a plan is permitted to use any reasonable method in determining whether substantially all of the coverage provided under the plan is for qualified long-term care services.

(f) Under section 106(b)(5), amounts contributed by an employer to a medical savings account (as defined in section 220(d)) are not considered part of a group health plan subject to COBRA. Thus, a plan is not required to make COBRA continuation coverage available with respect to amounts contributed by an employer to a medical savings account. A high deductible health plan does not fail to be a group health plan subject to COBRA merely because it covers a medical savings account holder.

Q–2: For purposes of section 4980B, what is the employer?

A–2: For purposes of section 4980B, *employer* refers to—

(a) A person for whom services are performed;

(b) Any other person that is a member of a group described in section 414(b), (c), (m), or (o) that includes a person described in paragraph (a) of this Q&A–2; and

(c) Any successor of a person described in paragraph (a) or (b) of this Q&A–2.

Q–3: [Reserved]

A–3: [Reserved]

Q–4: What group health plans are subject to COBRA?

A–4: (a) All group health plans are subject to COBRA except group health plans described in paragraph (b) of this Q&A–4. Group health plans described in paragraph (b) of this Q&A–4 are referred to in §§ 54.4980B–1 through 54.4980B–8 as excepted from COBRA.

(b) The following group health plans are excepted from COBRA—

(1) Small-employer plans (see Q&A–5 of this section);

(2) Church plans (within the meaning of section 414(e)); and

(3) Governmental plans (within the meaning of section 414(d)).

(c) The COBRA continuation coverage requirements generally do not apply to group health plans that are excepted from COBRA. However, a small-employer plan otherwise excepted from COBRA is nonetheless subject to COBRA with respect to qualified beneficiaries who experience a qualifying event during a period when the plan is not a small-employer plan (see paragraph (g) of Q&A–5 of this section).

(d) Although governmental plans are not subject to the COBRA continuation coverage requirements, group health plans maintained by state or local governments are generally subject to parallel continuation coverage requirements that were added by section 10003 of COBRA to the Public Health Service Act (42 U.S.C. 300bb–1 through 300bb–8), which is administered by the U.S. Department of Health and Human Services. Federal employees and their family members covered under the Federal Employees Health Benefit Program are covered by generally similar, but not parallel, temporary continuation of coverage provisions enacted by the Federal Employees Health Benefits Amendments Act of 1988. See 5 U.S.C. 8905a.

Q–5: What is a small-employer plan?

A–5: (a) Except in the case of a multiemployer plan, a *small-employer plan* is a group health plan maintained by an employer (within the meaning of Q&A–2 of this section) that normally employed fewer than 20 employees (within the meaning of paragraph (c) of this Q&A–5) during the preceding calendar year. In the case of a multiemployer plan, a *small-employer plan* is a group health plan under which each of the employers contributing to the plan for a calendar year normally employed fewer than 20 employees during the preceding calendar year. The rules of this paragraph (a) are illustrated in the following example:

Example. (i) Corporation *S* employs 12 employees, all of whom work and reside in the United States. *S* maintains a group health plan for its employees and their families. *S* is a wholly-owned subsidiary of *P*. In the previous calendar year, the controlled group of corporations including *P* and *S* employed more than 19 employees, although the only employees in the United States of the controlled group that includes *P* and *S* are the 12 employees of *S*.

(ii) Under § 1.414(b)-1 of this chapter, foreign corporations are not excluded from membership in a controlled group of corporations. Consequently, the group health plan maintained by *S* is not a small-employer plan during the current calendar year because the controlled group including *S* normally employed at least 20 employees in the preceding calendar year.

(b) An employer is considered to have normally employed fewer than 20 employees during a particular calendar year if, and only if, it had fewer than 20 employees on at least 50 percent of its typical business days during that year.

(c) All full-time and part-time common law employees of an employer are taken into account in determining whether an employer had fewer than 20 employees; however, an individual who is not a common law employee of the employer is not taken into account. Thus, the following individuals are not counted as employees for purposes of this Q&A–5 even though they are referred to as employees for all other purposes of §§ 54.4980B–1 through 54.4980B–8—

(1) Self-employed individuals (within the meaning of section 401(c)(1));

(2) Independent contractors (and their employees and independent contractors); and

(3) Directors (in the case of a corporation).

(d) [Reserved]

(e) [Reserved]

(f) [Reserved]

(g) A small-employer plan is generally excepted from COBRA. If, however, a plan that has been subject to COBRA (that is, was not a small-employer plan) becomes a small-employer plan, the plan remains subject to COBRA for qualifying events that occurred during the period when the plan was subject to COBRA. The rules of this paragraph (g) are illustrated by the following examples:

Example 1. An employer maintains a group health plan. The employer employed 20 employees on more than 50 percent of its working days during 2001, and consequently the plan is not excepted from COBRA during 2002. Employee *E* resigns and does not work for the employer after January 31, 2002. Under the terms of the plan, *E* is no longer eligible for coverage upon the effective date of the resignation, that is, February 1, 2002. The employer does not hire a replacement for *E*. *E* timely elects and pays for COBRA continuation coverage. The employer

employs 19 employees for the remainder of 2002, and consequently the plan is not subject to COBRA in 2003. The plan must nevertheless continue to make COBRA continuation coverage available to *E* during 2003 until the obligation to make COBRA continuation coverage available ceases under the rules of § 54.4980B–7. The obligation could continue until August 1, 2003, the date that is 18 months after the date of *E*'s qualifying event, or longer if *E* is eligible for a disability extension.

Example 2. The facts are the same as in *Example 1.* The employer continues to employ 19 employees throughout 2003 and 2004 and consequently the plan continues to be excepted from COBRA during 2004 and 2005. Spouse *S* is covered under the plan because *S* is married to one of the employer's employees. On April 1, 2002, *S* is divorced from that employee and ceases to be eligible for coverage under the plan. The plan is subject to COBRA during 2002 because *X* normally employed 20 employees during 2001. *S* timely notifies the plan administrator of the divorce and timely elects and pays for COBRA continuation coverage. Even though the plan is generally excepted from COBRA during 2003, 2004, and 2005, it must nevertheless continue to make COBRA continuation coverage available to *S* during those years until the obligation to make COBRA continuation coverage available ceases under the rules of § 54.4980B–7. The obligation could continue until April 1, 2005, the date that is 36 months after the date of *S*'s qualifying event.

Example 3. The facts are the same as in *Example 2. C* is a dependent child of one of the employer's employees and is covered under the plan. A dependent child is no longer eligible for coverage under the plan upon the attainment of age 23. *C* attains age 23 on November 16, 2005. The plan is excepted from COBRA with respect to *C* during 2005 because the employer normally employed fewer than 20 employees during 2004. Consequently, the plan is not obligated to make COBRA continuation coverage available to *C* (and would not be obligated to make COBRA continuation coverage available to *C* even if the plan later became subject to COBRA again).

Q–6: [Reserved]

A–6: [Reserved]

Q–7: What is the plan year?

A–7: (a) The *plan year* is the year that is designated as the plan year in the plan documents.

(b) If the plan documents do not designate a plan year (or if there are no plan documents), then the plan year is determined in accordance with this paragraph (b).

(1) The plan year is the deductible/limit year used under the plan.

(2) If the plan does not impose deductibles or limits on an annual basis, then the plan year is the policy year.

(3) If the plan does not impose deductibles or limits on an annual basis, and either the plan is not insured or the insurance policy is not renewed on an annual basis, then the plan year is the employer's taxable year.

(4) In any other case, the plan year is the calendar year.

Q–8: How do the COBRA continuation coverage requirements apply to cafeteria plans and other flexible benefit arrangements?

A–8: The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event. The rules of this Q&A–8 are illustrated by the following example:

Example: (i) Under the terms of a cafeteria plan, employees can choose among life insurance coverage, membership in a health maintenance organization (HMO), coverage for medical expenses under an indemnity arrangement, and cash compensation. Of these available choices, the HMO and the indemnity arrangement are the arrangements providing health care. The instruments governing the HMO and indemnity arrangements indicate that they are separate group health plans. These group health plans are subject to COBRA. The employer does not provide any group health plan outside of the cafeteria plan. *B* and *C* are unmarried employees. *B* has chosen the life insurance coverage, and *C* has chosen the indemnity arrangement.

(ii) *B* does not have to be offered COBRA continuation coverage upon terminating employment, nor is a subsequent open enrollment period for active employees required to be made available to *B.* However, if *C* terminates employment and the termination constitutes a qualifying event, *C* must be offered an opportunity to elect COBRA continuation coverage under the indemnity arrangement. If *C* makes such an election and an open enrollment period for active employees occurs while *C* is still receiving the COBRA continuation coverage, *C* must be offered the opportunity to switch from the indemnity arrangement to the HMO (but not to the life insurance coverage because that does not constitute coverage provided under a group health plan).

Q–9: What is the effect of a group health plan's failure to comply with the requirements of section 4980B(f)?

A–9: Under section 4980B(a), if a group health plan subject to COBRA fails to comply with section 4980B(f), an excise tax is imposed. Moreover, non-tax remedies may be available if the plan fails to comply with the parallel requirements in ERISA, which are administered by the Department of Labor.

Q–10: Who is liable for the excise tax if a group health plan fails to comply with the requirements of section 4980B(f)?

A–10: (a) In general, the excise tax is imposed on the employer maintaining the plan, except that in the case of a multiemployer plan the excise tax is imposed on the plan.

(b) In certain circumstances, the excise tax is also imposed on a person involved with the provision of benefits under the plan (other than in the capacity of an employee), such as an insurer providing benefits under the plan or a third party administrator administering claims under the plan. In general, such a person will be liable for the excise tax if the person assumes, under a legally enforceable written agreement, the responsibility for performing the act to which the failure to comply with the COBRA continuation coverage requirements relates. Such a person will be liable for the excise tax notwithstanding the absence of a written agreement assuming responsibility for complying with COBRA if the person provides coverage under the plan to a similarly situated nonCOBRA beneficiary (see Q&A–3 of § 54.4980B–3 for a definition of similarly situated nonCOBRA beneficiaries) and the employer or plan administrator submits a written request to the person to provide to a qualified beneficiary the same coverage that the person provides to the similarly situated nonCOBRA beneficiary. If the person providing coverage under the plan to a similarly situated nonCOBRA beneficiary is the plan administrator and the qualifying event is a divorce or legal separation or a dependent child's ceasing to be covered under the generally applicable requirements of the plan, the plan administrator will also be liable for the excise tax if the qualified beneficiary submits a written request for coverage.

§ 54.4980B–3 Qualified beneficiaries.

The determination of who is a qualified beneficiary, an employee, or a covered employee, and of who are the similarly situated nonCOBRA beneficiaries is addressed in the following questions-and-answers:

Q–1: Who is a qualified beneficiary?

A–1: (a)(1) Except as set forth in paragraphs (c) through (f) of this Q&A–1, a qualified beneficiary is—

(i) Any individual who, on the day before a qualifying event, is covered under a group health plan by virtue of being on that day either a covered

employee, the spouse of a covered employee, or a dependent child of the covered employee; or

(ii) Any child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage.

(2) In the case of a qualifying event that is the bankruptcy of the employer, a covered employee who had retired on or before the date of substantial elimination of group health plan coverage is also a qualified beneficiary, as is any spouse, surviving spouse, or dependent child of such a covered employee if, on the day before the bankruptcy qualifying event, the spouse, surviving spouse, or dependent child is a beneficiary under the plan.

(3) In general, an individual (other than a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage) who is not covered under a plan on the day before the qualifying event cannot be a qualified beneficiary with respect to that qualifying event, and the reason for the individual's lack of actual coverage (such as the individual's having declined participation in the plan or failed to satisfy the plan's conditions for participation) is not relevant for this purpose. However, if the individual is denied or not offered coverage under a plan under circumstances in which the denial or failure to offer constitutes a violation of applicable law (such as the Americans with Disabilities Act, 42 U.S.C. 12101–12213, the special enrollment rules of section 9801, or the requirements of section 9802 prohibiting discrimination in eligibility to enroll in a group health plan based on health status), then, for purposes of §§ 54.4980B–1 through 54.4980B–8, the individual will be considered to have had the coverage that was wrongfully denied or not offered.

(4) Paragraph (b) of this Q&A–1 describes how certain family members are not qualified beneficiaries even if they become covered under the plan; paragraphs (c), (d), and (e) of this Q&A–1 place limits on the general rules of this paragraph (a) concerning who is a qualified beneficiary; paragraph (f) of this Q&A–1 provides when an individual who has been a qualified beneficiary ceases to be a qualified beneficiary; paragraph (g) of this Q&A–1 defines *placed for adoption*; and paragraph (h) of this Q&A–1 contains examples.

(b) In contrast to a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, an individual who marries any qualified beneficiary on or after the date of the qualifying event and a newborn or adopted child (other than one born to or placed for adoption with a covered employee) are not qualified beneficiaries by virtue of the marriage, birth, or placement for adoption or by virtue of the individual's status as the spouse or the child's status as a dependent of the qualified beneficiary. These new family members do not themselves become qualified beneficiaries even if they become covered under the plan. (For situations in which a plan is required to make coverage available to new family members of a qualified beneficiary who is receiving COBRA continuation coverage, see Q&A–5 of § 54.4980B–5, paragraph (c) in Q&A–4 of § 54.4980B–5, section 9801(f)(2), and § 54.9801–6T(b).)

(c) An individual is not a qualified beneficiary if, on the day before the qualifying event referred to in paragraph (a) of this Q&A–1, the individual is covered under the group health plan by reason of another individual's election of COBRA continuation coverage and is not already a qualified beneficiary by reason of a prior qualifying event.

(d) A covered employee can be a qualified beneficiary only in connection with a qualifying event that is the termination, or reduction of hours, of the covered employee's employment, or that is the bankruptcy of the employer.

(e) An individual is not a qualified beneficiary if the individual's status as a covered employee is attributable to a period in which the individual was a nonresident alien who received from the individual's employer no earned income (within the meaning of section 911(d)(2)) that constituted income from sources within the United States (within the meaning of section 861(a)(3)). If, pursuant to the preceding sentence, an individual is not a qualified beneficiary, then a spouse or dependent child of the individual is not considered a qualified beneficiary by virtue of the relationship to the individual.

(f) A qualified beneficiary who does not elect COBRA continuation coverage in connection with a qualifying event ceases to be a qualified beneficiary at the end of the election period (see Q&A–1 of § 54.4980B–6). Thus, for example, if such a former qualified beneficiary is later added to a covered employee's coverage (e.g., during an open enrollment period) and then another qualifying event occurs with respect to the covered employee, the former qualified beneficiary does not become a qualified beneficiary by reason of the second qualifying event. If a covered employee who is a qualified beneficiary does not elect COBRA continuation coverage during the election period, then any child born to or placed for adoption with the covered employee on or after the date of the qualifying event is not a qualified beneficiary. Once a plan's obligation to make COBRA continuation coverage available to an individual who has been a qualified beneficiary ceases under the rules of § 54.4980B–7, the individual ceases to be a qualified beneficiary.

(g) For purposes of §§ 54.4980B–1 through 54.4980B–8, *placement for adoption* or *being placed for adoption* means the assumption and retention by the covered employee of a legal obligation for total or partial support of a child in anticipation of the adoption of the child. The child's placement for adoption with the covered employee terminates upon the termination of the legal obligation for total or partial support. A child who is immediately adopted by the covered employee without a preceding placement for adoption is considered to be placed for adoption on the date of the adoption.

(h) The rules of this Q&A–1 are illustrated by the following examples:

Example 1. (i) *B* is a single employee who voluntarily terminates employment and elects COBRA continuation coverage under a group health plan. To comply with the requirements of section 9801(f) and § 54.9801–6T(b), the plan permits a covered employee who marries to have her or his spouse covered under the plan. One month after electing COBRA continuation coverage, *B* marries and chooses to have *B*'s spouse covered under the plan.

(ii) *B*'s spouse is not a qualified beneficiary. Thus, if *B* dies during the period of COBRA continuation coverage, the plan does not have to offer *B*'s surviving spouse an opportunity to elect COBRA continuation coverage.

Example 2. (i) *C* is a married employee who terminates employment. *C* elects COBRA continuation coverage for *C* but not *C*'s spouse, and *C*'s spouse declines to elect such coverage. *C*'s spouse thus ceases to be a qualified beneficiary. At the next open enrollment period, *C* adds the spouse as a beneficiary under the plan.

(ii) The addition of the spouse during the open enrollment period does not make the spouse a qualified beneficiary. The plan thus will not have to offer the spouse an opportunity to elect COBRA continuation coverage upon a later divorce from or death of *C*.

Example 3. (i) Under the terms of a group health plan, a covered employee's child, upon attaining age 19, ceases to be a dependent eligible for coverage.

(ii) At that time, the child must be offered an opportunity to elect COBRA continuation coverage. If the child elects COBRA continuation coverage, the child marries during the period of the COBRA continuation coverage, and the child's spouse becomes covered under the group health plan, the child's spouse is not a qualified beneficiary.

Example 4. (i) *D* is a single employee who, upon retirement, is given the opportunity to elect COBRA continuation coverage but declines it in favor of an alternative offer of 12 months of employer-paid retiree health benefits. At the end of the election period, *D* ceases to be a qualified beneficiary and will not have to be given another opportunity to elect COBRA continuation coverage (at the end of those 12 months or at any other time). *D* marries *E* during the period of retiree health coverage and, under the terms of that coverage, *E* becomes covered under the plan.

(ii) If a divorce from or death of *D* will result in *E*'s losing coverage, *E* will be a qualified beneficiary because *E*'s coverage under the plan on the day before the qualifying event (that is, the divorce or death) will have been by reason of *D*'s acceptance of 12 months of employer-paid coverage after the prior qualifying event (*D*'s retirement) rather than by reason of an election of COBRA continuation coverage.

Example 5. (i) The facts are the same as in Example 4, except that, under the terms of the plan, the divorce or death does not cause *E* to lose coverage so that *E* continues to be covered for the balance of the original 12-month period.

(ii) *E* does not have to be allowed to elect COBRA continuation coverage because the loss of coverage at the end of the 12-month period is not caused by the divorce or death, and thus the divorce or death does not constitute a qualifying event. See Q&A–1 of § 54.4980B–4.

Q–2: Who is an employee and who is a covered employee?

A–2: (a)(1) For purposes of §§ 54.4980B–1 through 54.4980B–8 (except for purposes of Q&A–5 in § 54.4980B–2, relating to the exception from COBRA for plans maintained by an employer with fewer than 20 employees), an *employee* is any individual who is eligible to be covered under a group health plan by virtue of the performance of services for the employer maintaining the plan or by virtue of membership in the employee organization maintaining the plan. Thus, for purposes of §§ 54.4980B–1 through 54.4980B–8 (except for purposes of Q&A–5 in § 54.4980B–2), the following individuals are employees if their relationship to the employer maintaining the plan makes them eligible to be covered under the plan—

(i) Self-employed individuals (within the meaning of section 401(c)(1));

(ii) Independent contractors (and their employees and independent contractors); and

(iii) Directors (in the case of a corporation).

(2) Similarly, whenever reference is made in §§ 54.4980B–1 through 54.4980B–8 (except in Q&A–5 of § 54.4980B–2) to an employment relationship (such as by referring to the termination of employment of an employee or to an employee's being employed by an employer), the reference includes the relationship of those individuals who are employees within the meaning of this paragraph (a). See paragraph (c) in Q&A–5 of § 54.4980B–2 for a narrower meaning of employee solely for purposes of Q&A–5 of § 54.4980B–2.

(b) For purposes of §§ 54.4980B–1 through 54.4980B–8, a *covered employee* is any individual who is (or was) provided coverage under a group health plan (other than a plan that is excepted from COBRA on the date of the qualifying event; see Q&A–4 of § 54.4980B–2) by virtue of being or having been an employee. For example, a retiree or former employee who is covered by a group health plan is a covered employee if the coverage results in whole or in part from her or his previous employment. An employee (or former employee) who is merely eligible for coverage under a group health plan is generally not a covered employee if the employee (or former employee) is not actually covered under the plan. In general, the reason for the employee's (or former employee's) lack of actual coverage (such as having declined participation in the plan or having failed to satisfy the plan's conditions for participation) is not relevant for this purpose. However, if the employee (or former employee) is denied or not offered coverage under circumstances in which the denial or failure to offer constitutes a violation of applicable law (such as the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, the special enrollment rules of section 9801, or the requirements of section 9802 prohibiting discrimination in eligibility to enroll in a group health plan based on health status), then, for purposes of §§ 54.4980B–1 through 54.4980B–8, the employee (or former employee) will be considered to have had the coverage that was wrongfully denied or not offered.

Q–3: Who are the similarly situated non-COBRA beneficiaries?

A–3: For purposes of §§ 54.4980B–1 through 54.4980B–8, *similarly situated non-COBRA beneficiaries* means the group of covered employees, spouses of covered employees, or dependent children of covered employees receiving coverage under a group health plan maintained by the employer or employee organization who are receiving that coverage for a reason other than the rights provided under the COBRA continuation coverage requirements and who, based on all of the facts and circumstances, are most similarly situated to the situation of the qualified beneficiary immediately before the qualifying event.

§ 54.4980B–4 Qualifying events.

The determination of what constitutes a qualifying event is addressed in the following questions and answers:

Q–1: What is a qualifying event?

A–1: (a) A *qualifying event* is an event that satisfies paragraphs (b), (c), and (d) of this Q&A–1. Paragraph (e) of this Q&A–1 further explains a reduction of hours of employment, paragraph (f) of this Q&A–1 describes the treatment of children born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, and paragraph (g) of this Q&A–1 contains examples.

(b) An event satisfies this paragraph (b) if the event is any of the following—

(1) The death of a covered employee;

(2) The termination (other than by reason of the employee's gross misconduct), or reduction of hours, of a covered employee's employment;

(3) The divorce or legal separation of a covered employee from the employee's spouse;

(4) A covered employee's becoming entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg);

(5) A dependent child's ceasing to be a dependent child of a covered employee under the generally applicable requirements of the plan; or

(6) A proceeding in bankruptcy under Title 11 of the United States Code with respect to an employer from whose employment a covered employee retired at any time.

(c) An event satisfies this paragraph (c) if, under the terms of the group health plan, the event causes the covered employee, or the spouse or a dependent child of the covered employee, to lose coverage under the plan. For this purpose, to lose coverage means to cease to be covered under the same terms and conditions as in effect immediately before the qualifying event. Any increase in the premium or contribution that must be paid by a covered employee (or the spouse or dependent child of a covered employee) for coverage under a group health plan that results from the occurrence of one of the events listed in paragraph (b) of this Q&A–1 is a loss of coverage. In the case of an event that is the bankruptcy of the employer, lose coverage also means any substantial elimination of coverage under the plan, occurring within 12 months before or after the date the bankruptcy proceeding commences, for a covered employee who had retired on or before the date of the substantial elimination of group health plan coverage or for any spouse, surviving spouse, or dependent child of such a covered employee if, on the day

before the bankruptcy qualifying event, the spouse, surviving spouse, or dependent child is a beneficiary under the plan. For purposes of this paragraph (c), a loss of coverage need not occur immediately after the event, so long as the loss of coverage occurs before the end of the maximum coverage period (see Q&A–1 and Q&A–6 of § 54.4980B–7). However, if neither the covered employee nor the spouse or a dependent child of the covered employee loses coverage before the end of what would be the maximum coverage period, the event does not satisfy this paragraph (c). If coverage is reduced or eliminated in anticipation of an event (for example, an employer's eliminating an employee's coverage in anticipation of the termination of the employee's employment, or an employee's eliminating the coverage of the employee's spouse in anticipation of a divorce or legal separation), the reduction or elimination is disregarded in determining whether the event causes a loss of coverage.

(d) An event satisfies this paragraph (d) if it occurs while the plan is subject to COBRA. Thus, an event will not satisfy this paragraph (d) if it occurs while the plan is excepted from COBRA (see Q&A–4 of § 54.4980B–2). Even if the plan later becomes subject to COBRA, it is not required to make COBRA continuation coverage available to anyone whose coverage ends as a result of an event during a year in which the plan is excepted from COBRA. For example, if a group health plan is excepted from COBRA as a small-employer plan during the year 2001 (see Q&A–5 of § 54.4980B–2) and an employee terminates employment on December 31, 2001, the termination is not a qualifying event and the plan is not required to permit the employee to elect COBRA continuation coverage. This is the case even if the plan ceases to be a small-employer plan as of January 1, 2002. Also, the same result will follow even if the employee is given three months of coverage beyond December 31 (that is, through March of 2002), because there will be no qualifying event as of the termination of coverage in March. However, if the employee's spouse is initially provided with the three-month coverage through March 2002, but the spouse divorces the employee before the end of the three months and loses coverage as a result of the divorce, the divorce will constitute a qualifying event during 2002 and so entitle the spouse to elect COBRA continuation coverage. See Q&A–7 of § 54.4980B–7 regarding the maximum coverage period in such a case.

(e) A reduction of hours of a covered employee's employment occurs whenever there is a decrease in the hours that a covered employee is required to work or actually works, but only if the decrease is not accompanied by an immediate termination of employment. This is true regardless of whether the covered employee continues to perform services following the reduction of hours of employment. For example, an absence from work due to disability, a temporary layoff, or any other reason is a reduction of hours of a covered employee's employment if there is not an immediate termination of employment. If a group health plan measures eligibility for the coverage of employees by the number of hours worked in a given time period, such as the preceding month or quarter, and an employee covered under the plan fails to work the minimum number of hours during that time period, the failure to work the minimum number of required hours is a reduction of hours of that covered employee's employment.

(f) The qualifying event of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the qualifying event giving rise to the period of COBRA continuation coverage during which the child is born or placed for adoption. If a second qualifying event has occurred before the child is born or placed for adoption (such as the death of the covered employee), then the second qualifying event also applies to the newborn or adopted child. See Q&A–6 of § 54.4980B–7.

(g) The rules of this Q&A–1 are illustrated by the following examples, in each of which the group health plan is subject to COBRA:

Example 1. (i) An employee who is covered by a group health plan terminates employment (other than by reason of the employee's gross misconduct) and, beginning with the day after the last day of employment, is given 3 months of employer-paid coverage under the same terms and conditions as before that date. At the end of the three months, the coverage terminates.

(ii) The loss of coverage at the end of the three months results from the termination of employment and, thus, the termination of employment is a qualifying event.

Example 2. (i) An employee who is covered by a group health plan retires (which is a termination of employment other than by reason of the employee's gross misconduct) and, upon retirement, is required to pay an increased amount for the same group health coverage that the employee had before retirement.

(ii) The increase in the premium or contribution required for coverage is a loss of coverage under paragraph (c) of this Q&A–1 and, thus, the retirement is a qualifying event.

Example 3. (i) An employee and the employee's spouse are covered under an employer's group health plan. The employee retires and is given identical coverage for life. However, the plan provides that the spousal coverage will not be continued beyond six months unless a higher premium for the spouse is paid to the plan.

(ii) The requirement for the spouse to pay a higher premium at the end of the six months is a loss of coverage under paragraph (c) of this Q&A–1. Thus, the retirement is a qualifying event and the spouse must be given an opportunity to elect COBRA continuation coverage.

Example 4. (i) *F* is a covered employee who is married to *G*, and both are covered under a group health plan maintained by *F*'s employer. *F* and *G* are divorced. Under the terms of the plan, the divorce causes *G* to lose coverage. The divorce is a qualifying event, and *G* elects COBRA continuation coverage, remarries during the period of COBRA continuation coverage, and *G*'s new spouse becomes covered under the plan. (See Q&A–5 in § 54.4980B–5, paragraph (c) in Q&A–4 of § 54.4980B–5, section 9801(f)(2), and § 54.9801–6T(b).) *G* dies. Under the terms of the plan, the death causes *G*'s new spouse to lose coverage under the plan.

(ii) *G*'s death is not a qualifying event because *G* is not a covered employee.

Example 5. (i) An employer maintains a group health plan for both active employees and retired employees (and their families). The coverage for active employees and retired employees is identical, and the employer does not require retirees to pay more for coverage than active employees. The plan does not make COBRA continuation coverage available when an employee retires (and is not required to because the retired employee has not lost coverage under the plan). The employer amends the plan to eliminate coverage for retired employees effective January 1, 2002. On that date, several retired employees (and their spouses and dependent children) have been covered under the plan since their retirement for less than the maximum coverage period that would apply to them in connection with their retirement.

(ii) The elimination of retiree coverage under these circumstances is a deferred loss of coverage for those retirees (and their spouses and dependent children) under paragraph (c) of this Q&A–1 and, thus, the retirement is a qualifying event. The plan must make COBRA continuation coverage available to them for the balance of the maximum coverage period that applies to them in connection with the retirement.

Q–2: Are the facts surrounding a termination of employment (such as whether it was voluntary or involuntary) relevant in determining whether the termination of employment is a qualifying event?

A–2: Apart from facts constituting gross misconduct, the facts surrounding the termination or reduction of hours are irrelevant in determining whether a qualifying event has occurred. Thus, it

does not matter whether the employee voluntarily terminated or was discharged. For example, a strike or a lockout is a termination or reduction of hours that constitutes a qualifying event if the strike or lockout results in a loss of coverage as described in paragraph (c) of Q&A–1 of this section. Similarly, a layoff that results in such a loss of coverage is a qualifying event.

§ 54.4980B–5 COBRA continuation coverage.

The following questions-and-answers address the requirements for coverage to constitute COBRA continuation coverage:

Q–1: What is COBRA continuation coverage?

A–1: (a) If a qualifying event occurs, each qualified beneficiary (other than a qualified beneficiary for whom the qualifying event will not result in any immediate or deferred loss of coverage) must be offered an opportunity to elect to receive the group health plan coverage that is provided to similarly situated nonCOBRA beneficiaries (ordinarily, the same coverage that the qualified beneficiary had on the day before the qualifying event). See Q&A–3 of § 54.4980B–3 for the definition of similarly situated nonCOBRA beneficiaries. This coverage is COBRA continuation coverage. If coverage under the plan is modified for similarly situated nonCOBRA beneficiaries, then the coverage made available to qualified beneficiaries is modified in the same way. If the continuation coverage offered differs in any way from the coverage made available to similarly situated nonCOBRA beneficiaries, the coverage offered does not constitute COBRA continuation coverage and the group health plan is not in compliance with COBRA unless other coverage that does constitute COBRA continuation coverage is also offered. Any elimination or reduction of coverage in anticipation of an event described in paragraph (b) of Q&A–1 of § 54.4980B–4 is disregarded for purposes of this Q&A–1 and for purposes of any other reference in §§ 54.4980B–1 through 54.4980B–8 to coverage in effect immediately before (or on the day before) a qualifying event. COBRA continuation coverage must not be conditioned upon, or discriminate on the basis of lack of, evidence of insurability.

(b) In the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the child is generally entitled to elect immediately to have the same coverage that dependent children of active employees receive under the benefit packages under which the covered employee has coverage at the time of the birth or placement for adoption. Such a child would be entitled to elect coverage different from that elected by the covered employee during the next available open enrollment period under the plan. See Q&A–4 of this section.

Q–2: What deductibles apply if COBRA continuation coverage is elected?

A–2: (a) Qualified beneficiaries electing COBRA continuation coverage generally are subject to the same deductibles as similarly situated nonCOBRA beneficiaries. If a qualified beneficiary's COBRA continuation coverage begins before the end of a period prescribed for accumulating amounts toward deductibles, the qualified beneficiary must retain credit for expenses incurred toward those deductibles before the beginning of COBRA continuation coverage as though the qualifying event had not occurred. The specific application of this rule depends on the type of deductible, as set forth in paragraphs (b) through (d) of this Q&A–2. Special rules are set forth in paragraph (e) of this Q&A–2, and examples appear in paragraph (f) of this Q&A–2.

(b) If a deductible is computed separately for each individual receiving coverage under the plan, each individual's remaining deductible amount (if any) on the date COBRA continuation coverage begins is equal to that individual's remaining deductible amount immediately before that date.

(c) If a deductible is computed on a family basis, the remaining deductible for the family on the date that COBRA continuation coverage begins depends on the members of the family electing COBRA continuation coverage. In computing the family deductible that remains on the date COBRA continuation coverage begins, only the expenses of those family members receiving COBRA continuation coverage need be taken into account. If the qualifying event results in there being more than one family unit (for example, because of a divorce), the family deductible may be computed separately for each resulting family unit based on the members in each unit. These rules apply regardless of whether the plan provides that the family deductible is an alternative to individual deductibles or an additional requirement.

(d) Deductibles that are not described in paragraph (b) or (c) of this Q&A–2 must be treated in a manner consistent with the principles set forth in those paragraphs.

(e) If a deductible is computed on the basis of a covered employee's compensation instead of being a fixed dollar amount and the employee remains employed during the period of COBRA continuation coverage, the plan is permitted to choose whether to apply the deductible by treating the employee's compensation as continuing without change for the duration of the COBRA continuation coverage at the level that was used to compute the deductible in effect immediately before the COBRA continuation coverage began, or to apply the deductible by taking the employee's actual compensation into account. In applying a deductible that is computed on the basis of the covered employee's compensation instead of being a fixed dollar amount, for periods of COBRA continuation coverage in which the employee is not employed by the employer, the plan is required to compute the deductible by treating the employee's compensation as continuing without change for the duration of the COBRA continuation coverage either at the level that was used to compute the deductible in effect immediately before the COBRA continuation coverage began or at the level that was used to compute the deductible in effect immediately before the employee's employment was terminated.

(f) The rules of this Q&A–2 are illustrated by the following examples; in each example, deductibles under the plan are determined on a calendar year basis:

Example 1. (i) A group health plan applies a separate $100 annual deductible to each individual it covers. The plan provides that the spouse and dependent children of a covered employee will lose coverage on the last day of the month after the month of the covered employee's death. A covered employee dies on June 11, 2001. The spouse and the two dependent children elect COBRA continuation coverage, which will begin on August 1, 2001. As of July 31, 2001, the spouse has incurred $80 of covered expenses, the older child has incurred no covered expenses, and the younger one has incurred $120 of covered expenses (and therefore has already satisfied the deductible).

(ii) At the beginning of COBRA continuation coverage on August 1, the spouse has a remaining deductible of $20, the older child still has the full $100 deductible, and the younger one has no further deductible.

Example 2. (i) A group health plan applies a separate $200 annual deductible to each individual it covers, except that each family member is treated as having satisfied the individual deductible once the family has incurred $500 of covered expenses during the year. The plan provides that upon the divorce of a covered employee, coverage will

end immediately for the employee's spouse and any children who do not remain in the employee's custody. A covered employee with four dependent children is divorced, the spouse obtains custody of the two oldest children, and the spouse and those children all elect COBRA continuation coverage to begin immediately. The family had accumulated $420 of covered expenses before the divorce, as follows: $70 by each parent, $200 by the oldest child, $80 by the youngest child, and none by the other two children.

(ii) The resulting family consisting of the spouse and the two oldest children accumulated a total of $270 of covered expenses, and thus the remaining deductible for that family could be as high as $230 (because the plan would not have to count the incurred expenses of the covered employee and the youngest child). The remaining deductible for the resulting family consisting of the covered employee and the two youngest children is not subject to the rules of this Q&A–2 because their coverage is not COBRA continuation coverage.

Example 3. Each year a group health plan pays 70 percent of the cost of an individual's psychotherapy after that individual's first three visits during the year. A qualified beneficiary whose election of COBRA continuation coverage takes effect beginning August 1, 2001 and who has already made two visits as of that date need only pay for one more visit before the plan must begin to pay 70 percent of the cost of the remaining visits during 2001.

Example 4. (i) A group health plan has a $250 annual deductible per covered individual. The plan provides that if the deductible is not satisfied in a particular year, expenses incurred during October through December of that year are credited toward satisfaction of the deductible in the next year. A qualified beneficiary who has incurred covered expenses of $150 from January through September of 2001 and $40 during October elects COBRA continuation coverage beginning November 1, 2001.

(ii) The remaining deductible amount for this qualified beneficiary is $60 at the beginning of the COBRA continuation coverage. If this individual incurs covered expenses of $50 in November and December of 2001 combined (so that the $250 deductible for 2001 is not satisfied), the $90 incurred from October through December of 2001 are credited toward satisfaction of the deductible amount for 2002.

Q–3: How do a plan's limits apply to COBRA continuation coverage?

A–3: (a) Limits are treated in the same way as deductibles (see Q&A–2 of this section).

This rule applies both to limits on plan benefits (such as a maximum number of hospital days or dollar amount of reimbursable expenses) and limits on out-of-pocket expenses (such as a limit on copayments, a limit on deductibles plus copayments, or a catastrophic limit). This rule applies equally to annual and lifetime limits and applies equally to limits on specific benefits and limits on benefits in the aggregate under the plan.

(b) The rule of this Q&A–3 is illustrated by the following examples; in each example limits are determined on a calendar year basis:

Example 1. (i) A group health plan pays for a maximum of 150 days of hospital confinement per individual per year. A covered employee who has had 20 days of hospital confinement as of May 1, 2001 terminates employment and elects COBRA continuation coverage as of that date.

(ii) During the remainder of the year 2001 the plan need only pay for a maximum of 130 days of hospital confinement for this individual.

Example 2. (i) A group health plan reimburses a maximum of $20,000 of covered expenses per family per year, and the same $20,000 limit applies to unmarried covered employees. A covered employee and spouse who have no children divorce on May 1, 2001, and the spouse elects COBRA continuation coverage as of that date. In 2001, the employee had incurred $5,000 of expenses and the spouse had incurred $8,000 before May 1.

(ii) The plan can limit its reimbursement of the amount of expenses incurred by the spouse on and after May 1 for the remainder of the year to $12,000 ($20,000 − $8,000 = $12,000). The remaining limit for the employee is not subject to the rules of this Q&A–3 because the employee's coverage is not COBRA continuation coverage.

Example 3. (i) A group health plan pays for 80 percent of covered expenses after satisfaction of a $100-per-individual deductible, and the plan pays for 100 percent of covered expenses after a family has incurred out-of-pocket costs of $2,000. The plan provides that upon the divorce of a covered employee, coverage will end immediately for the employee's spouse and any children who do not remain in the employee's custody. An employee and spouse with three dependent children divorce on June 1, 2001, and one of the children remains with the employee. The spouse elects COBRA continuation coverage as of that date for the spouse and the other two children. During January through May of 2001, the spouse incurred $600 of covered expenses and each of the two children in the spouse's custody after the divorce incurred covered expenses of $1,100. This resulted in total out-of-pocket costs for these three individuals of $800 ($300 total for the three deductibles, plus $500 for 20 percent of the other $2,500 in incurred expenses [$600 + $1,100 + $1,100 = $2,800; $2,800 − $300 = $2,500]).

(ii) For the remainder of 2001, the resulting family consisting of the spouse and two children has an out-of-pocket limit of $1,200 ($2,000 − $800 = $1,200) . The remaining out-of-pocket limit for the resulting family consisting of the employee and one child is not subject to the rules of this Q&A–3 because their coverage is not COBRA continuation coverage.

Q–4: Can a qualified beneficiary who elects COBRA continuation coverage ever change from the coverage received by that individual immediately before the qualifying event?

A–4: (a) In general, a qualified beneficiary need only be given an opportunity to continue the coverage that she or he was receiving immediately before the qualifying event. This is true regardless of whether the coverage received by the qualified beneficiary before the qualifying event ceases to be of value to the qualified beneficiary, such as in the case of a qualified beneficiary covered under a region-specific health maintenance organization (HMO) who leaves the HMO's service region. The only situations in which a qualified beneficiary must be allowed to change from the coverage received immediately before the qualifying event are as set forth in paragraphs (b) and (c) of this Q&A–4 and in Q&A–1 of this section (regarding changes to or elimination of the coverage provided to similarly situated nonCOBRA beneficiaries).

(b) If a qualified beneficiary participates in a region-specific benefit package (such as an HMO or an on-site clinic) that will not service her or his health needs in the area to which she or he is relocating (regardless of the reason for the relocation), the qualified beneficiary must be given an opportunity to elect alternative coverage that the employer or employee organization makes available to active employees. If the employer or employee organization makes group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the qualified beneficiary is relocating, then that coverage is the alternative coverage that must be made available to the relocating qualified beneficiary. If the employer or employee organization does not make group health plan coverage available to similarly situated nonCOBRA beneficiaries that can be extended in the area to which the qualified beneficiary is relocating but makes coverage available to other employees that can be extended in that area, then the coverage made available to those other employees must be made available to the relocating qualified beneficiary. However, the employer or employee organization is not required to make any other coverage available to the relocating qualified beneficiary if the only coverage the employer or employee organization makes available to active employees is not available in the area to which the qualified beneficiary relocates (because all such coverage is region-specific and does not service individuals in that area).

(c) If an employer or employee organization makes an open enrollment period available to similarly situated active employees with respect to whom a qualifying event has not occurred, the same open enrollment period rights

must be made available to each qualified beneficiary receiving COBRA continuation coverage. An open enrollment period means a period during which an employee covered under a plan can choose to be covered under another group health plan or under another benefit package within the same plan, or to add or eliminate coverage of family members.

(d) The rules of this Q&A–4 are illustrated by the following examples:

Example 1. (i) *E* is an employee who works for an employer that maintains several group health plans. Under the terms of the plans, if an employee chooses to cover any family members under a plan, all family members must be covered by the same plan and that plan must be the same as the plan covering the employee. Immediately before *E*'s termination of employment (for reasons other than gross misconduct), *E* is covered along with *E*'s spouse and children by a plan. The coverage under that plan will end as a result of the termination of employment.

(ii) Upon *E*'s termination of employment, each of the four family members is a qualified beneficiary. Even though the employer maintains various other plans and options, it is not necessary for the qualified beneficiaries to be allowed to switch to a new plan when *E* terminates employment.

(iii) COBRA continuation coverage is elected for each of the four family members. Three months after *E*'s termination of employment there is an open enrollment period during which similarly situated active employees are offered an opportunity to choose to be covered under a new plan or to add or eliminate family coverage.

(iv) During the open enrollment period, each of the four qualified beneficiaries must be offered the opportunity to switch to another plan (as though each qualified beneficiary were an individual employee). For example, each member of *E*'s family could choose coverage under a separate plan, even though the family members of employed individuals could not choose coverage under separate plans. Of course, if each family member chooses COBRA continuation coverage under a separate plan, the plan can require payment for each family member that is based on the applicable premium for individual coverage under that separate plan. See Q&A–1 of § 54.4980B–8.

Example 2. (i) The facts are the same as in *Example 1*, except that *E*'s family members are not covered under *E*'s group health plan when *E* terminates employment.

(ii) Although the family members do not have to be given an opportunity to elect COBRA continuation coverage, *E* must be allowed to add them to *E*'s COBRA continuation coverage during the open enrollment period. This is true even though the family members are not, and cannot become, qualified beneficiaries (see Q&A–1 of § 54.4980B–3).

Q–5: Aside from open enrollment periods, can a qualified beneficiary who has elected COBRA continuation coverage choose to cover individuals (such as newborn children, adopted children, or new spouses) who join the qualified beneficiary's family on or after the date of the qualifying event?

A–5: (a) Yes. Under section 9801 and § 54.9801–6T, employees eligible to participate in a group health plan (whether or not participating), as well as former employees participating in a plan (referred to in those rules as participants), are entitled to special enrollment rights for certain family members upon the loss of other group health plan coverage or upon the acquisition by the employee or participant of a new spouse or of a new dependent through birth, adoption, or placement for adoption, if certain requirements are satisfied. Employees not participating in the plan also can obtain rights for self-enrollment under those rules. Once a qualified beneficiary is receiving COBRA continuation coverage (that is, has timely elected and made timely payment for COBRA continuation coverage), the qualified beneficiary has the same right to enroll family members under those special enrollment rules as if the qualified beneficiary were an employee or participant within the meaning of those rules. However, neither a qualified beneficiary who is not receiving COBRA continuation coverage nor a former qualified beneficiary has any special enrollment rights under those rules.

(b) In addition to the special enrollment rights described in paragraph (a) of this Q&A–5, if the plan covering the qualified beneficiary provides that new family members of active employees can become covered (either automatically or upon an appropriate election) before the next open enrollment period, then the same right must be extended to the new family members of a qualified beneficiary.

(c) If the addition of a new family member will result in a higher applicable premium (for example, if the qualified beneficiary was previously receiving COBRA continuation coverage as an individual, or if the applicable premium for family coverage depends on family size), the plan can require the payment of a correspondingly higher amount for the COBRA continuation coverage. See Q&A–1 of § 54.4980B–8.

(d) The right to add new family members under this Q&A–5 is in addition to the rights that newborn and adopted children of covered employees may have as qualified beneficiaries; see Q&A–1 in § 54.4980B–3.

§ 54.4980B–6 Electing COBRA continuation coverage.

The following questions-and-answers address the manner in which COBRA continuation coverage is elected:

Q–1: What is the election period and how long must it last?

A–1: (a) A group health plan can condition the availability of COBRA continuation coverage upon the timely election of such coverage. An election of COBRA continuation coverage is a timely election if it is made during the election period. The election period must begin not later than the date the qualified beneficiary would lose coverage on account of the qualifying event. (See paragraph (c) of Q&A–1 of § 54.4980B–4 for the meaning of *lose coverage*.) The election period must not end before the date that is 60 days after the later of—

(1) The date the qualified beneficiary would lose coverage on account of the qualifying event; or

(2) The date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage.

(b) An election is considered to be made on the date it is sent to the plan administrator.

(c) The rules of this Q&A–1 are illustrated by the following example:

Example. (i) An unmarried employee without children who is receiving employer-paid coverage under a group health plan voluntarily terminates employment on June 1, 2001. The employee is not disabled at the time of the termination of employment nor at any time thereafter, and the plan does not provide for the extension of the required periods (as is permitted under section 4980B(f)(8)).

(ii) *Case 1:* If the plan provides that the employer-paid coverage ends immediately upon the termination of employment, the election period must begin not later than June 1, 2001, and must not end earlier than July 31, 2001. If notice of the right to elect COBRA continuation coverage is not provided to the employee until June 15, 2001, the election period must not end earlier than August 14, 2001.

(iii) *Case 2:* If the plan provides that the employer-paid coverage does not end until 6 months after the termination of employment, the employee does not lose coverage until December 1, 2001. The election period can therefore begin as late as December 1, 2001, and must not end before January 30, 2002.

(iv) *Case 3:* If employer-paid coverage for 6 months after the termination of employment is offered only to those qualified beneficiaries who waive COBRA continuation coverage, the employee loses coverage on June 1, 2001, so the election period is the same as in Case 1. The difference between Case 2 and Case 3 is that in Case 2 the employee can receive 6 months of employer-paid coverage and then elect to pay for up to an additional 12 months of COBRA continuation coverage, while in Case

3 the employee must choose between 6 months of employer-paid coverage and paying for up to 18 months of COBRA continuation coverage. In all three cases, COBRA continuation coverage need not be provided for more than 18 months after the termination of employment, and in certain circumstances might be provided for a shorter period (see Q&A–1 of § 54.4980B–7).

Q–2: Is a covered employee or qualified beneficiary responsible for informing the plan administrator of the occurrence of a qualifying event?

A–2: (a) In general, the employer or plan administrator must determine when a qualifying event has occurred. However, each covered employee or qualified beneficiary is responsible for notifying the plan administrator of the occurrence of a qualifying event that is either a dependent child's ceasing to be a dependent child under the generally applicable requirements of the plan or a divorce or legal separation of a covered employee. The group health plan is not required to offer the qualified beneficiary an opportunity to elect COBRA continuation coverage if the notice is not provided to the plan administrator within 60 days after the later of—

(1) The date of the qualifying event; or

(2) The date the qualified beneficiary would lose coverage on account of the qualifying event.

(b) For purposes of this Q&A–2, if more than one qualified beneficiary would lose coverage on account of a divorce or legal separation of a covered employee, a timely notice of the divorce or legal separation that is provided by the covered employee or any one of those qualified beneficiaries will be sufficient to preserve the election rights of all of the qualified beneficiaries.

Q–3: During the election period and before the qualified beneficiary has made an election, must coverage be provided?

A–3: (a) In general, each qualified beneficiary has until 60 days after the later of the date the qualifying event would cause her or him to lose coverage or the date notice is provided to the qualified beneficiary of her or his right to elect COBRA continuation coverage to decide whether to elect COBRA continuation coverage. If the election is made during that period, coverage must be provided from the date that coverage would otherwise have been lost (but see Q&A–4 of this section). This can be accomplished as described in paragraph (b) or (c) of this Q&A–3.

(b) In the case of an indemnity or reimbursement arrangement, the employer or employee organization can provide for plan coverage during the election period or, if the plan allows retroactive reinstatement, the employer or employee organization can terminate the coverage of the qualified beneficiary and reinstate her or him when the election is made. Claims incurred by a qualified beneficiary during the election period do not have to be paid before the election (and, if applicable, payment for the coverage) is made. If a provider of health care (such as a physician, hospital, or pharmacy) contacts the plan to confirm coverage of a qualified beneficiary during the election period, the plan must give a complete response to the health care provider about the qualified beneficiary's COBRA continuation coverage rights during the election period. For example, if the plan provides coverage during the election period but cancels coverage retroactively if COBRA continuation coverage is not elected, then the plan must inform a provider that a qualified beneficiary for whom coverage has not been elected is covered but that the coverage is subject to retroactive termination. Similarly, if the plan cancels coverage but then retroactively reinstates it once COBRA continuation coverage is elected, then the plan must inform the provider that the qualified beneficiary currently does not have coverage but will have coverage retroactively to the date coverage was lost if COBRA continuation coverage is elected. (See paragraph (c) of Q&A–5 in § 54.4980B–8 for similar rules that a plan must follow in confirming coverage during a period when the plan has not received payment but that is still within the grace period for a qualified beneficiary for whom COBRA continuation coverage has been elected.)

(c)(1) In the case of a group health plan that provides health services (such as a health maintenance organization or a walk-in clinic), the plan can require with respect to a qualified beneficiary who has not elected and paid for COBRA continuation coverage that the qualified beneficiary choose between—

(i) Electing and paying for the coverage; or

(ii) Paying the reasonable and customary charge for the plan's services, but only if a qualified beneficiary who chooses to pay for the services will be reimbursed for that payment within 30 days after the election of COBRA continuation coverage (and, if applicable, the payment of any balance due for the coverage).

(2) In the alternative, the plan can provide continued coverage and treat the qualified beneficiary's use of the facility as a constructive election. In such a case, the qualified beneficiary is obligated to pay any applicable charge for the coverage, but only if the qualified beneficiary is informed that use of the facility will be a constructive election before using the facility.

Q–4: Is a waiver before the end of the election period effective to end a qualified beneficiary's election rights?

A–4: If, during the election period, a qualified beneficiary waives COBRA continuation coverage, the waiver can be revoked at any time before the end of the election period. Revocation of the waiver is an election of COBRA continuation coverage. However, if a waiver of COBRA continuation coverage is later revoked, coverage need not be provided retroactively (that is, from the date of the loss of coverage until the waiver is revoked). Waivers and revocations of waivers are considered made on the date they are sent to the employer, employee organization, or plan administrator, as applicable.

Q–5: Can an employer or employee organization withhold money or other benefits owed to a qualified beneficiary until the qualified beneficiary either waives COBRA continuation coverage, elects and pays for such coverage, or allows the election period to expire?

A–5: No. An employer, and an employee organization, must not withhold anything to which a qualified beneficiary is otherwise entitled (by operation of law or other agreement) in order to compel payment for COBRA continuation coverage or to coerce the qualified beneficiary to give up rights to COBRA continuation coverage (including the right to use the full election period to decide whether to elect such coverage). Such a withholding constitutes a failure to comply with the COBRA continuation coverage requirements. Furthermore, any purported waiver obtained by means of such a withholding is invalid.

Q–6: Can each qualified beneficiary make an independent election under COBRA?

A–6: Yes. Each qualified beneficiary (including a child who is born to or placed for adoption with a covered employee during a period of COBRA continuation coverage) must be offered the opportunity to make an independent election to receive COBRA continuation coverage. If the plan allows similarly situated active employees with respect to whom a qualifying event has not occurred to choose among several options during an open enrollment period (for example, to switch to another group health plan or to another benefit package under the same group health plan), then each qualified beneficiary must also be offered an independent election to choose during an open enrollment period among the

options made available to similarly situated active employees with respect to whom a qualifying event has not occurred. If a qualified beneficiary who is either a covered employee or the spouse of a covered employee elects COBRA continuation coverage and the election does not specify whether the election is for self-only coverage, the election is deemed to include an election of COBRA continuation coverage on behalf of all other qualified beneficiaries with respect to that qualifying event. An election on behalf of a minor child can be made by the child's parent or legal guardian. An election on behalf of a qualified beneficiary who is incapacitated or dies can be made by the legal representative of the qualified beneficiary or the qualified beneficiary's estate, as determined under applicable state law, or by the spouse of the qualified beneficiary. (See also Q&A–5 of § 54.4980B–7 relating to the independent right of each qualified beneficiary with respect to the same qualifying event to receive COBRA continuation coverage during the disability extension.) The rules of this Q&A–6 are illustrated by the following examples; in each example each group health plan is subject to COBRA:

Example 1. (i) Employee *H* and *H*'s spouse are covered under a group health plan immediately before *H*'s termination of employment (for reasons other than gross misconduct). Coverage under the plan will end as a result of the termination of employment.

(ii) Upon *H*'s termination of employment, both *H* and *H*'s spouse are qualified beneficiaries and each must be allowed to elect COBRA continuation coverage. Thus, *H* might elect COBRA continuation coverage while the spouse declines to elect such coverage, or *H* might elect COBRA continuation coverage for both of them. In contrast, *H* cannot decline COBRA continuation coverage on behalf of *H*'s spouse. Thus, if *H* does not elect COBRA continuation coverage on behalf of the spouse, the spouse must still be allowed to elect COBRA continuation coverage.

Example 2. (i) An employer maintains a group health plan under which all employees receive employer-paid coverage. Employees can arrange to cover their families by paying an additional amount. The employer also maintains a cafeteria plan, under which one of the options is to pay part or all of the employee share of the cost for family coverage under the group health plan. Thus, an employee might pay for family coverage under the group health plan partly with before-tax dollars and partly with after-tax dollars.

(ii) If an employee's family is receiving coverage under the group health plan when a qualifying event occurs, each of the qualified beneficiaries must be offered an opportunity to elect COBRA continuation coverage, regardless of how that qualified beneficiary's coverage was paid for before the qualifying event.

§ 54.4980B–7 Duration of COBRA continuation coverage.

The following questions-and-answers address the duration of COBRA continuation coverage:

Q–1: How long must COBRA continuation coverage be made available to a qualified beneficiary?

A–1: (a) Except for an interruption of coverage in connection with a waiver, as described in Q&A–4 of § 54.4980B–6, COBRA continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates—

(1) The last day of the maximum required period under section 4980B(f)(2)(B)(i) (the maximum coverage period) and, if applicable, section 4980B(f)(8) (relating to the optional extension of required periods in a case where coverage is lost after the date of, instead of on the date of, the qualifying event);

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary (see Q&A–5 in § 54.4980B–8);

(3) The date upon which the employer or employee organization ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan, as described in Q&A–2 of this section; and

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits, as described in Q&A–3 of this section.

(b) However, a group health plan can terminate for cause the coverage of a qualified beneficiary receiving COBRA continuation coverage on the same basis that the plan terminates for cause the coverage of similarly situated nonCOBRA beneficiaries. For example, if a group health plan terminates the coverage of active employees for the submission of a fraudulent claim, then the coverage of a qualified beneficiary can also be terminated for the submission of a fraudulent claim. Notwithstanding the preceding two sentences, the coverage of a qualified beneficiary can be terminated for failure to make timely payment to the plan only if payment is not timely under the rules of Q&A–5 in § 54.4980B–8.

(c) In the case of an individual who is not a qualified beneficiary and who is receiving coverage under a group health plan solely because of the individual's relationship to a qualified beneficiary, if the plan's obligation to make COBRA continuation coverage available to the qualified beneficiary ceases under this section, the plan is not obligated to make coverage available to the individual who is not a qualified beneficiary.

Q–2: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to coverage under another group health plan?

A–2: (a) If a qualified beneficiary first becomes covered under another group health plan (including for this purpose any group health plan of a governmental employer or employee organization) after the date on which COBRA continuation coverage is elected for the qualified beneficiary and the other coverage satisfies the requirements of paragraphs (b), (c), and (d) of this Q&A–2, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary first becomes covered under the other group health plan (even if the other coverage is less valuable to the qualified beneficiary). By contrast, if a qualified beneficiary first becomes covered under another group health plan on or before the date on which COBRA continuation coverage is elected, then the other coverage cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) The requirement of this paragraph (b) is satisfied if the qualified beneficiary is actually covered, rather than merely eligible to be covered, under the other group health plan.

(c) The requirement of this paragraph (c) is satisfied if the other group health plan is a plan that is not maintained by the employer or employee organization that maintains the plan under which COBRA continuation coverage must otherwise be made available.

(d) The requirement of this paragraph (d) is satisfied if the other group health plan does not contain any exclusion or limitation with respect to any preexisting condition of the qualified beneficiary (other than such an exclusion or limitation that does not apply to, or is satisfied by, the qualified beneficiary by reason of the provisions in section 9801 (relating to limitations on preexisting condition exclusion periods in group health plans)).

(e) The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employer *X* maintains a group health plan subject to COBRA. *C* is an employee covered under the plan. *C* is also covered under a group health plan

maintained by Employer *Y*, the employer of *C*'s spouse. *C* terminates employment (for reasons other than gross misconduct), and the termination of employment causes *C* to lose coverage under *X*'s plan (and, thus, is a qualifying event). *C* elects to receive COBRA continuation coverage under *X*'s plan.

(ii) Under these facts, *X*'s plan cannot terminate *C*'s COBRA continuation coverage on the basis of *C*'s coverage under *Y*'s plan.

Example 2. (i) Employer *W* maintains a group health plan subject to COBRA. *D* is an employee covered under the plan. *D* terminates employment (for reasons other than gross misconduct), and the termination of employment causes *D* to lose coverage under *W*'s plan (and, thus, is a qualifying event). *D* elects to receive COBRA continuation coverage under *W*'s plan. Later *D* becomes employed by Employer *V* and is covered under *V*'s group health plan. *D*'s coverage under *V*'s plan is not subject to any exclusion or limitation with respect to any preexisting condition of *D*.

(ii) Under these facts, *W* can terminate *D*'s COBRA continuation coverage on the date *D* becomes covered under *V*'s plan.

Example 3. (i) The facts are the same as in *Example 2*, except that *D* becomes employed by *V* and becomes covered under *V*'s group health plan before *D* elects COBRA continuation coverage under *W*'s plan.

(ii) Because the termination of employment is a qualifying event, *D* must be offered COBRA continuation coverage under *W*'s plan, and *W* is not permitted to terminate *D*'s COBRA continuation coverage on account of *D*'s coverage under *V*'s plan because *D* first became covered under *V*'s plan before COBRA continuation coverage was elected for *D*.

Q–3: When may a plan terminate a qualified beneficiary's COBRA continuation coverage due to the qualified beneficiary's entitlement to Medicare benefits?

A–3: (a) If a qualified beneficiary first becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) after the date on which COBRA continuation coverage is elected for the qualified beneficiary, then the plan may terminate the qualified beneficiary's COBRA continuation coverage upon the date on which the qualified beneficiary becomes so entitled. By contrast, if a qualified beneficiary first becomes entitled to Medicare benefits on or before the date that COBRA continuation coverage is elected, then the qualified beneficiary's entitlement to Medicare benefits cannot be a basis for terminating the qualified beneficiary's COBRA continuation coverage.

(b) A qualified beneficiary becomes entitled to Medicare benefits upon the effective date of enrollment in either part A or B, whichever occurs earlier. Thus, merely being eligible to enroll in Medicare does not constitute being entitled to Medicare benefits.

Q–4: [Reserved]

A–4: [Reserved]

Q–5: How does a qualified beneficiary become entitled to a disability extension?

A–5: (a) A qualified beneficiary becomes entitled to a disability extension if the requirements of paragraphs (b), (c), and (d) of this Q&A–5 are satisfied with respect to the qualified beneficiary. If the disability extension applies with respect to a qualifying event, it applies with respect to each qualified beneficiary entitled to COBRA continuation coverage because of that qualifying event. Thus, for example, the 29-month maximum coverage period applies to each qualified beneficiary who is not disabled as well as to the qualified beneficiary who is disabled, and it applies independently with respect to each of the qualified beneficiaries. See Q&A–1 in § 54.4980B–8, which permits a plan to require payment of an increased amount during the disability extension.

(b) The requirement of this paragraph (b) is satisfied if a qualifying event occurs that is a termination, or reduction of hours, of a covered employee's employment.

(c) The requirement of this paragraph (c) is satisfied if an individual (whether or not the covered employee) who is a qualified beneficiary in connection with the qualifying event described in paragraph (b) of this Q&A–5 is determined under Title II or XVI of the Social Security Act (42 U.S.C. 401–433 or 1381–1385) to have been disabled at any time during the first 60 days of COBRA continuation coverage. For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A–5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods in accordance with section 4980B(f)(8), then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost). However, in the case of a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage, the period of the first 60 days of COBRA continuation coverage is measured from the date of birth or placement for adoption. For purposes of this paragraph (c), an individual is determined to be disabled within the first 60 days of COBRA continuation coverage if the individual has been determined under Title II or XVI of the Social Security Act to have been disabled before the first day of COBRA continuation coverage and has not been determined to be no longer disabled at any time between the date of that disability determination and the first day of COBRA continuation coverage.

(d) The requirement of this paragraph (d) is satisfied if any of the qualified beneficiaries affected by the qualifying event described in paragraph (b) of this Q&A–5 provides notice to the plan administrator of the disability determination on a date that is both within 60 days after the date the determination is issued and before the end of the original 18-month maximum coverage period that applies to the qualifying event.

Q–6: Under what circumstances can the maximum coverage period be expanded?

A–6: (a) The maximum coverage period can be expanded if the requirements of Q&A–5 of this section (relating to the disability extension) or paragraph (b) of this Q&A–6 are satisfied.

(b) The requirements of this paragraph (b) are satisfied if a qualifying event that gives rise to an 18-month maximum coverage period (or a 29-month maximum coverage period in the case of a disability extension) is followed, within that 18-month period (or within that 29-month period, in the case of a disability extension), by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period; the bankruptcy of the employer also cannot be a second qualifying event that expands the maximum coverage period.) In such a case, the original 18-month period (or 29-month period, in the case of a disability extension) is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event (other than a qualifying event that is the bankruptcy of the employer) can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event (or more than 36 months after the date of the loss of coverage, in the case of a plan that provides for the extension of the required periods). For example, if an

employee covered by a group health plan that is subject to COBRA terminates employment (for reasons other than gross misconduct) on December 31, 2000, the termination is a qualifying event giving rise to a maximum coverage period that extends for 18 months to June 30, 2002. If the employee dies after the employee and the employee's spouse and dependent children have elected COBRA continuation coverage and on or before June 30, 2002, the spouse and dependent children (except anyone among them whose COBRA continuation coverage had already ended for some other reason) will be able to receive COBRA continuation coverage through December 31, 2003.

Q–7: If health coverage is provided to a qualified beneficiary after a qualifying event without regard to COBRA continuation coverage (for example, as a result of state or local law, the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C. 4315), industry practice, a collective bargaining agreement, severance agreement, or plan procedure), will such alternative coverage extend the maximum coverage period?

A–7: (a) No. The end of the maximum coverage period is measured solely as described in Q&A–1 and Q&A–6 of this section, which is generally from the date of the qualifying event.

(b) If the alternative coverage does not satisfy all the requirements for COBRA continuation coverage, or if the amount that the group health plan requires to be paid for the alternative coverage is greater than the amount required to be paid by similarly situated nonCOBRA beneficiaries for the coverage that the qualified beneficiary can elect to receive as COBRA continuation coverage, the plan covering the qualified beneficiary immediately before the qualifying event must offer the qualified beneficiary receiving the alternative coverage the opportunity to elect COBRA continuation coverage. See Q&A–1 of § 54.4980B–6.

(c) If an individual rejects COBRA continuation coverage in favor of alternative coverage, then, at the expiration of the alternative coverage period, the individual need not be offered a COBRA election. However, if the individual receiving alternative coverage is a covered employee and the spouse or a dependent child of the individual would lose that alternative coverage as a result of a qualifying event (such as the death of the covered employee), the spouse or dependent child must be given an opportunity to elect to continue that alternative coverage, with a maximum coverage period of 36 months measured from the date of that qualifying event.

Q–8: Must a qualified beneficiary be given the right to enroll in a conversion health plan at the end of the maximum coverage period for COBRA continuation coverage?

A–8: If a qualified beneficiary's COBRA continuation coverage under a group health plan ends as a result of the expiration of the maximum coverage period, the group health plan must, during the 180-day period that ends on that expiration date, provide the qualified beneficiary the option of enrolling under a conversion health plan if such an option is otherwise generally available to similarly situated nonCOBRA beneficiaries under the group health plan. If such a conversion option is not otherwise generally available, it need not be made available to qualified beneficiaries.

§ 54.4980B–8 Paying for COBRA continuation coverage.

The following questions-and-answers address paying for COBRA continuation coverage:

Q–1: Can a group health plan require payment for COBRA continuation coverage?

A–1: (a) Yes. For any period of COBRA continuation coverage, a group health plan can require the payment of an amount that does not exceed 102 percent of the *applicable premium* for that period. (See paragraph (b) of this Q&A–1 for a rule permitting a plan to require payment of an increased amount due to the disability extension.) The *applicable premium* is defined in section 4980B(f)(4). A group health plan can terminate a qualified beneficiary's COBRA continuation coverage as of the first day of any period for which timely payment is not made to the plan with respect to that qualified beneficiary (see Q&A–1 of § 54.4980B–7). For the meaning of *timely payment*, see Q&A–5 of this section.

(b) A group health plan is permitted to require the payment of an amount that does not exceed 150 percent of the applicable premium for any period of COBRA continuation coverage covering a disabled qualified beneficiary (for example, whether single or family coverage) if the coverage would not be required to be made available in the absence of a disability extension. (See Q&A–5 of § 54.4980B–7 for rules to determine whether a qualified beneficiary is entitled to a disability extension.) A plan is not permitted to require the payment of an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage to which a qualified beneficiary is entitled without regard to the disability extension. Thus, if a qualified beneficiary entitled to a disability extension experiences a second qualifying event within the original 18-month maximum coverage period, then the plan is not permitted to require the payment of an amount that exceeds 102 percent of the applicable premium for any period of COBRA continuation coverage. By contrast, if a qualified beneficiary entitled to a disability extension experiences a second qualifying event after the end of the original 18-month maximum coverage period, then the plan may require the payment of an amount that is up to 150 percent of the applicable premium for the remainder of the period of COBRA continuation coverage (that is, from the beginning of the 19th month through the end of the 36th month) as long as the disabled qualified beneficiary is included in that coverage. The rules of this paragraph (b) are illustrated by the following examples; in each example the group health plan is subject to COBRA:

Example 1. (i) An employer maintains a group health plan. The plan determines the cost of covering individuals under the plan by reference to two categories, individual coverage and family coverage, and the applicable premium is determined for those two categories. An employee and members of the employee's family are covered under the plan. The employee experiences a qualifying event that is the termination of the employee's employment. The employee's family qualifies for the disability extension because of the disability of the employee's spouse. (Timely notice of the disability is provided to the plan administrator.) Timely payment of the amount required by the plan for COBRA continuation coverage for the family (which does not exceed 102 percent of the cost of family coverage under the plan) was made to the plan with respect to the employee's family for the first 18 months of COBRA continuation coverage, and the disabled spouse and the rest of the family continue to receive COBRA continuation coverage through the 29th month.

(ii) Under these facts, the plan may require payment of up to 150 percent of the applicable premium for family coverage in order for the family to receive COBRA continuation coverage from the 19th month through the 29th month. If the plan determined the cost of coverage by reference to three categories (such as employee, employee-plus-one-dependent, employee-plus-two-or-more-dependents) or more than three categories, instead of two categories, the plan could still require, from the 19th month through the 29th month of COBRA continuation coverage, the payment of 150 percent of the cost of coverage for the category of coverage that included the disabled spouse.

Example 2. (i) The facts are the same as in *Example 1*, except that only the covered

employee elects and pays for the first 18 months of COBRA continuation coverage.

(ii) Even though the employee's disabled spouse does not elect or pay for COBRA continuation coverage, the employee satisfies the requirements for the disability extension to apply with respect to the employee's qualifying event. Under these facts, the plan may not require the payment of more than 102 percent of the applicable premium for individual coverage for the entire period of the employee's COBRA continuation coverage, including the period from the 19th month through the 29th month. If COBRA continuation coverage had been elected and paid for with respect to other nondisabled members of the employee's family, then the plan could not require the payment of more than 102 percent of the applicable premium for family coverage (or for any other appropriate category of coverage that might apply to that group of qualified beneficiaries under the plan, such as employee-plus-one-dependent or employee-plus-two-or-more-dependents) for those family members to continue their coverage from the 19th month through the 29th month.

(c) A group health plan does not fail to comply with section 9802(b) and § 54.9802–1T(b) (which generally prohibit an individual from being charged, on the basis of health status, a higher premium than that charged for similarly situated individuals enrolled in the plan) with respect to a qualified beneficiary entitled to the disability extension merely because the plan requires payment of an amount permitted under paragraph (b) of this Q&A–1.

Q–2: When is the applicable premium determined and when can a group health plan increase the amount it requires to be paid for COBRA continuation coverage?

A–2: (a) The applicable premium for each determination period must be computed and fixed by a group health plan before the determination period begins. A determination period is any 12-month period selected by the plan, but it must be applied consistently from year to year. The determination period is a single period for any benefit package. Thus, each qualified beneficiary does not have a separate determination period beginning on the date (or anniversaries of the date) that COBRA continuation coverage begins for that qualified beneficiary.

(b) During a determination period, a plan can increase the amount it requires to be paid for a qualified beneficiary's COBRA continuation coverage only in the following three cases:

(1) The plan has previously charged less than the maximum amount permitted under Q&A–1 of this section and the increased amount required to be paid does not exceed the maximum amount permitted under Q&A–1 of this section;

(2) The increase occurs during the disability extension and the increased amount required to be paid does not exceed the maximum amount permitted under paragraph (b) of Q&A–1 of this section; or

(3) A qualified beneficiary changes the coverage being received (see paragraph (c) of this Q&A–2 for rules on how the amount the plan requires to be paid may or must change when a qualified beneficiary changes the coverage being received).

(c) If a plan allows similarly situated active employees who have not experienced a qualifying event to change the coverage they are receiving, then the plan must also allow each qualified beneficiary to change the coverage being received on the same terms as the similarly situated active employees. (See Q&A–4 in § 54.4980B–5.) If a qualified beneficiary changes coverage from one benefit package (or a group of benefit packages) to another benefit package (or another group of benefit packages), or adds or eliminates coverage for family members, then the following rules apply. If the change in coverage is to a benefit package, group of benefit packages, or coverage unit (such as family coverage, self-plus-one-dependent, or self-plus-two-or-more-dependents) for which the applicable premium is higher, then the plan may increase the amount that it requires to be paid for COBRA continuation coverage to an amount that does not exceed the amount permitted under Q&A–1 of this section as applied to the new coverage. If the change in coverage is to a benefit package, group of benefit packages, or coverage unit (such as individual or self-plus-one-dependent) for which the applicable premium is lower, then the plan cannot require the payment of an amount that exceeds the amount permitted under Q&A–1 of this section as applied to the new coverage.

Q–3: Must a plan allow payment for COBRA continuation coverage to be made in monthly installments?

A–3: Yes. A group health plan must allow payment for COBRA continuation coverage to be made in monthly installments. A group health plan is permitted to also allow the alternative of payment for COBRA continuation coverage being made at other intervals (for example, weekly, quarterly, or semiannually).

Q–4: Is a plan required to allow a qualified beneficiary to choose to have the first payment for COBRA continuation coverage applied prospectively only?

A–4: No. A plan is permitted to apply the first payment for COBRA continuation coverage to the period of coverage beginning immediately after the date on which coverage under the plan would have been lost on account of the qualifying event. Of course, if the group health plan allows a qualified beneficiary to waive COBRA continuation coverage for any period before electing to receive COBRA continuation coverage, the first payment is not applied to the period of the waiver.

Q–5: What is timely payment for COBRA continuation coverage?

A–5: (a) Except as provided in this paragraph (a) or in paragraph (b) or (d) of this Q&A–5, timely payment for a period of COBRA continuation coverage under a group health plan means payment that is made to the plan by the date that is 30 days after the first day of that period. Payment that is made to the plan by a later date is also considered timely payment if either—

(1) Under the terms of the plan, covered employees or qualified beneficiaries are allowed until that later date to pay for their coverage for the period; or

(2) Under the terms of an arrangement between the employer or employee organization and an insurance company, health maintenance organization, or other entity that provides plan benefits on the employer's or employee organization's behalf, the employer or employee organization is allowed until that later date to pay for coverage of similarly situated nonCOBRA beneficiaries for the period.

(b) Notwithstanding paragraph (a) of this Q&A–5, a plan cannot require payment for any period of COBRA continuation coverage for a qualified beneficiary earlier than 45 days after the date on which the election of COBRA continuation coverage is made for that qualified beneficiary.

(c) If, after COBRA continuation coverage has been elected for a qualified beneficiary, a provider of health care (such as a physician, hospital, or pharmacy) contacts the plan to confirm coverage of a qualified beneficiary for a period for which the plan has not yet received payment, the plan must give a complete response to the health care provider about the qualified beneficiary's COBRA continuation coverage rights, if any, described in paragraphs (a), (b), and (d) of this Q&A–5. For example, if the plan provides coverage during the 30- and 45-day grace periods described in paragraphs (a) and (b) of this Q&A–5 but cancels coverage retroactively if payment is not made by the end of the applicable grace

period, then the plan must inform a provider with respect to a qualified beneficiary for whom payment has not been received that the qualified beneficiary is covered but that the coverage is subject to retroactive termination if timely payment is not made. Similarly, if the plan cancels coverage if it has not received payment by the first day of a period of coverage but retroactively reinstates coverage if payment is made by the end of the grace period for that period of coverage, then the plan must inform the provider that the qualified beneficiary currently does not have coverage but will have coverage retroactively to the first date of the period if timely payment is made. (See paragraph (b) of Q&A–3 in § 54.4980B–6 for similar rules that the plan must follow in confirming coverage during the election period.)

(d) If timely payment is made to the plan in an amount that is not significantly less than the amount the plan requires to be paid for a period of coverage, then the amount paid is deemed to satisfy the plan's requirement for the amount that must be paid, unless the plan notifies the qualified beneficiary of the amount of the deficiency and grants a reasonable period of time for payment of the deficiency to be made. For this purpose, as a safe harbor, 30 days after the date the notice is provided is deemed to be a reasonable period of time.

(e) Payment is considered made on the date on which it is sent to the plan.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

PAR. 3. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

PAR. 4. In § 602.101, paragraph (c) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
54.4980B–6	1545–1581
54.4980B–7	1545–1581
54.4980B–8	1545–1581
* * * * *	

Approved: December 28, 1998.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Donald C. Lubick,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–1520 Filed 2–2–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

Recommended Test Methods for State Implementation Plans

40 CFR Part 51

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 50 to 51, revised as of July 1, 1998, the text appearing on page 345 duplicates the text on page 344 and should be removed. As corrected the text on page 345 should read as follows:

* * * * *

high level of precision and accuracy for the purposes of this test. This method is not meant to replace the calibration requirements of test methods. In addition to the requirements in this method, all the calibration requirements of the applicable test method must also be met.

3.2.1 Prepare the gas dilution system according to the manufacturer's instructions. Using the high-level supply gas, prepare, at a minimum, two dilutions within the range of each dilution device utilized in the dilution system (unless, as in critical orifice systems, each dilution device is used to make only one dilution; in that case, prepare one dilution for each dilution device). Dilution device in this method refers to each mass flow controller, critical orifice, capillary tube, positive displacement pump, or any other device which is used to achieve gas dilution.

3.2.2 Calculate the predicted concentration for each of the dilutions based on the flow rates through the gas dilution system (or the dilution ratios) and the certified concentration of the high-level supply gas.

3.2.3 Introduce each of the dilutions from Section 3.2.1 into the analyzer or monitor one at a time and determine the instrument response for each of the dilutions.

3.2.4 Repeat the procedure in Section 3.2.3 two times, i.e., until three injections are made at each dilution level. Calculate the average instrument response for each triplicate injection at each dilution level. No single injection shall differ by more than ±2 percent from the average instrument response for that dilution.

3.2.5 For each level of dilution, calculate the difference between the average concentration output recorded by the analyzer and the predicted concentration calculated in Section 3.2.2. The average concentration output from the analyzer shall be within ±2 percent of the predicted value.

3.2.6 Introduce the mid-level supply gas directly into the analyzer, bypassing the gas dilution system. Repeat the procedure twice more, for a total of three mid-level supply gas injections. Calculate the average analyzer output concentration for the mid-level supply gas. The difference between the certified concentration of the mid-level supply gas and the average instrument response shall be within ±2 percent.

3.3 If the gas dilution system meets the criteria listed in Section 3.2, the gas dilution system may be used throughout that field test. If the gas dilution system fails any of the criteria listed in Section 3.2, and the tester corrects the problem with the gas dilution system, the procedure in Section 3.2 must be repeated in its entirety and all the criteria in Section 3.2 must be met in order for the gas dilution system to be utilized in the test.

4. References

1. ''EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards,'' EPA–600/R93/224, Revised September 1993.

[55 FR 14249, Apr. 17, 1990; 55 FR 24687, June 18, 1990, as amended at 55 FR 37606, Sept. 12, 1990; 56 FR 6278, Feb. 15, 1991; 56 FR 65435, Dec. 17, 1991; 60 FR 28054, May 30, 1995; 62 FR 32502, June 16, 1997]

Appendixes N–O [Reserved]

Appendix P to Part 51**—Minimum Emission Monitoring Requirements**

1.0 *Purpose.* This appendix P sets forth the minimum requirements for continuous emission monitoring and recording that each State Implementation Plan must include in order to be approved under the provisions of 40 CFR 51.165(b). These requirements include the source categories to be affected; emission monitoring, recording, and reporting requirements for those sources; performance specifications for accuracy, reliability, and durability of acceptable monitoring systems; and techniques to convert emission data to units of the applicable State emission standard. Such data must be reported to the State as an indication of whether proper maintenance and operating procedures are being utilized by source operators to maintain emission levels at or below emission standards. Such data may be used directly or indirectly for compliance determination or any other purpose deemed appropriate by the State. Though the monitoring requirements are specified in detail, States are given some flexibility to resolve difficulties that may arise during the implementation of these regulations.

1.1 *Applicability.* The State plan shall require the owner or operator of an emission source in a category listed in this appendix to: (1) Install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants specified in this appendix for the applicable source category; and (2) complete the installation and performance tests of such equipment and begin monitoring and recording within 18 months of plan approval or promulgation. The source categories and the respective monitoring requirements are listed below.

1.1.1 Fossil fuel-fired steam generators, as specified in paragraph 2.1 of this appendix,

shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.

1.1.2 Fluid bed catalytic cracking unit catalyst regenerators, as specified in paragraph 2.4 of this appendix, shall be monitored for opacity.

* * * * *

[FR Doc. 99–55507 Filed 2–2–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6229–9]

Section 112(l) Approval of the State of Florida's Construction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule: Clarification.

SUMMARY: On February 1, 1996 (61 FR 3572), the Environmental Protection Agency published in the **Federal Register** a direct final rule for State Implementation Plan (SIP) and section 112(l) approval of the State of Florida's minor source operating permit program so that Florida could begin to issue federally-enforceable operating permits on a source's potential emissions and thereby avoid major source applicability. Today's action is taken to clarify that EPA's section 112(l) approval of the Florida minor source operating permit program be extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act (CAA) as amended in 1990.

DATES: This direct final rule clarification is effective April 5, 1999 without further notice, unless EPA receives adverse comment by March 5, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8909; page.lee@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303, Phone: (404) 562–9131; page.lee@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 1994, the State of Florida, through the Florida Department of Environmental Protection (FDEP) submitted a SIP revision designed to make certain permits issued under the State's existing minor source operating permit program Federally-enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, ''Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules,'' (see 54 FR 22274, June 28, 1989). Additional materials were provided by the FDEP to EPA in a supplemental submittal on April 24, 1995.

The intent of Florida's December 21, 1994, submittal was to request SIP approval and 112(l) approval of certain operating permits issued under the State's existing minor source operating permit program and also to request 112(l) approval of certain construction permits issued under the same minor source operating permit program. However, the EPA approval of the state's construction permit program was not addressed in the February 1, 1996, FR notice.

Florida will continue to issue permits which are not Federally-enforceable under its existing minor source operating permit program and the minor source construction permit program as it has done in the past. Today's action clarifies that certain operating and construction permits issued under the State's minor source permitting program that has been approved under section 112(l), provide Federally-enforceable permit limits to sources of hazardous air pollutants pursuant to section 112 of the CAA.

Eligibility for Federally-enforceable construction permits extends not only to permits issued after the effective date of this rule, but also to permits issued under the State's current rule after February 1, 1996. For minor source construction permits issued in a manner consistent with both State regulations and established federal criteria, EPA considers all such construction permits as federally-enforceable as of February 1, 1996.

II. Final Action

In this action, EPA is clarifying that previous section 112(l) approve of the State of Florida's minor source operating permit program be extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act as amended in 1990.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the section 112(l) revision should adverse comments be filed. This rule will be effective April 5, 1999 without further notice unless the Agency receives adverse comments by March 5, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 5, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled ''Regulatory Planning and Review.''

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 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 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 rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule 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.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. 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 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 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 E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because section 112(l) approvals of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the section 112(l) approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. 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 annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

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

G. 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).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 5, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Dated: November 13, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2555 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300733A; FRL–6043–7]

RIN 2070–AB78

Revocation of Tolerances for Canceled Food Uses; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of October 26, 1998, a document announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. The amendatory language for two of the

sections was incorrect. This document corrects that language.

DATES: This correction becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., S.W., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2, 6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on October 26, 1998 (63 FR 57067) (FRL–6035–6), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. As part of that final rule, the Agency amended §§ 180.410 and 180.416. However, amendments to paragraphs (b), (c), and (d) within those two sections had already been properly addressed at a previous time, so these changes were redundant. Moreover, the final rule incorrectly reserved paragraph (b) for both sections. This document will correct those errors. Therefore, this document rectifies the original tolerance final rule by retaining only that portion of the amendatory language that is correct for those two sections; i.e., retaining only the amendments to paragraphs (a) within §§ 180.410 and 180.416.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical corection to the **Federal Register** and 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: January 20, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

In FR Doc. 98–28485 published on October 26, 1998 (63 FR 57067), make the following corrections:

§ 180.410 [Corrected]

1. On page 57077, in the second column, the amendatory language for § 180.410 is corrected to read as follows:

yy. In § 180.410, by amending paragraph (a) in the table, by removing the entries for ''almonds''; ''almond, hulls''; ''apricots''; ''peaches''; and ''plums (fresh prunes)''.

§ 180.416 [Corrected]

2. On page 57077, in the third column, the amendatory language for § 180.416 is corrected to read as follows:

zz. In § 180.416, by amending paragraph (a) in the table, by removing the entries for ''cattle, fat'', ''cattle, meat'', ''cattle, mbyp'', ''eggs'', ''hogs, fat'', ''hogs, meat'', ''hogs, mbyp'', horses, fat'', ''horses, meat'', ''horses, mbyp'', ''milk'', ''poultry, fat'', ''poultry, meat'', ''poultry, mbyp'', ''sheep, fat'', ''sheep, meat'', and ''sheep, mbyp''.

[FR Doc. 99–2226 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 3)]

Regulations Governing Fees For Services Performed in Connection With Licensing and Related Services—1999 Update

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rules.

SUMMARY: The Board adopts its 1999 User Fee Update and revises its fee schedule at this time to recover the cost associated with the January 1999 Government salary increases plus increases to its **Federal Register** publication costs.

EFFECTIVE DATE: These rules are effective on March 5, 1999.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1652. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulations in 49 CFR 1002.3(a) provide that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in Board or Interstate Commerce Commission fee policy.

Because Board employees received a salary increase of 3.68% in January 1999, we are updating our user fees to recover the increased personnel cost.

We also are increasing the fees to take into account a 12.7% increase in our publication costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d).

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update,* 4 I.C.C.2d 137 (1987). Therefore, we believe that notice and comment is unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update,* 7 I.C.C.2d 3 (1990), *Regulations Governing Fees For Services-1991 Update,* 8 I.C.C.2d 13 (1991), and *Regulations Governing Fees For Services-1993 Update,* 9 I.C.C.2d 855 (1993).

We conclude that the fee changes being adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from DC News & Data, Inc., Suite 210, Surface Transportation Board, 1925 K Street, N.W., Washington, DC 20423–0001. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: January 27, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

2. Section 1002.1 is amended by revising paragraphs (b) through (d) and (e)(1) and the chart in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $26.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $18.00 per hour.

(d) Electrostatic copies of tariffs, reports, and other public documents, at the rate of $0.90 per letter or legal size exposure. A minimum charge of $5.00 will be made for this service.

* * * * *

(e) * * *

(1) A fee of $46.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$7.83
GS–2	8.52
GS–3	9.60
GS–4	10.78
GS–5	12.06
GS–6	13.44
GS–7	14.94
GS–8	16.54
GS–9	18.27
GS–10	20.12
GS–11	22.11
GS–12	26.50
GS–13	31.51
GS–14	37.24
GS–15 and over	43.80

* * * * *

2. In § 1002.2 paragraph (f) is revised to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(1) An application for the pooling or division of traffic	$2,900
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303	1,300
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	18,100
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	3,000
(ii) Minor amendment	60
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	300
(6)–(10) [Reserved]	
PART II: Rail Licensing Proceedings other than Abandonment or Discontinuance Proceedings	
(11):	
(i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901	4,700
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	1,200
(iii) Petition for exemption under 49 U.S.C. 10502	8,200
(12):	
(i) An application involving the construction of a rail line	48,800
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	1,200
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	48,800
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	2,600
(14):	
(i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902	4,100
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	1,200
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902	4,300
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,100
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings	
(21):	
(i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments)	14,500
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	2,500
(iii) A petition for exemption under 49 U.S.C. 10502	4,100

Type of proceeding	Fee
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act	300
(23) Abandonments filed by bankrupt railroads	1,200
(24) A request for waiver of filing requirements for abandonment application proceedings	1,100
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment	1,000
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	14,800
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	150
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	12,400
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	6,700
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	1,100
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	900
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	800
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	6,100
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	976,500
(ii) Significant transaction	195,300
(iii) Minor transaction	5,200
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	950
(v) Responsive application	5,200
(vi) Petition for exemption under 49 U.S.C. 10502	4,300
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	1,600
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	45,700
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	8,500
(ii) Minor amendment	60
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	500
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered	5,200
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	150
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act	150
(49)–(55) [Reserved]	
PART V: Formal Proceedings	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	54,500
(ii) All other formal complaints (except competitive access complaints)	5,400
(iii) Competitive access complaints	150
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705	5,800.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding	1,000
(ii) All other petitions for declaratory order	1,400
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	4,600
(60) Labor arbitration proceedings	150
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d)	150
(62) Motor carrier undercharge proceedings	150
(63)–(75) [Reserved]	
PART VI: Informal Proceedings	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706	800
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	80
(78):	
(i) The filing of tariffs, including supplements, or contract summaries (per page, $16 minimum charge)	1
(ii) Tariffs transmitted by fax (per page)	1
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	50
(ii) Applications involving over $25,000	100
(80) Informal complaint about rail rate applications	400
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	50
(ii) Petitions involving over $25,000	100
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3)	150
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c) (per document)	26
(84) Informal opinions about rate applications (all modes)	150
(85) A railroad accounting interpretation	700
(86) An operational interpretation	950
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	75
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(iii) Third Party Complaint	75

Type of proceeding	Fee
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	75
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	150
(88)–(95) [Reserved]	
PART VII: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent (per delivery)	21
(97) Request for service or pleading list for proceedings (per list)	16
(98):	
(i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a **Federal Register** notice	200
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a **Federal Register** notice	400
(99):	
(i) Application fee for the Surface Transportation Board's Practitioners' Exam	100
(ii) Practitioners' Exam Information Package	25
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	50
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	10
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	20
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	500
(v) PC version or mainframe version URCS Phase II	400
(vi) PC version or mainframe version Updated Phase II databases	50
(vii) Public requests for *Source Codes* to PC version URCS Phase II	1,500
(101) Carload Waybill Sample data on recordable compact disk (R–CD):	
(i) Requests for Public Use File on R–CD—First Year	450
(ii) Requests for Public Use File on R–CD Each Additional Year	150
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	650
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	450
(v) Waybill—Surface Transportation Board or State proceeding on R–CD—Second Year on different R–CD	500
(vi) User Guide for latest available Carload Waybill Sample	450

[FR Doc. 99–2428 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1312

[STB Ex Parte No. 580]

Regulations for the Publication, Posting and Filing of Tariffs for the Transportation of Property by or With a Water Carrier in the Noncontiguous Domestic Trade

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Surface Transportation Board (Board) revises its tariff filing regulations to eliminate the option of filing tariffs with the Board electronically through the Federal Maritime Commission's (FMC) Automated Tariff Filing and Information System (ATFI), which is being phased out effective May 1, 1999. The Board will, however, entertain special tariff authority requests by individual carriers seeking to file their tariffs in alternative electronic formats.

EFFECTIVE DATE: These rules are effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 565–1578. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking (NPR) served on December 2, 1998, and published at 63 FR 66521, the Board proposed to revise its tariff filing regulations to eliminate the option to file tariffs with the Board electronically through the FMC's ATFI system. The action was proposed because the Ocean Shipping Reform Act of 1998, Pub. L. No. 105–258, 112 Stat. 1902 (1998) (OSRA) will eliminate the requirement that ocean carriers file their tariffs with the FMC effective May 1, 1999, and, in these circumstances, the FMC will not be accepting new ATFI tariff filings on or after that date. As explained in the NPR, the use of ATFI to file tariffs with the Board has always been predicated upon the basic system being operated and maintained by the FMC to support its own tariff filing requirements, and, with FMC's discontinuance of the system, it will no longer be available for carriers to use to file their tariffs with the Board.

Comments in response to the NPR were received from South Seas Steamship Line (South Seas) and Tropical Shipping & Construction Co. Ltd. (Tropical).[1] Both commenters note that, while OSRA eliminates FMC's tariff filing requirements, it continues to mandate that carriers publish their tariffs in private, automated systems which must comport with requirements to be established by the FMC. They suggest that the Board delay taking any action to revise its regulations until the FMC adopts final rules for the automated systems, in order to facilitate as much commonality as possible between the respective agencies' requirements. South Seas acknowledges that the ''publication of tariffs'' is not equivalent to the ''filing of tariffs with a government agency'' but it suggest that the publication requirements to be adopted by the FMC might assist the Board in connection with amending its rules.

Upon consideration of the comments, we have determined to finalize the regulations as proposed. The revisions do not establish requirements for future electronic tariff filings; rather, they merely eliminate the option to use ATFI, and there is no disagreement that ATFI will cease to be available for new filings effective May 1, 1999. As we stated in the NPR, we encourage electronic tariff filing and we will be receptive to alternative electronic tariff filing proposals from interested carriers. Further, we share the commenters' concerns that tariff filing and publishing burdens be minimized, and we will relax those burdens to the extent possible. However, termination of the ATFI system for noncontiguous domestic trade filings, which is all that our proposal contemplates, will have no effect on our ability to meet our objectives.

For several reasons, we do not believe that we should postpone any new rules we issue pending adoption of final rules by the FMC. First, there could be some differences in future FMC and Board

[1] South Seas currently files its tariffs with the Board electronically through ATFI, and Tropical currently files printed tariffs with the Board.

tariff requirements. Indeed, the statutory requirement to file noncontiguous domestic trade tariffs with the Board will continue, whereas the requirement to file foreign tariffs with the FMC will be eliminated, and, in fact, FMC's new regulations will no longer even address tariff filing. Second, unlike FMC's existing regulations, which require all carriers to file tariffs through ATFI, FMC's proposed regulations will permit carriers to design and use whatever private tariff publishing systems they choose, so long as minimum requirements are met, and it is unclear at this point how much commonality may exist among the various individual carrier systems. Thus, while we understand the commenters' point about facilitating commonality, we also believe that we should provide carriers with the flexibility to design the tariff filing systems that will best meet their needs, and the needs of their customers, by inviting special tariff authority requests for appropriate proposals individual carriers wish to pursue. It may become desirable to adopt specific regulations governing electronic tariff filings at some point in the future, but adoption of formal regulations at this point could prove to be more limiting than helpful. Finally, as we indicated in our earlier notice, we are not planning to adopt rules, but rather to address electronic tariff requests on a case-by-case basis. Thus, any procedure allowed under the FMC's rules can, if appropriate, be approved for use in the noncontiguous domestic trade through a grant of special tariff authority.

II Entities

The Board certifies that these rules will not have a significant economic effect on a substantial number of small entities. The rules eliminate the option to file tariffs electronically through the FMC's ATFI system, but many carriers already opt to file printed tariffs, and any cost differences for alternative tariff filing methodologies that carriers may propose are unlikely to be significant.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1312

Motor carriers, Noncontiguous domestic trade, Tariffs, Water carriers.

Decided: January 26, 1999.

By the Board, Chairman Morgan and Vice Chairman Clyburn.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Board amends part 1312 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS FOR THE TRANSPORTATION OF PROPERTY BY OR WITH A WATER CARRIER IN NONCONTIGUOUS DOMESTIC TRADE

1. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 721(a), 13702(a), 13702(b) and 13702(d).

2. In § 1312.1(c), the definition of ''ATFI'' is removed.

3. Section 1312.6 is amended by revising paragraph (c) to read as follows:

§ 1312.6 Advance notice required.

* * * * *

(c) *Receipt of tariffs by the Board.* The Board will receive tariff filings between the hours of 8:30 A.M. and 5:00 P.M. Eastern Time on workdays. Tariff filings delivered to the Board on other than a workday, or after 5:00 P.M. on a workday, will be considered as received the next workday.

* * * * *

§ 1312.17 [Removed]

4. Section 1312.17 is removed.

[FR Doc. 99–2558 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 012999A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast subzone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: This rule is effective 12:01 a.m., local time, January 30, 1999, through June 30, 1999, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast subzone of 1.17 million lb (0.53 million kg). That quota was further divided into two equal quotas of 585,000 lb (265,352 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear (50 CFR 622.42(c)(1)(i)(A)(*2*), (63 FR 8353, February 19, 1998)).

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or until the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone was reached on January 28, 1999. Accordingly, a 500–lb (227 kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, January 30, 1999.

The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL boundary) through March 31, 1999; and (2) 25°48' N. lat. (due west of the Monroe/Collier

County, FL boundary) from April 1, 1999, through October 31, 1999.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2543 Filed 1-29-99; 3:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 012299B]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota; Commercial Quota Harvested for Delaware

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustment, notice of commercial quota harvest.

SUMMARY: NMFS issues this notification announcing preliminary adjustments to the 1999 summer flounder commercial quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) and that require that landings in excess of a state's individual quota be deducted from a state's respective quota for the following year. The public is advised that preliminary adjustments have been made and is informed of the revised quotas for the affected states. This action also notifies the public that there is no 1999 commercial summer flounder quota available to the State of Delaware.

DATES: This rule is effective January 28, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary M. Grim, Fisheries Management Specialist, (978) 281–9326.

SUPPLEMENTARY INFORMATION: Regulations implementing summer flounder management measures are found at 50 CFR part 648, Subparts A and G. The regulations require annual specification of a quota that is apportioned among the Atlantic coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100. The final specifications for the 1999 summer flounder fishery, adopted to ensure achievement of a fishing mortality rate (F) of 0.24 for 1999, set a commercial quota equal to 11.11 million lb (5.04 million kg) (63 FR 72203, December 31, 1998).

Section 648.100(d)(2) provides that all landings for sale in a state shall be applied against that state's annual commercial quota. Any landings in excess of the state's quota must be deducted from that state's annual quota for the following year. NMFS published final specifications and noted that it would adjust each state's 1999 quota as a result of 1998 overages. The adjustment in this notification is preliminary because it is likely that additional data will be received from the states that would alter the figures, including late landings reported from either federally permitted dealers or state statistical agencies reporting landings by non-federally permitted dealers.

Based on dealer reports and other information available through December 31, 1998, NMFS has determined that the States of Delaware, Maine, New York, New Jersey, Maryland, and Virginia exceeded their 1998 quotas. The remaining States of New Hampshire, Massachusetts, Rhode Island, Connecticut, and North Carolina have not exceeded their 1998 quotas. The preliminary 1998 landings and resulting overages for all states are given in Table 1 to the preamble of this document. The resulting adjusted 1999 commercial quota for each state is given in Table 2 to the preamble of this document. In Table 3 to the preamble of this document, the adjustment has been made to maintain the incidental component of the commercial quota at 32.7 percent of the total (as recommended in the final specifications).

This notification also corrects errors for Rhode Island's commercial summer flounder allocation specified in the preamble to Table 1.—1999 State Commercial Quotas published on December 31, 1998 (63 FR 72203).

In FR Doc. 98–34511, on page 72204, in Table 1.—1999 State Commercial Quotas, the commercial state allocation for Rhode Island is corrected to read as follows:

In the third column of the table, under the heading Directed, and under the subheading Lb, in the fourth line, ''1,171,379'' is corrected to read ''1,172,758''; in the last line, the total ''7,468,107'' is corrected to read ''1,742,583'' and in the fourth column of the table, under the same heading, and under the subheading KG, ''53,133'' is corrected to read ''531,954''; in the last line, the total ''3,387,476'' is corrected to read ''790,422.''

In the fifth column of the table, under the heading Incidental catch, under the subheading Lb, in the fourth line, ''571,204'' is corrected to read ''569,825'' and in the sixth column, under the same heading, under the subheading KG, ''259,094'' is corrected to read ''258,468.''

In the seventh column, under the heading Total, under the subheading Lb, in the fourth line, ''1,741,583'' is corrected to read ''1,742,583''; and under the same heading, under the same subheading, in the last line, ''11,111,191'' is corrected to read ''11,110,300.'' These corrections are reflected in Tables 2 and 3 of this document. In addition, Tables 2 and 3 reflect a quota transfer of 5,000 lb (2,268 kg) from North Carolina to Virginia (64 FR 2600, January 15, 1999).

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
ME	4,791	2,173	5,168	2,344	377	171
NH	51	23	0	0	0	0
MA	721,899	327,448	695,994	315,698	0	0
RI	1,742,583	790,422	1,729,643	784,553	0	0
CT	250,457	113,605	246,642	111,875	0	0
NY	763,419	346,281	819,351	371,651	55,932	25,370
NJ	1,858,363	842,939	1,864,089	845,537	5,726	2,597

TABLE 1.—SUMMER FLOUNDER PRELIMINARY 1998 LANDINGS BY STATE—Continued

State	1998 quota		Preliminary 1998 landings		1998 overage	
	Lb	Kg [1]	Lb	Kg [1]	Lb	Kg [1]
DE	[2](14,534)	[2](6,593)	10,637	4,825	25,171	11,417
MD	199,876	90,662	203,322	92,225	3,446	1,563
VA	2,362,877	1,071,783	2,526,177	1,145,855	163,300	74,072
NC	3,049,589	1,383,270	2,936,623	1,332,030	0	0
Total [3]	10,933,871	4,959,518	11,037,646	5,006,592	253,952	115,191

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2.—SUMMER FLOUNDER PRELIMINARY ADJUSTED 1999 QUOTAS

State	1999 initial quota		1999 adjusted quota	
	Lb	Kg [1]	Lb	Kg [1]
ME	5,285	2,397	4,908	2,226
NH	51	23	51	23
MA	757,842	343,751	757,842	343,751
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	250,791	113,757
NY	849,680	385,408	793,748	360,038
NJ	1,858,363	842,939	1,852,637	840,342
DE	1,977	897	[2](23,194)	[2](10,521)
MD	226,570	102,770	223,124	101,207
VA	2,373,569	1,076,633	2,210,269	935,561
NC	3,044,589	1,381,002	3,044,589	1,381,002
Total	11,111,300	5,040,001	10,857,348	4,924,810

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

TABLE 3.—SUMMER FLOUNDER 1999 STATE QUOTAS AND INCIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Incidental Catch		Total	
		Lb	Kg [1]	Lb	Kg	Lb	Kg
ME	0.04756	3,303	1,498	1,605	728	4,908	2,226
NH	0.00046	34	16	17	8	51	23
MA	6.82046	510,028	231,345	247,814	112,407	757,842	343,751
RI	15.68298	1,172,758	531,954	569,825	258,468	1,742,583	790,422
CT	2.25708	168,782	76,558	82,009	37,199	250,791	113,757
NY	7.64699	534,192	242,305	259,556	117,733	793,748	360,075
NJ	16.72499	1,246,825	565,550	605,812	274,792	1,852,637	840,342
DE	0.01779	[2](15,610)	[2](7,080)	[2](7,584)	[2](3,440)	[2](23,194)	[2](10,521)
MD	2.03910	150,162	68,113	72,962	33,095	223,124	101,207
VA	21.31676	1,487,511	674,724	722,758	327,837	2,210,269	935,561
NC	27.44584	2,049,008	929,415	995,581	451,588	3,044,589	1,381,002
Total	100.00000	7,306,993	3,314,396	3,550,355	1,610,414	10,857,348	4,924,810

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

In 1998, the State of Delaware was closed to the landing of summer flounder by Federal permit holders as a result of deductions to the 1998 quota for overages in 1997 (62 FR 66304, December 18, 1997). As a result of those deductions and further quota reductions as published in the **Federal Register** on April 28, 1998 (63 FR 23227, April 28, 1998), the 1998 quota allocation to the State of Delaware was –14,534 lb (–6,593 kg). Further, an additional 10,591 lb of summer flounder were landed in Delaware in 1998. The 1999 quota for Delaware is not sufficient to offset this negative 1998 allocation and the additional landings in 1998. Consequently, Delaware will have no commercial quota for 1999. To prevent landings in Delaware by Federal permit holders, the State is closed to the landing of summer flounder by Federal permit holders for 1999. The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of their permit, not to land summer flounder in any state that, according to the Regional Administrator, no longer has commercial quota available for harvest. Therefore, effective January 28, 1999, through December 31, 1999, landings of summer flounder in Delaware by vessels holding commercial Federal fisheries permits are prohibited for the remainder of the 1999 calender year, unless additional quota becomes available

through a quota transfer and is announced in the **Federal Register**. Federally permitted dealers are also advised that they may not purchase summer flounder from federally permitted vessels that land in Delaware for the remainder of the 1999 calender year, or until additional quota becomes available through a transfer. If additional landings should be reported for 1998, the commercial quota for the State of Delaware will be re-adjusted pursuant to § 648.100(d)(2).

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2465 Filed 1–28–99; 4:44 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 012899A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 interim harvest specification of Atka mackerel.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 29, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at Subpart H of 50 CFR part 600 and CFR part 679.

The Interim 1999 Harvest Specifications (64 FR 50 January 4, 1999) as amended by the final rule implementing season and area apportionment of Atka Mackerel total allowable catch (TAC) (64 FR 3446, January 22, 1999) established the Interim 1999 Harvest Specifications for non-jig gear as 6,269 metric tons (mt) in the Eastern Aleutian District and the Bering Sea subarea. See § 679.20(c)(2)(ii) and 679.20(a)(8)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 interim specification for non-jig gear Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea will be reached. The Regional Administrator is establishing a directed fishing allowance of 5,769 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. NMFS is prohibiting directed fishing for Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the interim TAC limitations and other restrictions on the fisheries established in the Interim 1999 Harvest Specifications for groundfish for the BSAI. It must be implemented immediately to prevent overharvesting the 1999 interim specification of Atka mackerel in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 28, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2544 Filed 1-29-99; 3:08 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 012999B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1999 pollock total allowable catch (TAC) for Statistical Area 610 established by the 1999 Interim Specifications and amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), January 31, 1999, until 1200 hrs, A.l.t., June 1, 1999.

FOR FURTHER INFORMATION CONTACT: Nick Hindman, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The interim 1999 pollock TAC in Statistical Area 610 as amended by the emergency interim rule implementing Steller sea lion protection measures for the pollock fisheries off Alaska (64 FR 3437, January 22, 1999) is 6,936 metric tons (mt), determined in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in Statistical Area 610 will soon

be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,436 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Areas 610. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 29, 1999.

Gary C. Matlock.

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–2542 Filed 1–29–99; 3:08 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

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 Part 100

[NOTICE 1999–2]

Rulemaking Petition: Definition of ''Express Advocacy''; Notice of Availability

AGENCY: Federal Election Commission.

ACTION: Rulemaking petition: Notice of Availability.

SUMMARY: On January 11, 1999, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the Virginia Society for Human Life. The Petition urges the Commission to revise its rules defining ''express advocacy'' to conform with recent court decisions. The Petition is available for inspection in the Commission's Public Records Office and through its FAXLINE service.

DATES: Statements in support of or in opposition to the Petition must be filed on or before March 5, 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 expressad@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. 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) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The petitioner is requesting the Commission to revise the definition of ''express advocacy'' set forth in its rules at 11 CFR 100.22 to reflect the decisions in *Maine Right to Life Committee* v. *FEC*, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (U.S. 1997), and in *Right to Life of Dutches Co.* v. *FEC*, 6 F.Supp.2d 248 (S.D.N.Y. 1998) (''*Dutchess County*''). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in those cases. The challenged paragraph defines ''express advocacy'' to include communications in which the electoral portion is ''unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.''

The ''express advocacy'' standard is used to determine if a disbursement qualifies as an independent expenditure for purposes of the Federal Election Campaign Act; if independent communications by corporation and labor organizations are prohibited under the Act; and if campaign communications require a disclaimer. *See* 2 U.S.C. 431(17), 441b, 441d; *Federal Election Commission* v. *Massachusetts Citizens for Life, Inc.*, 479 U.S.C. 238 (1986).

Copies of the Petition for Rulemaking are available for public inspection at the Commission's Public Records Office, 999 E Street, NW, Washington, DC 20463, Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. Interested persons may also obtain a copy of the Petition by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions, at any time of the day and week. Request document #237.

Consideration of the merits of the Petition will be deferred until the close of the comment period. If the Commission decides that the Petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: January 29, 1999.

Scott E. Thomas,

Chairman.

[FR Doc. 99–2500 Filed 2–2–99; 8:45 am]

BILLING CODE 6715–01–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 17

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rulemaking.

SUMMARY: As part of its regulatory reform initiative, the Commodity Futures Trading Commission (Commission or CFTC) is proposing to amend Parts 15 and 17 of its rules, 17 CFR Parts 15 and 17. The proposed amendments to Part 15 would raise the reporting levels at which futures commission merchants (FCMs), clearing members, foreign brokers,[1] and traders must file large trader reports in certain commodities. The Commission is also proposing to delete the requirement that where an independent account controller trades for a number of commodity pools, the carrying firm must identify separately each such commodity pool. In addition, the proposed amendments would delete current reporting Rule 17.01(c) under which a reporting firm must identify the number and name of other accounts not included in the special account that are controlled or owned by the trader.

The Commission is also proposing to reorganize the identifying information reported by large traders on CFTC Form 40 ''Statement of Reporting Trader'' to obtain and present data more useful to the Commission's market surveillance activities. The proposed amendments would streamline the reporting process and would substantially lessen the burden on persons reporting, as well as the processing workload of the Commission, without compromising the integrity of the Commission's large trader reporting system, its market surveillance activities or its oversight responsibilities.

DATES: Comments on this proposed rulemaking should be submitted on or before April 5, 1999.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, attention:

[1] FCMs, clearing members and foreign brokers are referred to herein collectively as ''firms.''

Office of the Secretariat; transmitted by facsimile at (202) 418-5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to ''Large Trader Reporting Rules.''

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, or Kimberly A. Browning, Attorney/Advisor, Division of Economic Analysis, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, telephone (202) 418–5600, or electronically [lreese@cftc.gov] or [kbrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Over the past two years, the Commission has implemented a program of regulatory reform and modernization to reduce unnecessary burdens on the futures industry while maintaining the important public protections embodied in the Commodity Exchange Act. In particular, the Commission has eliminated duplicative regulatory requirements, reduced unnecessary paperwork burdens and updated its regulatory scheme to reflect changes in the market place. In doing so, the Commission has sought to maintain the regulatory safeguards relied upon by the public. The rule reform initiatives have included a fast-track procedure for Commission review and approval of new contract market designations and exchange rule amendments, 62 FR 10434 (March 7, 1997). The Commission is also considering a proposal to streamline designation applications and to modify its speculative position limits. See, 63 FR 38537 (July 17, 1998) and 63 FR 38525 (July 17, 1998), respectively. As part of its regulatory reform program, the Commission has re-examined its rules regarding its large-trader reporting system. The Commission's large-trader reporting system is an important Commission oversight tool. These rules require FCMs to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to prevent market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest. Generally, large trader reports are filed by the firm carrying the reportable trader's position.[2]

The Commission periodically reviews information concerning trading volume, open interest, and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage of open interest is adequate for effective market surveillance. In this regard, the Commission also is mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the futures and option markets. The Commission's most recent review of reporting levels indicates that the size of trading volume, open interest, and position of individual traders would enable the Commission to raise reporting levels as follows: (1) Lean Hogs from 50 to 100 contracts, (2) Rough Rice from 25 to 50 contracts, (3) Goldman Sachs Commodity Index from 25 to 100 contracts, (4) Soybean Oil from 175 to 200 contracts, (5) Soybean Meal from 175 to 200 contracts, (6) 1-Month LIBOR from 100 to 300 contracts, (7) 30-Day Fed Funds from 100 to 300 contracts, (8) 3-Month Eurodollars from 850 to 1000 contracts, (9) 3-Month Euroyen from 25 to 100 contracts, (10) 2-Year US Treasury Notes from 200 to 500 contracts, (11) 5-Year US Treasury Notes from 300 to 800 contracts, (12) 10-Year US Treasury Notes from 500 to 1000 contracts, (13) 30-Year US Treasury Bonds from 500 to 1000 contracts, (14) Municipal Bond Index from 100 to 300 contracts, (15) Dow Jones Industrial Average Index from 25 to 100 contracts, (16) NASDAQ 100 Stock Index from 25 to 100 contracts, (17) NIKKEI Stock Average from 50 to 100 contracts, (18) Russell 2000 Stock Index from 25 to 100 contracts, (19) S&P 400 Midcap Stock Index from 25 to 100 contracts, (20) S&P 500 Stock Index from 600 to 1000 contracts, (21) Crude Oil from 300 to 350 contracts, (22) Natural Gas from 100 to 175 contracts, and (23) Sugar 11 from 300 to 400 contracts.[3]

Reporting levels for foreign currencies would also be modified. Currently, Commission Rule 15.03 does not distinguish among foreign currencies, setting a uniform standard for all. However, surveillance of contracts on currencies of the major economies requires fewer large trader reports than for contracts on the currencies of the emerging markets. Accordingly, the Commission is proposing to amend Rule 15.03 to classify the European currency unit (and its successor, the Euro) and the currencies of Japan, Germany, the UK, France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, and the Netherlands as ''Major Foreign Currencies'' and to raise the reporting level applicable to them to 400 from the current level of 200 contracts.

In addition, the Commission is proposing to lower the reporting level for all other foreign currencies[4] to 100 contracts in order to obtain needed information in surveilling these contracts.[5] In addition, the Commission is proposing a 100 contract reporting level for any contract having one of the other foreign currencies as a constituent part of a crossrate contract.[6]

The Commission is also proposing to list the reporting levels for the grains and soybeans in terms of contracts rather than bushels. Prior to January 1998, it was industry practice to express open interest and volume data, as well as required position reports, for the

[2] Specifically, Parts 17 and 18 of the regulations require reports from firms and traders, respectively, when a trader holds a ''reportable position.'' A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission Rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) Long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and Part 150.

The firms which carry accounts for traders holding ''reportable positions'' are required to identify those accounts by filing a CFTC Form 102, discussed *infra*, and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[3] The Commission also is proposing to delete Rule 15.03's separate reference to ''GNMA,'' a contract that is now currently dormant. See, 17 CFR 5.2(a). Under this proposal, if trading in GNMAs were to be reactivated, the reporting level would be 25 contracts.

[4] Futures contracts classified in ''Other Foreign Currencies'' with open interest during the first two weeks in December 1998 included the Mexican Peso, Russian Ruble, Brazilian Real, New Zealand Dollar and the South African Rand. All currencies had positions reportable at the current, 200-contract level.

[5] Because exchange large trader reporting levels for these currencies presently are either at or below 100 contracts, the Commission anticipates that there will be a small additional cost to reporting firms to provide the information to the Commission. The Commission specifically invites comments from interested persons on the extent of this additional reporting burden.

[6] Cross-rate contracts which are composed of two major currencies would also be considered to be a major currency.

grain and soybean futures contracts, in terms of thousands of bushels. Beginning in 1998, however, industry practice for the grains and soybean contracts changed to express data for these contracts in contract units, which is consistent with the data for all other futures and option contracts. The Commission is proposing to conform its reporting levels to this practice.

The Commission's long-standing administrative practice has been to set reporting levels by commodity and not by individual contract market. Consistent with this long-standing policy, although contracts on the MidAmerica Commodity Exchange (MACE) are smaller in size than those traded on other exchanges,[7] the Commission is not proposing to adjust the reporting level for MACE contracts to compensate for the smaller bushel-size of its contracts. This will result in a MACE trader's reporting level being set at a lower absolute number of bushels than the number of bushels underlying a reportable position on the exchanges that trade larger-sized contracts.[8] Although the number of reporting traders on MACE contracts may increase by expressing the reporting level in contracts rather than bushels, existing data cannot precisely gauge whether, or to what degree, the reporting burden will be changed as a result. Of course, the Commission would propose to amend these reporting levels if, based upon actual experience after their adoption, the proposed MACE levels resulted in too many or too few reports. The Commission specifically invites comments on this matter from interested persons.

The Commission estimates that these proposed amendments to adjust reporting levels will decrease the number of daily position reports (*i.e.*, CFTC Series '01 Reports and CFTC Form 102s) required to be filed by reporting firms by about 14 percent. (The number of CFTC Form 40s required to be filed by large traders will also decrease). However, the percent of total market open interest reported through the large trader system would remain at the level deemed sufficient for rigorous market surveillance based upon the Commission's administrative experience.

Not all reporting firms may elect to avail themselves of this relief. In this regard, the exchanges also maintain large trader reporting systems that are similar in most respects to the Commission's. The exchanges set their own reporting level, which for particular contracts may vary from Commission levels. When exchange levels are lower than the Commission's, firms may report to the Commission at the lower exchange level, thereby saving any cost associated with reprogramming their reporting systems to reflect the proposed increases to the Commission's levels. The Commission, however, accepts information on CFTC Forms 40 and 102 only for positions that exceed its levels. Since these forms are filed manually, raising the reporting levels will always result in reducing firm costs by reducing the amount of paperwork firms must generate.

II. Proposed Amendments to Special Account Information (CFTC Form 102)

In addition to the daily large trade position data discussed above, Part 17 of the Commission's regulations requires that firms report to the Commission when an account first becomes reportable. When a trade first exceeds a reporting level, the firm labels the account a ''special account.'' [9] The firm must also file with the Commission Form 102.[10] CFTC Form 102 identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported and gives preliminary information whether positions and transactions are commercial or noncommercial in nature. Certain information included on the Form 102 no longer is needed for the operation of the Commission's surveillance data systems or by routine report from firms.

Specifically, Commission Rule 17.01(b)(3) provides that a firm identify on Form 102 each pool, the pool's account number and name, as well as the name and location of the commodity pool for which the account controller trades. In addition, Commission Rule 17.01(c) requires that a trader identify on a Form 102 the names and account numbers of all other separate accounts that the reporting trader controls or in which the trader has a ten percent or greater financial interest. (''other accounts'').[11]

These requirements are duplicative of more complete information on account ownership and control filed by the traders themselves on CFTC Form 40, as required by Commission rule § 18.04. Based upon the information reported on the Form 40, the Commission's compliance programs are able to make the necessary account aggregations without the need for firms to furnish the above information, as well. Because neither of these categories of information, as reported routinely by firms, any longer facilitates the Commission's market surveillance program in any significant respect, and their deletion may substantially reduce the over all burden of the firm's required reporting on the Form 102, the Commission is proposing to streamline the reporting process by deleting the requirements under 17.01(b)(3) and (c) as described above. Of course, the proposed deletion of these routine requirements will not in any way affect the Commission's authority to obtain complete account information from either or both the firm and the individual trader in those individual cases where additional information is necessary to the Commission's conduct of market surveillance or to the enforcement of its rules. Nor does it affect the manner in which accounts are aggregated for calculation of compliance with speculative position limits and for other compliance purposes. Accordingly, the Commission is proposing that § 17.01 be amended by deleting those sections of the rule requiring that special account data reflected on Form 102s must include specific information on commodity pools and pool operators, as well as ''other account'' data required by § 17.01(c). The Commission believes that these proposed amendments to streamline § 17.01 would reduce the reporting burden on the public and the processing workload of the Commission.

III. Proposed Changes to Statement of Reporting Trader (CFTC Form 40)

Under Part 18 of the Commission's regulations, traders who own or control reportable positions are required to file a CFTC Form 40 on call by the Commission or its delegee disclosing information about the ownership or

[7] Specifically, for example, the contract size for wheat, corn, oats and soybean futures contracts traded on MACE is 1,000 bushels, rather than the 5,000 bushel size contract traded on other exchanges.

[8] The current convention of expressing reporting levels for all of the contract markets in bushels does not raise this issue.

[9] The firm assigns a reporting number to the special account and reports all information to the Commission using this number.

[10] Commission Rule 17.01, 17 CFR 17.01. The CFTC Form 102 must also be updated when information concerning financial interest in, or control of, the special account changes. 17 CFR 17.02.

[11] For example, when an individual shares control of and has a financial interest in an account with one or more persons, and that individual also has his or her own account that he or she solely controls, these accounts would not be reported as a single account for special account/Form 102 reporting purposes. *See*, Commission Rule 17.00(b)(ii).

control of their futures and option positions.

The Commission is proposing to reorganize the Form 40 to present data in a more useful manner. In particular, the commission is proposing to redesign ''Schedule 1'' to clarify information regarding the reporting trader's hedging activities. This information includes the types of futures or options contracts used to hedge, the commercial occupations or merchandising activities of traders and the futures or option markets used for hedging. Although the information required would remain essentially the same, the Commission is proposing that the data reflected on Schedule 1 be reorganized to emphasize occupations and merchandising activities of the traders rather than the markets in which they trade.[12] In addition, the Commission is proposing to divide the Schedule 1 ''Investment Groups'' category, which currently includes all professionally managed funds, into distinct, more descriptive subcategories. These subcategories would include hedge funds, college endowments, managed accounts and commodity pools, trusts, foundations, pension funds, mutual funds and insurance companies. This proposed reorganization would provide information of greater use for surveillance activities. The proposed Schedule 1 is included below and the Commission invites comments from the public regarding its readability and overall structure:

[12] Slight changes would also be made to the list of merchandising activities to reflect those of greater surveillance importance to the Commission.

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SCHEDULE 1: To be completed only by traders who checked "Yes" to question 3 of part B or question 4 of part C. (1) Complete each section that pertains to the types of futures/options in which you hedge or cover a risk exposure. (2) List or check your merchandising or marketing activity(ies). (3) List all futures/option markets used. (4) List all cash commodities hedged or risk exposure covered. [Use a continuation sheet if necessary.]

FINANCIAL FUTURES/OPTIONS (e.g., Bonds, Notes, Bills, Eurodollars, Stock Indices & Foreign Currencies) (Check each activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Markets Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	**CASH MARKETS HEDGED**
☐ **ARBITRAGEUR, BROKER/DEALER, MARKET MAKER (A)** ☐ **U.S. COMMERCIAL BANK (C)** ☐ **CORPORATE TREASURY (T)** ☐ **NON-U.S. COMMERCIAL BANK (B)** ☐ **PENSION FUND (F)** ☐ **SWAPS/DERIVATIVES DEALER (S)** ☐ **INSURANCE COMPANY (G)** ☐ **MORTGAGE ORIGINATOR (M)** ☐ **HEDGE FUNDS (H)** ☐ **COLLEGE ENDOWMENT, TRUST, FOUNDATION (D)** ☐ **MUTUAL FUND (E)** ☐ **MANAGED ACCOUNTS AND COMMODITY POOLS (P)** ☐ **OTHER (O):** Specify _____ (e.g., Central Bank, savings & loan)		
AGRICULTURAL AND NATURAL RESOURCE FUTURES/OPTIONS **(Other Than Livestock/Meat)** (Check each commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	**CASH COMMODITIES HEDGED**
☐ **PRODUCER (P):** Specify _____ (e.g., farmer, miner)		
☐ **MANUFACTURER (M):** Specify _____ (e.g., refiner, miller, crusher, fabricator, sawmill, coffee roaster, cocoa grinder)		
☐ **DEALER/MERCHANT (D):** Specify _____ (e.g., wholesaler, exporter/importer, shipper, grain elevator operator, crude oil marketer)		
☐ **SWAPS/DERIVATIVES (S):** Specify _____		
☐ **OTHER (O):** Specify _____ (e.g., end user, restaurant chain)		
LIVESTOCK/MEAT FUTURES/OPTIONS (Check each commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	**CASH COMMODITIES HEDGED**
☐ **LIVESTOCK FEEDER (F):** Specify _____ (e.g., cattle feeder, hog feeder, poultry feeder)		
☐ **LIVESTOCK SLAUGHTERER (S):** Specify _____		
☐ **OTHER (O):** Specify _____ (e.g., cow/calf operator, meat processor, bacon slicer, warehouseman, restaurant chain, swaps/derivatives dealer)		

BILLING CODE 6351–01–C

IV. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously determined that large traders and FCMs are not ''small entities'' for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). The proposed amendments to reporting requirements fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. In addition, these proposed amendments relieve a regulatory burden. Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. The Commission invites comments from any firm believing that these rules would have a significant economic impact upon its operations.

B. Paperwork Reduction Act

When publicizing proposed rules, the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13 (May 13, 1995)) imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission through these rule proposals solicits comments to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission responses.

The Commission has submitted these proposed rules and their associated information collection requirements to the Office of Management and Budget. The burdens associated with this entire collection (3038–0009), including these proposed rules, is as follows:

Average Burden Hours Per Response: 0.35
Number of Respondents: 5391
Frequency of Response: Daily

Persons wishing to comment on the information which would be required by these proposed rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with the rulemaking may be obtained from the Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340.

List of Subjects

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1994), the Commission hereby proposes to amend Parts 15 and 17 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, (a)–(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. Section 15.03 is revised to read as follows:

§ 15.03 Reporting Levels.

(a) Definitions. For purposes of this section, the term *major foreign currency* means the currencies and cross-rates between the currencies of Japan, Germany, the U.K., France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, and the Netherlands and the Euro.

(b) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50

Commodity	Number of contracts
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175
Financial:	
Municipal Bond Index	300
3-month (13-Week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
All Other Commodities	25

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

3. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a unless otherwise noted.

4. Section 17.01 is proposed to be amended by removing and reserving paragraphs (b)(3)(ii) and (c) and by revising paragraph (b)(3)(iii) to read as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(3) * * *

(iii) If fewer than ten accounts are under control of the independent advisor, for each account the account number and the name and location of each person having a ten percent or more financial interest in the account; and

* * * * *

Issued in Washington, D.C., this 28th day of January, 1999 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–2435 Filed 2–2–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–003]

Open Access Same-Time Information System and Standards of Conduct

January 27, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (the Commission) proposes to adopt a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over OASIS nodes and proposes to revise 18 CFR 37.5 to require compliance with these practices. In addition, the Commission proposes a consistent naming convention for path names, proposes to replace the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term ''AS__TYPE,'' and proposes to clarify the terms ''DISPLACED,'' ''SUPERSEDED,'' and ''REFUSED'' in § 4.2.10.2 of that same document and in the Data Dictionary Element.

DATES: Written comments (an original and 14 paper copies) must be received by April 5, 1999. In addition, the Commission encourages the filing of a copy of the comments on computer diskette or by E-Mail by the same date.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Marvin Rosenberg (Technical Information), Office of Economic Policy, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–1283.

Paul Robb (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2702.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0321.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to

inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to cipsmaster@ferc.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Home Page using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc. is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Table of Contents

I. Introduction

In this notice of proposed rulemaking (NOPR), the Federal Energy Regulatory Commission (Commission) proposes a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) nodes and proposes to revise 18 CFR 37.5 to require compliance with these practices. In addition, we propose a consistent naming convention for path names, propose to replace the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the OASIS Standards and Communication Protocols Document, Version 1.3 (S&CP Document) with the term ''AS__TYPE,'' and propose to clarify the terms ''DISPLACED,'' ''SUPERSEDED,'' and ''REFUSED'' in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.[1]

II. Public Reporting Burden

The proposed rule would require a transmission provider to comply with a set of uniform business practices to implement the Commission's policies on transmission service price negotiation and improve interactions between transmission providers and customers over OASIS nodes. The proposed business practices are divided between mandatory standards and voluntary best practice guides. Under this proposal, the best practice guides would not be mandatory; but a transmission provider electing to follow them would be bound to follow them on a consistent non-discriminatory basis. By necessity, a transmission provider already follows business practices in the operation of its OASIS node. The NOPR merely proposes to make these practices more uniform across the industry.

On December 1, 1998, the Commission issued a proposed information collection and request for comments in Docket No. IC99–717–000 that covered all information collected under the requirements of FERC–717 ''Open Access Same-Time Information System and Standards of Conduct'' (OMB No. 1902–0173) over the next three years, including the implementation of OASIS Phase IA and any information collected under this NOPR.[2] The burden estimate submitted on December 1, 1998 for all OASIS requirements was as follows: ''*Burden Statement:* Public reporting burden for this collection is estimated as:

[1] See attached ''Business Practice Standards and Guides for OASIS Transactions'' (BPS&G). We expect that, with assistance from the industry, we will make improvements in these business practices over time, in the same way that we have made changes to the S&CP Document since its original issuance in 1995.

[2] See note 11, *infra*, where we elaborate on matters covered by OASIS Phase IA.

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
140	1	1,418	198,520

The estimated total cost to respondents is $21,157,500.'' [3]

We are not preparing a separate estimate covering this NOPR only, because we find that the NOPR would not significantly alter the estimate contained in the December 1, 1998 notice. The December 1, 1998 burden estimate gave the Commission's estimate of OASIS-related information requirements over the next three years, and this estimate contemplated the Commission's issuance of uniform business practices during this time frame. In any event, if a separate estimate were prepared, it would not be substantial, because the proposal in this NOPR, if promulgated, would not create any direct information collection requirements and because transmission providers already will need to have business practices in place to conduct OASIS transactions under the Phase IA S&CP Document that becomes effective on March 1, 1999. By announcing this proposal before March 1, 1999, the burden of making changes from already established business practices will be minimized.

The following collection of information contained in this NOPR has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). For copies of the OMB submission, contact Michael Miller at 202–208–1415.

Internal Review

The Commission has conducted an internal review of this conclusion and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information proposed by this NOPR and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[4]

III. Discussion

A. Overview

In this NOPR, we propose a set of uniform business practices, set out in the attached BPS&G document, for use by transmission providers in conjunction with OASIS transactions. Moreover, to ensure compliance, we are proposing a revision to 18 CFR 37.5(b) proposing that responsible parties must comply with the requirements set out in the BPS&G document. In main part, the uniform business practices we propose are those recommended by an industry group in two recent filings. However, as discussed below, we have made certain revisions to those recommendations, to reflect Commission policy, add clarity, and address initial comments received from interested persons.[5] In addition, the Commission proposes a consistent naming convention for path names, proposes to replace the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the S&CP Document with the term ''AS__TYPE,'' and proposes to clarify the terms ''DISPLACED,'' ''SUPERSEDED,'' and ''REFUSED'' in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.

B. Background

The OASIS rulemaking process began with the Commission's issuance of a notice of technical conference and request for comments (RIN Notice) [6] in conjunction with the Commission's previously proposed Open Access Rule.[7] The RIN Notice announced that the Commission was considering establishing rules to effectuate the non-discrimination goals of the Open Access NOPR, through the creation of a real-time information network (RIN) or other options to ensure that potential and actual transmission service customers would receive adequate access to pertinent information.

The Commission's staff held a technical conference on RINs (RINs Technical Conference) in Washington, D.C. on July 27 and 28, 1995.

During the discussion at the RINs Technical Conference, a consensus developed that two industry working groups should be formed, one dealing with ''what'' information should be posted on a RIN and the other dealing with ''how'' to design a RIN to communicate this information to the industry and what, if any, national standards this would require.[8] The ''what'' group would be facilitated by the North American Electric Reliability Council (NERC) and the ''how'' group would be facilitated by the Electric Power Research Institute (EPRI).

On October 16, 1995, both working groups submitted their reports to the Commission. The Commission used the two industry reports and associated comments as the starting point for a notice of proposed rulemaking (RIN NOPR).[9] Under the RIN NOPR, each public utility that owned and/or controlled facilities used for the transmission of electric energy in interstate commerce would be required to develop and/or participate in a RIN.

Subsequently, the Commission issued Order No. 889, a final rule establishing the OASIS requirements.[10] This order required jurisdictional public utilities that own or control transmission systems (transmission providers) to set up an OASIS. It also established standards of conduct designed to ensure that a public utility's employees (or any of its affiliates' employees) engaged in transmission system operations function independently of the public utility's employees (or of any of its affiliates' employees) who are engaged in wholesale merchant functions. Finally, the order issued a set of communication standards and protocols to ensure that

[3] The estimated total cost of $21,157,500 was computed as follows:

The Commission has assumed that 4.5 personnel are necessary for staffing and using a total personnel cost of $109,889, the result is $494,501. To get the total cost, add annual ongoing costs of $110,000 plus staffing costs [$110,000 + $494,501] for a total of $604,501 divided by 4 = $151,125). The estimated total cost of the OASIS requirement is 140 respondents × $151,125 or $21,157,500.

[4] *See* 44 U.S.C. § 3506(c).

[5] Throughout this document we have shown additions and recommended revisions with italics and boldface and deletions and recommended deletions with [italics and brackets].

[6] Real-Time Information Networks, Notice of Technical Conference and Request for Comments, FERC Stats. & Regs. ¶35,026 (1995).

[7] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Notice of Proposed Rulemaking and Supplemental Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶32,514 (1995).

[8] Real-Time Information Networks, Notice of Timetable and Opportunity for Participation in Industry Working Groups, FERC Stats. & Regs. ¶35,029 (1995).

[9] *Id.*

[10] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996).

the OASIS system presents information in a consistent and uniform manner.

The rules established in Order No. 889 were for a basic (Phase I) OASIS. The Order also contemplated that an enhanced (Phase II) OASIS would be established in the future. The current Phase IA rules improve the operations of the basic Phase I OASIS prior to the development of the enhanced OASIS Phase II system.[11]

In Order No. 889–A, the Commission addressed the requests for rehearing of Order No. 889 and requested that the industry prepare a report on Phase II issues.[12] In response to this request, on November 3, 1997, the Commercial Practices Working Group (CPWG), together with the How Group (jointly ''CPWG/How Group''), submitted a document entitled ''Industry Report to the Federal Energy Regulatory Commission on the Future of OASIS'' (November 1997 Report). The November 1997 Report stated:

> [t]here are inconsistencies in business practices across the nodes. In fact, OASIS serves to underscore the differences in practices as customers try to access information and reserve transmission in a familiar way, but find procedures vary from provider to provider. Some of the variations . . . include packaging of ancillary services, application of discounts, use of ''sliding windows'' of transmission service, and customer confirmation time limits.

The November 1997 Report contained an action plan that included a commitment to file a report with the Commission proposing draft guidelines to clarify OASIS Phase IA business practices. Consistent with this commitment, on June 19, 1998, CPWG/How Group tendered for filing a report entitled ''Industry Report to the Federal Energy Regulatory Commission on OASIS Phase IA Business Practices'' (June 19 Report). CPWG/How Group state that the recommendations in the June 19 Report are based on a consensus among participants from various industry segments with diverse interests and viewpoints who chose to participate in the CPWG/How Group process. The June 19 Report offers for Commission adoption a set of business practice standards and guidelines.

The June 19 Report states that the recommended business practice standards and guides are intended to enable the Commission to implement its policy directives related to on-line price negotiation and to improve the commercial operation of OASIS. It also is stated that the recommended standards and guides are intended to support FERC regulations, the *pro forma* tariff, and the S&CP Document. Finally, the June 19 Report maintains that, in a few instances, revisions to the *pro forma* tariff are required to support the recommended business practices and offers recommended tariff changes consistent with the recommended business practices for Commission review and approval.

The June 19 Report describes how many OASIS-related business practice implementation details were left for transmission providers to determine for themselves, based on their interpretations of Order Nos. 888 and 889, the S&CP Document, and individual tariffs. The June 19 Report contends that this flexibility has resulted in significant variation among business practices across OASIS nodes that influence the development of markets.

CPWG/How Group argue that the recommended ''Phase IA Business Practice Standards and Guides'' (Business Practices) in the June 19 Report provide an important step toward achieving greater consistency in the implementation of the Commission's open access policy and OASIS. CPWG/How Group request that the Commission adopt the recommended Business Practices to support the implementation of Phase IA OASIS. CPWG/How Group maintain that the recommended Business Practices are consistent with existing FERC regulations, the *pro forma* tariff, and the Phase IA S&CP Document, except where specific tariff revisions are requested.

On July 6, 1998, the Commission issued a notice of the filing of the June 19 Report that invited interested persons to comment on the CPWG/How Group recommendations on or before July 31, 1998.[13] Timely comments were filed by Electric Clearinghouse, Inc. (ECI), Cinergy Services, Inc. (Cinergy), and Enron Power Marketing Inc. (EPMI).

On August 11, 1998, CPWG/How Group filed a letter with the Commission requesting implementation of the recommended Business Practices on March 1, 1999.

On September 15, 1998, CPWG/How Group filed a letter with the Commission recommending standards for transmission path naming and requesting Commission approval coincident with the start of OASIS Phase IA (to begin on March 1, 1999). On October 14, 1998, the Commission issued a notice of the filing of the proposed standards for transmission path naming that invited comments by interested persons on or before October 28, 1998.[14] Timely comments were filed by American Public Power Association (APPA).

C. Composition of CPWG Membership

In previous orders,[15] we have noted that the Commission would heed recommendations from industry working groups only to the extent that the views of those groups reflected an open process with input from diverse industry segments.

Comments

ECI argues that even though the CPWG has made valuable contributions, that group is not a forum ''with balanced industry segment representation.'' [16] ECI disagrees with the statement in the June 19 Report that the CPWG ''is an independent forum with balanced industry segment representation.'' [17] In ECI's experience, the composition of the CPWG is unbalanced and is heavily dominated by transmission providers. ECI argues that the unbalanced composition of CPWG membership has resulted in the group functioning more effectively as a barometer for, and not as the definitive statement of, electric power industry views. ECI also argues that claims of CPWG consensus should be viewed with skepticism and that the heavy representation of public utility organizations (estimated by ECI as 68 of 78 representatives) in the process encourages resolution of problems through a least common denominator approach. Thus, ECI argues that recommendations from the CPWG do not deserve the Commission's unqualified deference.

Discussion

We agree with ECI that unqualified deference should not be given to the recommendations of any industry group whose decisions are not made in an open inclusive process with balanced

[11] OASIS ''Phase IA'' is a label devised by the industry to refer to revisions to the OASIS Phase I requirements that the Commission asked industry to devise to implement the Commission's findings in the OASIS Final Rule requiring the on-line negotiation of discounts. *See* Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,452 (1998) (June 18 Order).

[12] Open Access Same-Time Information System and Standards of Conduct, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549, n.8 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[13] 63 FR 38641 (1998).

[14] 63 FR 56022 (1998).

[15] *See, e.g.*, RIN NOPR, FERC Stats. & Regs. ¶ 32,516 at 33,173–74; Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,589, n.13; Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549, n.7.

[16] ECI Comments at 5–7.

[17] June 19 Report at 2.

representation reflecting a broad consensus of views from all industry segments. Moreover, rather than giving ''unqualified deference'' to recommendations from the CPWG, we here are issuing a NOPR that invites comment from any interested person before taking any further action on this matter. Further, we recently have been informed that the CPWG has been reconstituted and its functions taken over by a replacement industry group, the Interim Market Interface Committee (IMIC), sponsored by NERC.[18]

If, in the future, IMIC (or any other industry group) would like the Commission to consider its recommendations to reflect the views of the entire industry, then it is incumbent on it to demonstrate to the Commission that: (1) its membership is drawn from all industry segments in an open inclusive process; (2) it makes its decisions in a manner that gives fair voice to participants with diverse viewpoints from all industry segments; and (3) its activities are conducted in an open inclusive manner.

D. Business Practices for OASIS Phase IA Transactions

1. Recommended Voluntary Guides and Recommended Mandatory Standards

The June 19 Report distinguishes between recommended OASIS business practice ''standards'' and best practices ''guides.'' The June 19 Report states that while the ''standards'' are offered to the Commission for adoption as mandatory requirements, the ''guides'' are recommended as voluntary best practices. The CPWG/How Group advances several reasons why some practices have been offered as guides instead of as standards. First, they argue there may be majority support for the practice, but not an overwhelming consensus. Second, they argue reasonable alternatives may exist. Third, they argue customers and providers need time to adapt computer systems and processes. Fourth, they argue adoption of a practice as a standard may conflict with existing tariffs and require tariff changes prior to adoption as a standard. Fifth, they argue the practice may be a suggested, but not required, action. CPWG/How Group stated that it plans to file additional recommendations for standards and guides over time and, as appropriate, request that existing guides be upgraded to mandatory standards.

Comments

ECI argues that ''voluntary best practices'' must be enforceable standards.[19] Otherwise, ECI argues, these ''voluntary best practices'' will foster the problem that CPWG identified in its November 1997 report to the Commission.

> There are inconsistencies in business practices across the nodes. In fact, OASIS serves to underscore the differences in practices as customers try to access information and reserve transmission in a familiar way, but find procedures vary from provider to provider.

ECI argues that the recommendation of ''voluntary best practices'' defeats the chief objective of the June 19 Report—to impose a uniform and consistent set of business practices across the board in the electric power industry.[20]

Moreover, as discussed below, both EPMI and Cinergy argue that specific recommended guides (recommended Guides 4.2 and 4.3—cited by EPMI, and recommended Guide 4.1—cited by Cinergy) should be adopted as mandatory standards for all transmission providers and not merely as discretionary ''best practice'' guides.

Discussion

Notwithstanding concerns about the fairness and representativeness of CPWG's decision making process, the distinction between mandatory standards and voluntary guides helped the participants in its process reach agreement on the issues. Similarly, we propose to maintain the same distinction between standards and guides in this NOPR, although (as discussed further below) we invite comment on this issue.

However, we agree with Cinergy that uniform and consistent business practices across the board in the electric power industry are a desired result, and that consistency can best be achieved through mandatory standards rather than suggested guidelines.

Accordingly, although this NOPR proposes to follow the June 19 Report's general recommendation—that we distinguish between mandatory standards and voluntary ''best practice'' guides—we invite commenters to this NOPR to address whether particular proposals should be adopted as standards or guidelines and whether the commenter recommends the adoption of any additional standards or guides not contained in the June 19 Report. Specifically, we invite those who agree with the tentative classification of guideline vs. standard, as proposed in this NOPR, to present their arguments as to why those classifications should be retained (in the final rule) and invite those that disagree with the current classifications to present their arguments as to why those classifications should be changed (in the final rule). Commenters should be aware that we are considering making *all* of the recommendations mandatory standards, including those now proposed as guidelines in this NOPR.

As written, the proposed guidelines would only apply to transmission providers that choose to follow them, even where words such as ''must'' or ''shall'' are used. However, a transmission provider choosing to follow the guidelines is bound to apply them on a uniform non-discriminatory basis.

2. Need for Standard Terminology (Section 2A of the June 19 Report)

In the November 1997 Report, CPWG/How Group identified inconsistent use of terminology as an area for improvement in OASIS. In the June 19 Report, CPWG/How Group recommend that we establish a standard set of attribute values to provide clarity and consistency in the labeling of transmission services.

Comments

Comments were received from ECI, Cinergy, and EPMI in support of standard attributes. However, as discussed in detail below, ECI finds fault with several of the specific proposals put forth in the June 19 Report. Cinergy supports the needs of the marketplace to give flexibility for individual transmission providers to use non-standard attributes if they are clearly defined by the provider on the OASIS. EPMI generally supports standardization and formulation of practices that improve consistency of customer-provider interactions across OASIS nodes, but suggests revisions to particular provisions.[21]

Discussion

Section 2.A of the June 19 Report does not recommend any specific guides or standards. It argues, however, that standard attribute values should be used in OASIS transactions to the greatest extent possible. All of the comments addressing this issue support this approach and we agree. ECI and EPMI oppose the authorization of non-standard attributes, because they fear that they will be compelled to purchase services they do not want.[22] However,

[18] Minutes of September 22–23, 1998 CPWG Meeting, p.2.

[19] ECI Comments at 7.

[20] *Id.*

[21] EPMI Comments at 3.

[22] *Id.* and ECI Comments at 9.

there is an important distinction that must be drawn between allowing a service to be offered and compelling a customer to purchase that service. Providers are encouraged to offer new products within the marketplace that are permitted within approved tariffs (*i.e.*, services that are consistent with or superior to the *pro forma* tariff services). However, this does not mean that customers are required to purchase these products. The non-standard attributes only describe the products so that OASIS users will be better informed of available services. Allowing the use of non-standard attributes would not by itself constitute approval for a transmission provider offering a particular services to its customers or compel its purchase.

3. Attribute Values Defining the Period of Service (Section 2B of the June 19 Report)

On September 29, 1998, the Commission issued a revised OASIS S&CP Document for Phase IA implementation.[23] The Phase IA S&CP Document developed data templates, but did not provide a definition for each attribute value. CPWG/How Group recommend standards and guides for service attribute value definitions to be implemented with Phase IA.

In the June 19 Report, CPWG/How Group recommended that the Commission establish a standard set of attribute values (*i.e.*, service characteristics) to provide clarity and consistency in the labeling of transmission services. Table 1–1 of the June 19 Report identifies the definitions that are recommended as standard terminology in Phase IA for the attributes SERVICE__INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended).[24] Recommended Table 1–1 provides as follows:

TABLE 1–1—STANDARD SERVICE ATTRIBUTE DEFINITIONS REQUIRED IN PHASE IA

	Fixed	Sliding	Extended
Hourly	X	N/A	N/A
Daily	X	X	X
Weekly	X	X	X
Monthly	X	X	X
Yearly	X	X	X

[footnote omitted, *see* note 21, *infra*].

CPWG/How Group argue that a definition is required for each combination of SERVICE__INCREMENT and WINDOW, except ''Hourly Sliding'' and ''Hourly Extended,'' which are not considered by the CPWG to be sufficiently common in the market to require standard definitions. CPWG/How Group advocate that the Commission add the characteristic ''Extended'' as a permissible value for WINDOW, which at the time the report was submitted, would have required a modification to the S&CP Document.[25]

The June 19 Report provides that the existence of a definition in this table does not imply the services must be offered by a transmission provider. It further provides that requirements as to which services must be offered are defined by regulation and tariffs and are not addressed by this report. Nor does the report imply that there is an implication as to the curtailment priority or price caps for these services. CPWG/How Group also suggest that transmission providers offer new products that meet the needs of transmission customers, when an appropriate standard attribute is not available.

CPWG/How Group recommend the terms ''fixed,'' ''sliding,'' and ''extended'' to describe periods of service. ''Fixed'' defines service periods that align with calendar periods such as a day, week, or month. ''Sliding'' defines service periods that are fixed in duration, such as a week or month, but the start and stop time may slide. For example, a ''sliding'' week could start on a Tuesday and end on the following Monday. ''Extended'' defines service periods for which the start time may ''slide'' and with a longer than standard duration. For example, an ''extended'' week of service could be nine consecutive days. These definitions are contained in recommended Standards 2.1–2.1.13, which provide as follows:

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service__Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (See Section 3 of this report for registration requirements.)

2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

[23] Open Access Same-Time Information System and Standards of Conduct, 84 FERC ¶ 61,329 (1998) (September 29 Order). Version 1.3 of the S&CP Document is posted on the Commission Issuance Posting System (accessed through the Commission's Internet Home Page at http://ferc.fed.us) or may be inspected in the Commission's Public Reference Room.

[24] What is referred to here as ''WINDOW'' is referred to as ''TS__WINDOW'' in the S&CP Data Dictionary.

[25] Subsequent to the submittal of the June 19 Report, the Commission incorporated a value for ''EXTENDED'' under the definition of TS__WINDOW in Version 1.3 of the S&CP Document. *See* S&CP Document, Version 1.3, Data Element Dictionary at A–18. For this reason, we have omitted a footnote from the recommended Table 1–1 suggesting that this change is needed.

2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 48 hours later.

2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than two weeks later.

2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later but less than two months later.

2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one year calendar year later but less than two calendar years later.

Definitions are recommended as standard terminology in Phase IA for the attributes SERVICE__INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended). A definition is recommended for each combination of SERVICE__INCREMENT and WINDOW. The September 29 Order includes ''EXTENDED'' as a permissible value of the data element ''TS__WINDOW.'' [26]

Comments

ECI and Cinergy filed comments on this issue. ECI disagrees with the term ''extended'' and states that this term is not contained in the *pro forma* tariff. ECI also asserts that the term ''sliding'' is appropriate while the term ''fixed'' is unnecessary. Cinergy argues that non pro-forma rate designs approved by the Commission should have service attribute definitions defined for Table 1–1.[27] For example, it argues the information provided in Table 1–1 should include service attribute definitions for locational marginal pricing and megawatt-mile pricing.[28]

Discussion

We propose that Standards 2.1 through 2.1.13, as shown in the attached BPS&G document, be adopted. While the term ''extended'' is not included in the *pro forma* tariff, the marketplace is evolving to the point where offerings of extended daily, extended weekly, and extended monthly services are products that can serve a useful market niche. While not covered by the *pro forma* tariff, there is no prohibition against these services being provided under transmission providers' individual open access tariffs. This being the case, it is appropriate that the standards proposed in this NOPR should provide such definitions. Furthermore, the terms ''sliding'' and ''fixed'' also help to improve communications in the contracting for transmission services. We note that the Phase IA S&CP Document, approved in the September 29 Order, provided for the inclusion of ''fixed,'' ''sliding,'' and ''extended'' transmission service period definitions.

Cinergy has not persuaded us that the definitions of ''fixed,'' ''sliding,'' and ''extended'' should be expanded to include service attribute definitions for locational marginal pricing and megawatt-mile pricing, since these attributes are intended to describe types of services, not prices or rate designs for services. However, we invite additional comment on this issue in the comments to this NOPR.

4. Attribute Values Defining Service Class and Type (Section 2C of the June 19 Report)

The Phase IA S&CP Document issued in the September 29 Order included data templates that refer to service class and type, but do not define these attributes. CPWG/How Group recommend definitions for Service Class (recommended Standard 2.2) (*i.e.*, Firm Transmission Service (recommended Standard 2.2.1) and Non-Firm Transmission Service (recommended Standard 2.2.2)) and for Service Type (recommended Standard 2.3) (*i.e.*, Point-to-Point Transmission Service (recommended Standard 2.3.1) and Network Integration Transmission Service (recommended Standard 2.3.2)). These recommended definitions provide as follows:

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

2.2.1: Firm—Transmission service that always has a priority over Non-Firm transmission service and has equal priority with Native Load Customers and Network Customers, in accordance with FERC regulations.

2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, Native Load Customers, and Network Customers.

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

2.3.1: Point-to-point—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the FERC *pro forma* tariff.

2.3.2: Network—Network Integration Transmission Service that is reserved and/or scheduled to serve a Network Customer load pursuant to Part III of the FERC *pro forma* Tariff.

Comments

Comments were offered by ECI and EPMI. ECI comments that the recommended definitions are unnecessary because the terms are defined in the *pro forma* tariff. EPMI offers a revised definition to indicate that there should be no differing priorities within the firm classes of service.

Discussion

In general, we believe that these recommended definitions (2.2.1, 2.2.2, 2.3.1, and 2.3.2) should be included in the standards. However, to avoid any misunderstanding, we propose to add a disclaimer to each definition stating in each instance that the service is to be offered ''in accordance with the definitions in the *pro forma* tariff.''

We do not find ECI's argument, that the recommended definitions are unnecessary (because they are included in the *pro forma* tariff), to be persuasive. In instances where a term is defined in the *pro forma* tariff, we will incorporate—verbatim—the definition from the *pro forma* tariff—into the BPS&G document. In instances where the term is not defined in the *pro forma* tariff, we will use the recommended definitions, so long as we find them consistent with the definitions of related terms in the *pro forma* tariff.

The standards proposed herein have been proposed to improve the communications in conducting business on the OASIS. Therefore, terminology used in communications over the OASIS should clearly be defined in the BPS&G document, so long as those definitions are consistent with those in the *pro forma* tariff. We propose to adopt the suggested revision offered by EPMI to recommended Standard 2.2.1 because it clarifies the definition of Firm Transmission Service. As revised, Standard 2.2.1 will read as follows:

Standard 2.2.1: FIRM—Transmission service that always has [a] priority over NON-

[26] As noted above, *supra* note 25, the Commission incorporated a value for ''EXTENDED'' under the definition of TS__WINDOW in Version 1.3 of the S&CP Document.

[27] Cinergy Comments at 2.

[28] *Id.*

FIRM transmission service [and has equal priority with] and includes Native Load Customers, [and] Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff [FERC regulations].

Moreover, we find the definitions in sections 2.2–2.3.2, as revised, to be consistent with the *pro forma* tariff.

5. Curtailment Priorities (Section 2D of the June 19 Report)

Included in the S&CP Document for Phase IA implementation is a data dictionary element entitled ''Curtailment Procedures.'' A business practice has not previously been defined for this data element. Recommended Standard 2.4 on curtailment policies provides as follows:

Standard 2.4: A Transmission Provider shall use the curtailment priority definitions in NERC Policy 9 Security Coordinator Procedures for NERC CURTAILMENT PRIORITY (1–7) for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

Comments

ECI objects to the CPWG/How Group's proposal, on the basis that the Commission in its *pro forma* tariff has established the curtailment priorities for transmission service. ECI comments that the curtailment priorities under NERC procedures are unreasonable and anticompetitive. To the extent the Commission intends to address the merits of NERC's proposal here, ECI incorporates by reference its July 20, 1998 protest filed in Docket No. EL98–52–000.[29]

EPMI offers revisions to the recommended standard to remove the option of posting alternative attribute values and definitions.

Discussion

We have not been persuaded to propose the adoption of Standard 2.4 as recommended in the June 19 Report in the NOPR. There is still considerable work to be accomplished in the area of developing procedures/definitions for establishing curtailment policy.

The Commission recently ruled on a petition for declaratory order (Petition) filed by NERC regarding NERC's proposed Transmission Loading Relief (TLR) procedures.[30] The Commission found that these procedures, which address multi-system transactions and unscheduled flows, are generally consistent with or superior to the *pro forma* tariff curtailment provisions, but that further efforts by NERC and industry participants are necessary. The Commission also found that the TLR procedures must be on file with the Commission, and adopted NERC's suggestion to establish an efficient mechanism for public utilities to incorporate the TLR procedures into their individual open access tariffs.[31] As policies evolve, we can revisit the notion of adding a curtailment definition at a later date.

To prevent confusion, this NOPR reserves section 2.4 for future use (in the numbering of sections in the attached BPS&G document) so that we do not have to renumber sections 2.5–2.5.9 and so that the section numbers in the NOPR will continue to match up with the section numbers used in the June 19 report.

6. Other Service Attribute Values (Section 2E of the June 19 Report)

In Order No. 888, the Commission concluded that six ancillary services must be included in an open access tariff.[32] Other services may be offered pursuant to filed tariffs, or as specified in a customer's service agreement with the transmission provider.[33]

The June 19 Report recommends the data element ANCILLARY__SERVICE__TYPE in the S&CP Document be changed to AS__TYPE. This name is less restrictive and may be used to denote ancillary or additional services that are not *pro forma* tariff ancillary services. This name is also comparable to the use for transmission service of TS, for example TS__TYPE. Consistent with this recommendation, the June 19 Report recommends Standard 2.5, to describe the AS__TYPES offered on OASIS.

Recommended Standard 2.5 provides as follows:

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS__TYPES offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

In addition, the June 19 Report recommends FERC Ancillary Services Definitions for: Scheduling, System Control, and Dispatch Service; Reactive Supply and Voltage Control from Generation Sources Service; Regulation and Frequency Response Service; Energy Imbalance Service; Operating Reserve—Spinning Reserve Service; Operating Reserve—Supplemental Reserve Service; and other services which may be offered to transmission customers such as Dynamic Transfer, Real Power Transmission Losses, and System Black Start Capability. Specifically, recommended sections 2.5.1–2.5.9 provide the following definitions:

Ancillary Services Definitions

2.5.1: Scheduling, System Control and Dispatch Service (SC)—is the provision of (i) interchange schedule confirmation and implementation with other control areas, including intermediary control areas that are providing transmission service, and (ii) actions to ensure the operational security during interchange transaction.

2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities.

2.5.3: Regulation and Frequency Response Service (RF)—is the provision of resources to follow a Transmission Customer's load changes and to supply power to meet any difference between a Customer's actual and scheduled generation.

2.5.4: Energy Imbalance Service (EI)—supplies any hourly mismatch between a Transmission Customer's energy supply and the load being served in the control area. This service makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load that the energy serves in the control area.

2.5.5: Operating Reserve—Spinning Reserve Service (SP)—is the provision of resources, which are on-line and loaded at less than maximum output, to serve load in case there is an unplanned event such as loss of generation.

2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—is the provision of resources that may not be available instantaneously, including generating units that are on-line, quick start units, and customer-interrupted load, to serve load in case there is an unplanned event such as loss of generation.

2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring,

[29] ECI's protest argues, among other things, that: (1) NERC's Tagging requirements must be applied to all transactions; (2) NERC's proposed revisions to Policy 9 (on curtailment) are contrary to the *pro forma* tariff; and (3) NERC security coordinators must be subject to enforceable Standards of Conduct.

[30] North American Electric Reliability Council, 85 FERC ¶ 61,353 (1998) (NERC Order).

[31] By contrast, in Mid-Continent Area Power Pool, 85 FERC ¶ 61,352 (1998), *reh'g pending* (MAPP Order), the Commission rejected line load relief procedures that were not consistent with or superior to the *pro forma* tariff. *See Coalition Against Private Tariffs*, 83 FERC ¶ 61,015 at 61,039, *reh'g denied*, 84 FERC ¶ 61,050 at 61,235–36 (1998).

[32] The six ancillary services defined in the *pro forma* tariff are: (1) Scheduling, System Control, and Dispatch Service; (2) Reactive Supply and Voltage Control from Generation Sources Service; (3) Regulation and Frequency Response Service; (4) Energy Imbalance Service; (5) Operating Reserve—Spinning Reserve Service; and (6) Operating Reserve—Supplemental Reserve Service. *See* §§ 3.1–3.6 of the *pro forma* tariff.

[33] FERC Stats. & Regs. ¶31,036 at 31,705.

telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated with transmission service on the Transmission Provider's system.

2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

Comments

ECI objects to the recommended change on the basis that ancillary services are defined in the *pro forma* tariff. Cinergy comments that, for clarity, the words ''according to FERC pro forma tariff'' or ''pursuant to the transmission provider's open access transmission tariff'' should be included when addressing ancillary services. As an alternate approach, Cinergy suggests including a blanket introductory statement indicating that the ancillary services definitions refer to those services offered pursuant to the transmission provider's open access transmission tariff.

EPMI comments that the Commission should not authorize unspecified ''alternative attribute values,'' and that the Commission must approve ancillary services.[34]

Discussion

We agree with ECI that, in instances where terms are defined in the *pro forma* tariff, we should use that same definition for conducting OASIS-related business. Accordingly, we will revise the definitions in recommended sections 2.5.1–2.5.6 to match those in the *pro forma* tariff. We therefore propose as follows:

FERC Ancillary Services Definitions

2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area.[35] This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.[36] [(i) interchange schedule confirmation and implementation with other control areas, including intermediary control areas that are providing transmission service, and (ii) actions to ensure the operational security during interchange transaction.]

2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities under the control of the control area operator.[37] This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.[38]

2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.[39] [the provision of resources to follow a Transmission Customer's load changes and to supply power to meet any difference between a Customer's actual and scheduled generation.]

2.5.4: Energy Imbalance Service (EI) [supplies any hourly mismatch between a Transmission Customer's energy supply and the load being served in the control area. This service makes up for any net mismatch over an hour between the scheduled delivery of energy and the actual load that the energy serves in the control area.] is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.[40]

2.5.5: Operating Reserve—Spinning Reserve Service (SP)—[is the provision of resources, which are on-line and loaded at less than maximum output, to serve load in case there is an unplanned event such as loss of generation.] is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.[41]

2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—[is the provision of resources that may not be available instantaneously, including generating units that are on-line, quick start units, and customer-interrupted load, to serve load in case there is an unplanned event such as loss of generation.] is generating capacity that can be used to respond to contingency situations. Supplemental reserve, is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.[42]

We agree with Cinergy's suggestion that we add the blanket statement ''ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings'' and will add language to this effect to the paragraph about ''other service definitions'' preceding Standard 2.5.7 in the attached BPS&G Document.

We propose to adopt recommended Standard 2.5, because we agree that the term ''AS__TYPE'' is less restrictive than the term ''ANC__SERVICE__TYPE'' and would allow this data element to be used to offer additional services (beyond the six ancillary services denoted in the *pro forma* tariff) if the services are authorized by a transmission provider's individual open access tariff. We also propose to add a qualifier to Standards 2.5.1–2.5.6 clarifying that the various ancillary services are in accordance with the definitions of ancillary services in the *pro forma* tariff. Consistent with this proposal, we also propose to replace the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the S&CP Document with the term ''AS__TYPE.'' The comments to this NOPR should identify specifically all of the places in the S&CP Document where this change should be made.

7. Scheduling Period (Section 2F of the June 19 Report)

Recommended Guides 2.6, 2.6.1, and 2.6.2 are recommended by the June 19 Report as business practice guides, related to on-line price negotiations and bumping rules in short-term markets, SAME-DAY (2.6.1) and NEXT-HOUR (2.6.2). They provide as follows:

Guide 2.6: A Transmission Provider should use the definitions below to describe the scheduling period leading up to the start time of a transaction:

2.6.1: Same-day is (i) after 2 p.m. of the preceding day and (ii) more than one hour prior to the service start time.

2.6.2: Next-hour is one hour or less prior to the service start time.

These definitions do not apply to a specific data element in the Phase IA S&CP Document.

[34] EPMI Comments at 3–4.

[35] FERC Stats. & Regs., Regulations Preambles, January 1991–June 1996 at 31,716.

[36] Order No. 888–A, FERC Stats. & Regs. ¶31,048 at 30,227.

[37] *Id.* at 30,228.

[38] FERC Stats. & Regs. ¶31,036 at 31,716.

[39] *Id.* at 31,717.

[40] *Id.*

[41] *Id.* at 31,708.

[42] *Id.*

Comments

No comments were offered on these definitions.

Discussion

Recommended Guides 2.6, 2.6.1, and 2.6.2 refer to definitions established for the next-hour experiment, which begins November 1, 1998 and terminates March 1, 1999, with a report due to the Commission by March 31, 1999. It is premature to propose the adoption of these guides at this time, pending the outcome of the industry experiment.

8. Maintenance of Industry Home Page (Section 3A of the June 19 Report)

The June 19 Report would require all users of individual OASIS sites to register with the industry-wide OASIS Home Page (www.tsin.com) to obtain access to any individual OASIS site (Standard 3.1). The June 19 Report also recommends that the Commission permit a nominal registration fee to be charged to defray the cost of the registration process and to cover the maintenance of the site. In addition, the industry-wide Home Page is referenced in recommended Standards 2.1, 2.2, 2.3, 2.5, 3.1, 3.2, 3.4, and 3.5 and in recommended Guides 3.3 and 6.4. However, the June 19 Report does not identify the party who will operate and maintain the industry-wide OASIS Home Page. Nor does the proposal discuss how the Commission can ensure that it is maintained in accordance with Commission regulations.

Comments

ECI agrees with the June 19 Report that all users of OASIS should register their identity at the ''OASIS Home Page.'' However, ECI disagrees with the June 19 Report's proposal to charge a registration fee to defray the registration and maintenance costs of the OASIS Home Page. ECI argues that a ''nominal'' fee is ambiguous and questions whether such a fee is FERC jurisdictional and whether it would be cost-based. It asserts that, consistent with Order No. 889, the costs associated with the OASIS Home Page should be collected through a transmission provider's cost of service.[43]

Discussion

We are concerned that the proposal could have a non-public utility setting fees for the use of the industry-wide OASIS home page (in contrast to fees for individual transmission provider OASIS sites). We are concerned that this proposal would allow an unidentified, non-public utility to be the sole gatekeeper of who may use individual OASIS sites.[44] We cannot allow access to individual OASIS sites to be controlled by an unidentified, possibly non-public utility party. However, this concern would be alleviated if the relationship between the industry-wide OASIS Home Page and the individual OASIS sites operated or controlled by public utilities is such that: (1) The operator of the industry-wide OASIS Home Page acts as an agent for the individual transmission providers on whose behalf it acts; and (2) in the event that a user or potential user fails to comply with the registration procedures followed by the industry-wide OASIS Home Page, the operator of the industry-wide OASIS Home Page would take no independent action denying access to any individual OASIS site, but would merely pass along this assessment to the operators of the individual OASIS sites, who would then determine whether to deny access to their individual OASIS sites. The user or potential user could then file a complaint with the Commission if dissatisfied with this action.

Under this scenario, the individual transmission providers, could collectively contribute to the operation and maintenance of an industry-wide OASIS Home Page, but this would not diminish their responsibility to provide access to their individual OASIS site to users and potential users who comply with applicable registration requirements. Such a contractual arrangement would also permit transmission providers to recover reasonable fees they paid for the operation and maintenance of the industry-wide OASIS Home Page.

We, therefore, propose to allow the use of an industry-wide OASIS Home Page at www.tsin.com, keeping in mind that the operator of the Home Page may only act as an agent of the transmission providers, and that this provision in no way undermines the responsibilities of individual transmission providers to make their individual OASIS sites accessible to users and potential users and to operate their OASIS sites in compliance with all applicable Commission orders and regulations. As long as transmission providers pay reasonable fees to the third party for operating and maintaining the industry-wide OASIS Home Page, they will be able to recover these fees in their transmission rates.[45]

9. Identification of Parties (Section 3A of the June 19 Report)

The OASIS S&CP Document specifies what information is necessary to communicate among the parties, and how the information must be communicated, for the Commission's Open Access program to work. The June 19 Report identifies instances where the information requirements are not always sufficiently defined. For example, transactions generally require the identification of receipt and delivery points, but it is left to each transmission provider to name the receipt and delivery points on their system. The lack of standardized transmission path names and service points often causes confusion when customers attempt to reserve service.

The June 19 Report states that, for OASIS to succeed, there must be an unambiguous identification of the parties to a transaction. Further, it contends that factors such as mergers, reorganizations, and name changes often result in confusion as to the identification of parties. The June 19 Report recommends, in Standard 3.1, to keep parties informed about parties' name changes by requiring all transmission providers and users of OASIS to register at an Internet web site, www.tsin.com, and to renew the registration annually. Recommended Standard 3.1 provides as follows:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase 1-A and renewed annually thereafter.

Comment

ECI agrees that all OASIS users should register their identity at the industry-wide OASIS Home Page.

Discussion

The June 19 Report proposal discusses how name changes and the use of ambiguous names caused by mergers can make the identification of parties difficult. The June 19 Report recommends eliminating the problem by requiring each entity to annually renew its registration. We believe this proposal for annual renewal may not be sufficient to avoid ambiguity. Thus, we propose to require that registration be renewed within 48 hours of any changes in

[43] ECI Comments at 11.

[44] This is distinguishable from an individual transmission provider using a nonjurisdictional entity as its agent to operate its OASIS site because, in that instance, the transmission provider ultimately still is responsible for the actions of its agent.

[45] As provided in 18 CFR 37.5(c), access to OASIS is to be provided to Commission staff and the staffs of State regulatory authorities at no cost. This provision governs access to both individual OASIS sites and to any industry-wide OASIS Home Page.

identification and propose a specific date each year by which registration must be accomplished.[46] Accordingly, we propose to adopt recommended Standard 3.1 as modified below:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase IA and renewed annually by January 1st of each year thereafter and within 48 hours of any changes in identification.

10. Registering Non-Standard Service Attributes (Section 3B of the June 19 Report)

The June 19 Report also maintains that standardized identification of service products is needed. It maintains that inconsistencies in the names of services can inhibit moving power across the power grid. For example, if three transmission providers offer weekly firm service that can begin on any day of the week and one calls its service ''sliding weekly firm'', and the second calls it ''enhanced weekly firm'' and the third calls it ''moveable weekly firm'', customers can become confused. The S&CP Document defines standard services using attributes. However, the S&CP Document does not define the attributes. The June 19 Report proposes standard attribute definitions.[47] Sections III.D.2–D.4 and III.D.6–D.7 above address the proposed standard definitions. The June 19 Report also provides for instances where standardized attributes and definitions are not appropriate. Specifically, recommended Standard 3.2 and recommended Guide 3.3 provide as follows:

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Guide 3.3: Providers of transmission and ancillary services may use on their OASIS attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com.

Under this proposal, transmission providers register new attributes and definitions on the industry-wide home page (www.tsin.com). Transmission providers would be free to use attributes and definitions developed by other transmission providers.[48]

The June 19 Report states that the CPWG will monitor the registration process to ''ensure the attributes and definitions do not undermine the goal of promoting consistent terminology.'' [49]

Comments

EPMI recommends that monitoring of the attribute registration process not be left to the CPWG as it is not clear that the CPWG will even exist in the future.[50] Cinergy expresses concern that there may be real or perceived conflicts if the CPWG monitors the attribute registration process. Cinergy proposes that the process be monitored by the Commission or an organization that is not so involved in the process.[51]

Discussion

The Commission agrees with the June 19 Report that monitoring is needed to ensure that the non-standard attribute naming process is not abused. The CPWG has volunteered to monitor the process, but as discussed above and as predicted by EPMI, the IMIC, a group we are not yet familiar with, has taken over the functions of the CPWG.[52] Although, we continue to believe that an industry group is the logical body to monitor the process, the proper group to undertake this task needs to be identified.

Accordingly, we invite comment on which group would be the proper group to perform this function, whether that group would be agreeable to performing this function, how it organizes itself, and how it conducts its business, before deciding whether it would be able to perform this function in a fair evenhanded manner. We will consider these comments before deciding who should perform this monitoring function.

We propose to adopt recommended Standard 3.2, and recommended Guide 3.3, with modifications. Recommended Guide 3.3 states that transmission providers may use attribute values and definitions that have been posted by other transmission providers. We believe that in order to minimize the number of attribute values and definitions, transmission providers should use attribute values and definitions that have been posted by other transmission providers whenever possible. Accordingly, we propose a modified Guide 3.3 that would read as follows:

Guide 3.3: Providers of transmission and ancillary services [may] should endeavor to use on their OASIS attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com whenever possible.

These revisions would more strongly encourage transmission providers to use attribute values posted by other providers.

11. Registering Points of Receipt and Delivery (Section 3C of the June 19 Report)

OASIS Phase I requires transmission providers to define and post, on their OASIS sites, transmission paths and associated transfer capabilities. The June 19 Report recommends Standards 3.4 and 3.5 and Guide 3.6 as follows: [53]

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS node, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Guide 3.6: When two or more Transmission Providers share a common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting or common Paths on OASIS.

The June 19 Report maintains that for the most part, paths and service points have been defined from each individual transmission provider's perspective. The June 19 Report states that the lack of standards results in confusion about the feasibility of connecting paths to move power from one system and region to another. The June 19 Report recommends the following business practices to improve coordination of path naming and enhance identification of commercially available connection points between transmission providers and regions:

- Transmission Providers register (at the industry-wide OASIS home page) all service points (Points of Receipt and Delivery) for which transmission service is available over OASIS.

[46] The change in identification includes both name and DUNS number of a party. DUNS numbers, a proprietary service of DUN & Bradstreet, are a means of uniquely identifying commercial entities and their use is required by the S&CP Document.

[47] *See* June 19 Report at Section 2.

[48] June 19 Report at 10. However, changes to filed rates would require a filing under section 205.

[49] *Id.*

[50] EPMI Comments at 4.

[51] Cinergy Comments at 4.

[52] This makes moot Cinergy's argument that it would be inappropriate for the CPWG to monitor the process because of real or perceived conflicts of interests.

[53] The subject of path names is also the subject of a separate September 15, 1998 submittal from CPWG/How Group, discussed below in section III.F, *infra.*

• Each Provider would indicate on its OASIS node, for each Path posted on its OASIS node, the Points of Receipt and Delivery to which each Path is connected.

These principles are incorporated in recommended Standards 3.4 and 3.5, and recommended Guide 3.6.[54]

Comments

No comments were received on this issue.

Discussion

With a slight revision, we propose to adopt Standards 3.4 and 3.5 and Guide 3.6 as recommended.[55] We agree with the principle behind Guide 3.6, that transmission providers should be encouraged to apply consistent names for connecting paths or common paths and request that transmission providers do so whenever possible. We also request that the comments to this NOPR address what would be the proper entity to monitor this process and whether this function should be performed in tandem with the monitoring of the registration of standard attributes (as discussed above).

12. On-line Price Negotiation in Short-term Markets (Section 4A of the June 19 Report)

Negotiations on the OASIS. Order No. 889–A requires negotiations between transmission providers and potential customers to take place on the OASIS and be visible to all market participants. The OASIS Phase IA S&CP Document specifies the information needed for negotiations and how the information will be communicated between the parties. With the exception of reservations for next-hour service (which it separately discusses in recommended Guide 4.2 and 4.3, discussed below), the June 19 Report incorporates the requirement in Order No. 889–A that all reservations and price negotiations be made directly on the OASIS. This is stated explicitly in recommended Guide 4.1 as follows:

Guide 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

Comments

Cinergy argues that recommended Guide 4.1 should be a standard because the guide implements the Commission policy that all reservations and price negotiations be conducted on the OASIS.[56]

Discussion

We agree with Cinergy that this provision merely restates existing Commission policy. Accordingly, we propose adoption of recommended Guide 4.1 as Standard 4.1.

Next-Hour Transactions and Electronic Entry of Reservation and Scheduling Requests. At the industry's request, to permit development of the next-hour market, the Commission issued an order on December 27, 1996,[57] clarifying how reservations for next-hour service would be made during OASIS Phase I. The Commission stated:

A request for transmission service made after 2:00 p.m. of the day preceding the commencement of such service, will be ''made on the OASIS'' if it is made directly on the OASIS or, if it is made by facsimile or telephone and promptly (within one hour) posted on the OASIS by the Transmission Provider.[58]

While it is Commission policy that all reservation requests be made on the OASIS, the clarification allows any request made after 2:00 p.m. on the day preceding the start of service to be made by telephone or facsimile as long as the request is posted on the OASIS within one hour of receipt. However, the June 19 Report expresses the fear that next-hour transactions will have to be treated differently from other same-day transactions.[59] Therefore, the June 19 Report recommends Guides 4.2 and 4.3, which provide as follows:

Guide 4.2: The following is considered ''on the OASIS'' during Phase 1–A: For a transmission service of hourly duration, requested within the next-hour, a Customer should have the option, subject to the exception allowed by Guide 4.3, of entering a reservation and schedule request electronically on the Provider's OASIS and scheduling system (if such electronic transactions are allowed on the Provider's scheduling system), or arranging the reservation and schedule verbally with the Provider. If a transmission reservation is confirmed verbally, the Provider should have the option of requiring the Customer to enter the reservation on OASIS electronically within one hour after the start of the reservation.

Guide 4.3: If a Provider's OASIS and scheduling processes allow that a Customer's reservation and scheduling requests will be accepted or refused within 15 minutes of the queue time, then the Provider may require that reservations and schedules be entered electronically by the Customer prior to the established scheduling deadline. If in any case the Provider has not responded to the reservation and schedule request within 15 minutes, the Customer has the option of calling the Provider to verbally confirm the reservation and schedule.

Comments

EPMI recommends that recommended Guides 4.2 and 4.3 be made mandatory standards and not merely voluntary best practice guides.[60] However, EPMI sees an inconsistency between the time limits recommended in Guide 4.3 and those in Table 4–2 and recommends that this discrepancy be resolved.[61]

Discussion

The June 19 Report's proposal is essentially the same as the proposal made in the June 1998 CPWG/How Group letter to the Commission requesting a four-month next-hour experiment and approved by the Commission in the September 29 Order. We will defer a decision on this issue until we have had an opportunity to evaluate the outcome of that experiment. Consistent with our practice elsewhere in this NOPR, we will reserve the applicable section numbers (4.2 and 4.3) so that the references in Attachment A will continue to match-up with the June 19 report.

13. Diagram Depicting the Negotiation Process (Section 4B of the June 19 Report)

The June 19 Report recommends a process state diagram, Guide 4.4, that defines transmission provider and customer interactions when negotiating for transmission service. The diagram defines allowable steps in the reservation request, negotiation, approval, and confirmation processes. The June 19 Report also recommends a table, Guide 4.5, that defines the terms used in the diagram. Recommended Guides 4.4 and 4.5 provide as follows:

Guide 4.4: The following state transitions in Figure 4–1 are recommended practice in OASIS Phase 1–A.

[54] *Id.*

[55] As shown in Attachment A to this NOPR, we are making a grammatical correction to recommended Guide 3.6.

[56] Cinergy Comments at 3.

[57] Open Access Same-Time Information System and Standards of Conduct, 77 FERC ¶ 61,335 (1996) (December 27, 1996 Order).

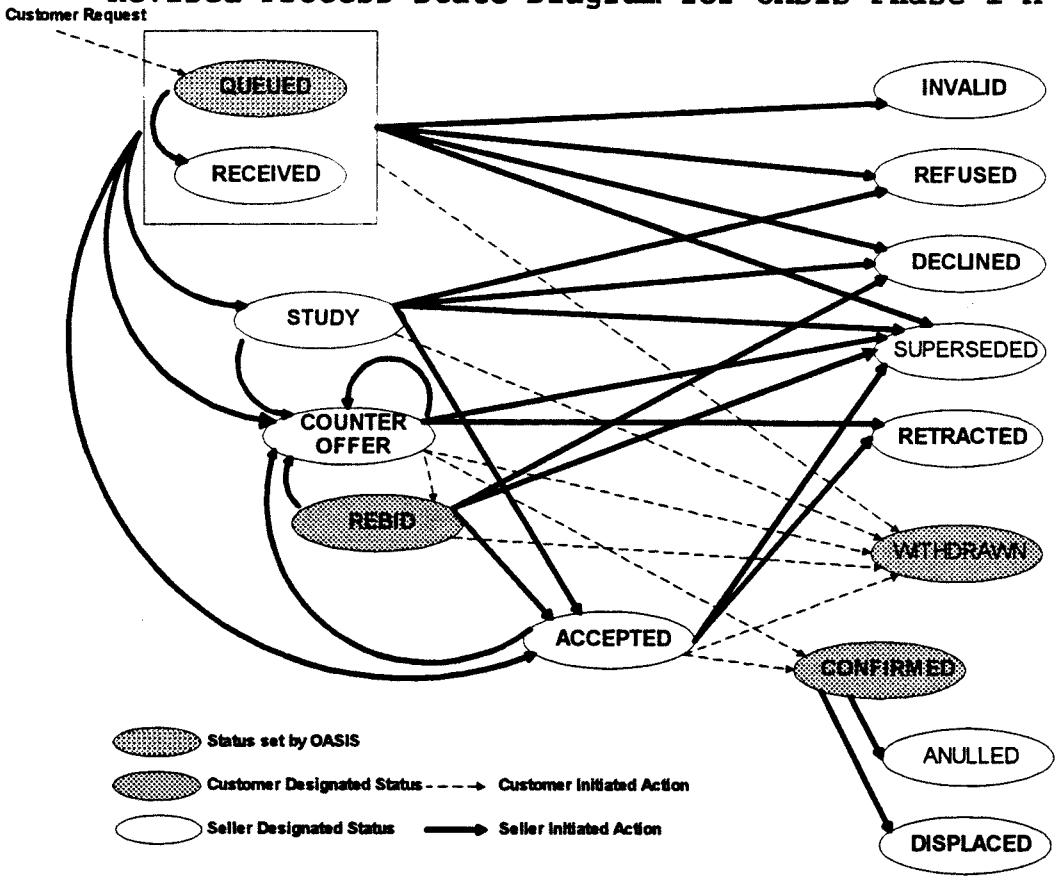
[58] December 27, 1996 Order, 77 FERC at 62,492.

[59] June 19 Report at 12.

[60] EPMI Comments at 5.

[61] Table 4–2 also is discussed in section III.D.14 below, *infra.*

Figure 4-1
Revised Process State Diagram for OASIS Phase 1-A



Guide 4.5: The following definitions in Table 4–1 should be applied to the process states in OASIS Phase 1–A.

Table 4–1—OASIS Phase 1-A State Definitions

Queued	The request has been received by OASIS
Invalid	An invalid request (improper POR, POD, source, sink, increment, combination of duration and increment, etc.). (Final state.)
Received	The request has been received by Provider/Seller.
Study	The request is being evaluated by the Provider/Seller.
Accepted	The Provider has determined that the request is valid, there is sufficient transfer capability, and the price is acceptable.
Refused	The request is denied due to lack of availability of transfer capability. (Final state.)
Declined	The Provider has determined that the price being proposed by the Customer is unacceptable and that negotiations are terminated. (Final state.)
Counteroffer	The Provider/Seller is proposing a different price than was bid by the Customer.
Rebid	The Customer responds to a Provider's ACCEPTED or COUNTEROFFER price with a new bid price.
Retracted	The Provider has (prior to Customer confirmation) determined that the Customer's time limit has expired. (Final state.)
Superseded	A request which has not yet been CONFIRMED is preempted by another reservation request. (Final state.)
Withdrawn	The Customer withdraws the request (prior to confirmation). (Final state.)
Confirmed	The Customer consummates the reservation which has been ACCEPTED or is in COUNTEROFFER by the Provider. (Final state unless later ANNULLED or DISPLACED.)
Annulled	The request is terminated after reaching the CONFIRMED state. This can only be done if both the Customer and Provider agree. The annulment should be confirmed on OASIS by both the Provider/Seller and Customer. (Final state.)
Displaced	A CONFIRMED reservation has been terminated because a reservation of higher priority has preempted it. (Final state.)

Comments

Cinergy argues that the definition of ''REBID'', in recommended Guide 4.5, which provides that ''[t]he customer responds to a Provider's ACCEPTED or COUNTEROFFER price with a new bid price'', is confusing. Cinergy contends that the confusion arises from defining ''REBID'' in terms of ''ACCEPTED''. It asserts that once a transmission provider ''accepts'' a customer's offer, a customer would have no reason to rebid.[62]

Cinergy also argues that there is an inconsistency between the definition of ''rebid'' recommended in Guide 4.5 and the statement recommended in Guide 4.26 that if, during the negotiation process (*i.e.*, before confirmation of the deal by the customer), the transmission provider receives a pre-confirmed request with a higher bid price, the transmission provider may counteroffer the price and potentially prompt a rebid.[63] Cinergy requests either that: (1) the language be clarified; or (2) a cross reference be made.

ECI argues that the June 19 Report proposal would revise the process state diagram appearing in the S&CP Document by adding SUPERSEDED to indicate that a request is preempted prior to confirmation by the customer. ECI further argues that this change results in a contradiction between June 19 Report's process state diagram in Guide 4.4 (Figure 4–1), and an order issued by the Commission on July 17, 1998.[64] ECI argues that the July 17 Order holds that ''there is no right to supersede while engaged in negotiations (*i.e.*, pending), until there is a refusal to match.''[65]

ECI also argues that the definition of SUPERSEDED recommended in Guide 4.5 (Table 4–1) is inconsistent with findings in the July 17 Order regarding section 13.2 of the *proforma* tariff.[66] ECI states,

[i]n the complaint, ECI asserted that PJM violated Section 13.2 of its open access transmission tariff when it granted a transmission customer (PP&L), who had made a request for service that had not been confirmed, a right of first refusal to match a subsequent longer-term request for service that ECI had made.[67]

On this same point, ECI further argues that the Commission found, in the July 17 Order, that ECI's interpretation of the tariff is erroneous. ECI quotes from the July 17 Order:

For purposes of section 13.2, reservations are considered to have been made when the request for service is made. PP&L had a conditional reservation for one-week service that was made when it requested service via PJM's OASIS. As such, it had the right of first refusal to match any later longer-term reservation before losing its reservation priority.[68]

ECI also argues that the process state diagram's treatment of counteroffers needs revision. In discussing this change, the June 19 Report states:

These state changes are necessary in the event the Provider needs to change a price during negotiation prior to hearing a response from the Customer. For example, a discount may be given to another Customer after negotiations started with a first Customer (price is lowered by the Provider without a response from the first Customer) or the Provider may allow the Customer to match a competing bid that would preempt the current price being negotiated (price is raised by the Provider).[69]

ECI argues that, in order to be consistent with the Commission's first-come-first-served and right to match processes, the diagram should reflect a right to match a subsequent acceptable request for service.[70]

Discussion

Cinergy sees a conflict or inconsistency between associating REBID with ACCEPTED in recommended Guide 4.4 and recommended Guide 4.26. We disagree. In our view, the pairing of REBID with ACCEPTED is not inconsistent with recommended Guide 4.26. Once a transmission provider accepts a customer's offer (but before confirmation) a transmission provider can make a counteroffer based on a new higher offer it receives from another customer. Under these circumstances, a customer might wish to rebid.[71]

ECI has raised a number of objections to Part 4B of the June 19 Report (*i.e.*, ''Phase IA Negotiation Process State Transition Diagram''). One of ECI's objections is that the proposal in the June 19 Report would revise the process state diagram in the S&CP Document. While this was true at the time when ECI filed its comments, it is true no longer. Subsequent to the filing of ECI's comments, the Commission approved a revised S&CP Document that contains the same process state diagram recommended by the June 19 Report.[72]

Second, ECI contends that the addition of ''SUPERSEDED'' to the report's process state transition diagram (at Figure 4–1) is inconsistent with the Commission's denial of ECI's complaint against PJM in the July 17 Order,[73] because ECI maintains that the July 17 Order held that ''there is no right to supersede [a pending request for service] while engaged in negotiations (*i.e.*, pending) until there is a refusal to match.'' [74]

ECI misapprehends the holding of the July 17 Order.[75] The Commission's findings in the July 17 Order conformed to determinations in Order No. 888-A, that: (1) Long-term firm point-to-point service is available on a first-come-first-served basis; (2) as to requests for short-term non-firm transmission service, those requesting service for a longer duration have priority over requests for short-term non-firm transmission service over a shorter duration; [76] and (3) in dealing with requests for short-term firm point-to-point transmission service, a customer should be given an opportunity to match a subsequent request for short-term firm point-to-point transmission service for a longer time period before being preempted.[77] However, the July 17 Order did not make any finding that requests for service could not be superseded for other reasons. In fact, the July 17 Order did not address this issue. Thus, the June 19 Report's addition of ''SUPERSEDED'' to the process state transition diagram is not inconsistent with the Commission's precedent on this issue.[78]

Next, ECI argues that the report's treatment of counteroffers needs revision to allow a right to match a subsequent request for service. We disagree. A review of Table 4–1's REBID definition discloses that a customer may respond to a transmission provider's

[62] Cinergy Comments at 3.

[63] Guide 4.26 is quoted below at section III.D.15, *infra*.

[64] Electric Clearinghouse, Inc. v. PJM Interconnection, L.L.C., 84 FERC ¶ 61,045 (1998) (July 17 Order).

[65] ECI Comments at 13.

[66] For convenience, Section 13.2 of the *pro forma* tariff is quoted in full in Attachment B to this NOPR.

[67] ECI Comments at 14.

[68] 84 FERC at 61,196.

[69] June 19 Report at 14.

[70] ECI Comments at 13.

[71] In the comments to this NOPR, we invite comment on whether rebid should be limited to price, as proposed in this NOPR, or whether it would be feasible and/or desirable to allow a rebid lengthening the duration of the requested service or a rebid wtih both a higher price and longer duration.

[72] *See* note 23, *supra*.

[73] *See* 84 FERC at 61,196.

[74] ECI Comments at 13.

[75] ECI raises its argument about alleged inconsistencies between the July 17 Order and the June 19 Report's proposals in a number of contexts. We will address these arguments as they apply in various contexts.

[76] *See pro forma* tariff at §§ 13,2 and 14.2.

[77] Order No. 888–A, FERC Stats. & Regs. § 31,048 at 30,277–78.

[78] *See* June 19 Report, Guide 4.4, Figure 4–1, shown in Section III.D.13 above, *supra*.

counteroffer with a new bid price.[79] This mechanism meets the concerns raised by ECI's comments on this issue.

Third, ECI argues that the report's definition of ''SUPERSEDED'' should be rejected because it does not state, as ECI argues is required by the July 17 Order, that a customer has a right to match subsequent longer-term requests for service before a requester loses its reservation priority. In our view, the findings in the July 17 Order need not be restated in the BPS&G to remain in effect. Table 4–1 is not incorporated into the proposed BPS&G document (*see* Attachment A at Section 4.2) and, in any event, Table 4–1's definition of SUPERSEDED is silent as to why and when an unconfirmed request might be preempted. It neither confers nor denies a customer's right to match. When a request for transmission service has been superseded, this occurs before the customer's confirmation.[80] Therefore, the customer has no right to match.[81] Additionally, a customer whose request for transmission service has been superseded may make a new request for service.

Upon review, the definition of ''SUPERSEDED'' in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document could be improved. We propose to revise the definition by substituting the word ''preempted'' in place of ''displaced.'' We invite the comments to this NOPR to address this issue.

Version 1.3 of the S&CP Document, adopted by the Commission in the September 29 Order, currently contains the same process state diagram contained in recommended Guide 4.4 of the June 19 Report.[82] To avoid any possible future conflict between the two documents, we will incorporate by reference Exhibit 4–1 of the S&CP Document into the attached BPS&G, rather than proposing to adopt the recommended diagram itself as part of the attached BPS&G. This will assure that any changes to this diagram in the S&CP Document automatically will be reflected in the BPS&G document.

Recommended Guide 4.5 (Table 4–1) of the June 19 Report contains definitions of the process states appearing in Guide 4.4. These definitions differ slightly from the definitions of the same terms appearing at Section 4.2.10.2 of the S&CP Document.[83] To avoid any inconsistency between these definitions, and because the definitions in the S&CP Document are more complete, we will incorporate by reference the definitions in Section 4.2.10.2 of the S&CP Document in the attached BPS&G.

Because we are incorporating by reference the version of Table 4–1 that appears in S&CP Document, we are not including Table 4–1 from the June 19 Report in the attached BPS&G. However, as we did with section 2.4, we will reserve for future use a blank Table 4–1, so that Tables 4–2 and 4–3 as shown in the attached BPS&G will continue to have the same designations as in the June 19 Report without any renumbering.

14. Negotiations Without Competing Bids (Section 4C of July 19 Report)

In our June 18, 1998 order on OASIS-related issues, we asked the CPWG to examine the development of predetermined deadlines for acceptances by transmission providers of transmission service requests and confirmation by customers of acceptances of their requests.[84] We did this because comments received from PECO and NRECA convinced us that the parties to negotiations require decisions to be made quickly and in a known time frame. The CPWG/How Group responded to this concern by proposing Recommended Guide 4.6 that provides as follows:

Guide 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the ''Provider Response Time Limit'' defined in Table 4–2 Reservation Timing Requirements. The time limit is measured from the time the request is QUEUED. A Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED

This provision provides that, consistent with filed tariffs, transmission providers/sellers shall respond to customer requests within the time limits appearing in Table 4–2, contained in recommended Guide 4.13. Recommended Table 4–2 specifies how long transmission providers may take to respond to a request for service and how long customers may take to confirm the transmission provider's acceptance. In addition, the June 19 Report recommends reservation timing guidelines in Guide 4.13 as follows:

Guide 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2—RESERVATION TIMING GUIDELINES

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit after ACCEPTED or COUNTEROFFER [2]	Provider counter time limit after REBID [3]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes.
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes.
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes.
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours.
Non-Firm	Monthly	N/A	2 days	24 hours	4 hours.
Firm	Daily	< 24 hours	Best effort	2 hours	30 minutes.
Firm	Daily	N/A	30 days[4]	24 hours	4 hours.
Firm	Weekly	N/A	30 days[4]	48 hours	4 hours.
Firm	Monthly	N/A	30 days[4]	4 days	4 hours.
Firm	Yearly	N/A	30 days	15 days	4 hours.

Notes for Table 4–2:

[1] Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.

[79] We note that as a REBID is only made on the basis of price, *see* definition in Guide 4.5, Table 4–1, the time limits in Guide 4.13, Table 4–2 ought to be adequate. Any objections to these time limits should be raised in comments to this NOPR. *See* note 72, *supra.*

[80] After requests for transmission are confirmed, they may be preempted under Table 4–3.

[81] *See* § 14.2 of the *pro forma* tariff.

[82] S&CP Document, Version 1.3, Exhibit 4–1, State Diagram of Purchase Transactions.

[83] For convenience, these provisions are quoted in Attachment C to this NOPR.

[84] June 18 Order at 62, 464–65.

[2] Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.
[3] Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.
[4] Subject to expedited time requirements of Section 17.1 of the pro forma tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

The report also contains several guides (recommended Guides 4.7–4.12) dealing with the rights and obligations of the parties during negotiations. Recommended Guides 4.7–4.12 provide as follows:

Guide 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

Guide 4.8: For any request that is REFUSED or INVALID, the Transmission Provider should indicate in the COMMENTS field the reason the request was refused or invalid.

Guide 4.9: The Customer may change a request to WITHDRAWN at any time prior to CONFIRMED.

Guide 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED, WITHDRAWN, or REBID. The Customer has the amount of time designated as ''Customer Confirmation Time Limit'' in Table 4–2 Reservation Timing Requirements to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Guide 4.11: After expiration of the ''Customer Confirmation Time Limit,'' specified in Table 4–2 Reservation Timing Requirements, the Provider has a right to move the request to the RETRACTED state.

Guide 4.12: Should the Customer elect to respond to a Provider's COUNTEROFFER by moving a reservation request to REBID, the Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the ''Provider Counter Time Limit,'' specified in Table 4–2 Reservation Timing Requirements. The Provider response time is measured from the most recent REBID time.

Comments

Recommended Guide 4.8 suggests that when a request is REFUSED or INVALID the transmission provider should indicate in the COMMENTS field the reason the request was refused or found invalid. Cinergy argues that a transmission provider should not be required to enter a special reason in the comment section for a ''REFUSED'' response, since the definition of ''REFUSED'' means that the request is denied due to lack of availability of transfer capability.[85]

ECI supports recommended Guide 4.9, which states that a customer may change a request to WITHDRAWN at any time prior to confirmation. It asserts that this concept should be incorporated into the *pro forma* tariff.[86]

Discussion

Recommended Guide 4.8 would have transmission providers give an explanation of why a request is refused. Cinergy argues that no reason other than REFUSED is needed to explain why a service request is rejected. We disagree. Even though backup information is available upon request to the customer,[87] there is a delay before this information is provided. Any timely information from the transmission provider which can explain the reason(s) for refusal will be useful to the customer in assessing the competitiveness of the bid, establishing a level of confidence in the transmission provider's ATC posting, and detecting any instances of undue discrimination.[88] For example, the reason for the lack of ATC may be that another customer has made a simultaneous bid for a longer duration short-term transmission service. Having this information available in a timely manner would allow the first customer to make a revised request for service that might be accepted. Another example would be where a transmission provider had not yet updated its ATC posting and thus its OASIS node would still show available ATC even though this was no longer true.

ECI agrees with recommended Guide 4.9 of the June 19 Report that, in the absence of competing bids, a customer may change a request to WITHDRAWN any time prior to it being confirmed. However, ECI contends that, under the July 17 Order, this may require a revision to § 13.2 of the *pro forma* tariff because this provision is silent as to the withdrawal of a request for transmission.

We disagree. When we addressed the issue of reservation time limits in the June 18 Order, we agreed with commenters that on-line negotiation of discounts requires predetermined time limits on responses by transmission providers and customers.[89] We asked the CPWG to examine the development of such deadlines and to make recommendations to us. The deadlines appearing in recommended Guide 4.13 on the time limits for customers and transmission providers at different stages of the reservation process reflects the recommendations of the CPWG/How Group and appear to us to be reasonable. Any objections to these proposed time limits should be raised in comments to this NOPR.

We disagree with ECI that the timing requirements in Table 4–2 of Guide 4.13 are inconsistent with section 17.5 of the *pro forma* tariff. Section 17.5 requires a response to a completed application ''as soon as practicable.'' In our view, Guide 4.13 sets forth the practicable time limits for responses to various reservation requests. We find this provision to be consistent with the *pro forma* tariff.[90]

We also find unpersuasive ECI's argument that the statement, in recommended Guide 4.13, that,

> it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price * * *[91]

is inconsistent with the July 17 Order and needs revision to include a right to match the subsequent request. As discussed above, the silence of recommended Guide 4.13 and Table 4.1 on this point do not abrogate the Commission's findings in the July 17 Order. These findings still hold.

Accordingly, we propose to adopt the June 19 Report's recommended Guides 4.6–4.13 in the attached BPS&G.

15. Negotiations With Competing Bids for Constrained Resources (When Customer Has Not Yet Confirmed a Provider±s Acceptance) (Section 4D of June 19 Report)

Section 4D of the June 19 Report contains recommended sections 4.14–

[85] *Id.*

[86] ECI Comments at 15.

[87] A NOPR on expanding the availability of this back-up information is pending in Docket No. RM98–3–000. *See* Open Access Same-Time Information System and Standards of Conduct, FERC Stats. & Regs. ¶ 32,531 (1998).

[88] Upon review, the definition of ''REFUSED'' in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document is unclear. We propose to clarify the definition by inserting the words ''lack of'' before the word ''availability.'' We invite the comments to this NOPR to address this issue.

[89] 83 FERC at 62,464.

[90] We also note that in the Wisconsin Electric case cited in note 89, *supra,* the Commission approved a revision to WEPCO's individual open access tariff setting a time limit on customer confirmations.

[91] June 19, Report at 18.

4.27 dealing with the procedures for negotiations over the OASIS when there are competing bids for constrained resources prior to a customer confirming the transmission provider's acceptance. For the reasons stated below, we propose to adopt recommended Guides 4.14—4.26, with certain modifications, and to reject recommended Guide 4.27.

When competing bids for reservations on constrained resources are received, the June 19 Report generally recommends awarding the reservation on a first-come-first-served basis. Exceptions to this rule are recommended for competing bids for short-term transmission service that have a higher priority,[92] solely because they request service for a longer duration, and in the case of non-firm point-to-point transmission service, requests that are of the same duration, but at a higher price. In some situations, the right of first refusal is permitted. We will now discuss the provisions on negotiations for competing bids for constrained resources on a section-by-section basis.

Section 4.14—Service Request Priority Tiers

Consistent with regulations and filed tariffs, Guide 4.14 divides transmission service into five tiers of successive priority when competing bids are negotiating for transmission service.[93] Highest priority is given to native load, network, or long-term firm service (subsection 4.4.1). Second highest priority is given to short-term firm service (subsection 4.4.2). Third highest priority is given to network service on non-designated resources (subsection 4.4.3). Fourth highest priority is given to non-firm service (subsection 4.4.4). Fifth highest priority is given to service over secondary receipt and delivery points (subsection 4.4.5).

Comments

None of the comments take issue with these priorities.

Discussion

We propose to adopt the priorities laid out in Guide 4.14 as recommended.

Section 4.15—First-Come First-Served

Consistent with regulations and filed tariffs, recommended Guide 4.15 provides that reservation requests should be handled on a first-come-first-served basis based on queue time.

Comments

EPMI notes that under the June 19 Report's proposal, requests for capacity will no longer be pro-rated if there is a lack of available transmission capacity. Instead, requests will be evaluated on a first-come-first-served basis. EPMI supports this change, but is concerned about affiliate transactions. EPMI fears that an affiliate of the transmission provider could obtain all of the available transmission capacity, rather than having it pro-rated if there is a constraint.[94]

Discussion

EPMI's argument is based on an incorrect premise. Currently, under the *pro forma* tariff, transmission is allocated on a first-come-first-served basis and is not pro-rated.

Nor, for two reasons, do we find persuasive EPMI's contention that the allocation of capacity on a first-come-first-served basis would allow an affiliate of a transmission provider to obtain all available transmission capacity. First, the S&CP Document TRANSSTATUS template contains the queue time of a request. Customers can monitor requests and detect any undue discrimination. Suspected violations can be reported to the Commission. As long as capacity is awarded on a non-discriminatory basis, which gives the affiliate no undue preference, the award of capacity should not be an issue. Second, EPMI's prediction is contradicted by the fact that transmission already is allocated on a first-come-first-served basis and it does not appear that EPMI's scenario has come to pass.

Section 4.16—Priorities for Competing Reservation Requests

Recommended Guide 4.16, which includes Table 4–3, describes the relative priorities of competing service requests and rules for offering a right of first refusal, consistent with Commission regulations and filed tariffs. Specifically, it states:

Guide 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it is intended to also be applied in the more general case of more than two competing requests.

TABLE 4–3 [95]—Priorities for Competing Reservation Requests

Row	Request 1	Is preempted by request 2	Right of first refusal
1	Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request	N/A.
2	Tier 2: Short-term Firm ...	Tier 1: Long-term Firm, Native Load, and Network Firm), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
3	Tier 2: Short-term Firm ...	Tier 2: Short-term Firm of longer term (duration), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
4	Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
5	Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
6	Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources.	No.
7	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration) [1]. Except in the last hour prior to start (see Standard 4.23).	Yes.

[92] Recommended Guide 4.14 specifies the service request priority tiers.

[93] These priorities are not meant to govern curtailments.

[94] EPMI Comments at 6.

TABLE 4–3 [95]—Priorities for Competing Reservation Requests—Continued

Row	Request 1	Is preempted by request 2	Right of first refusal
8	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration) [1] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (See Standards 4.22 and 4.25.).	No.
9	Tier 5: PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4	No.

[1] Longer duration, in addition to being higher SERVICE__INCREMENT (i.e., WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE__INCREMENT (i.e., 3 Days may have priority over 2 Days).
[95] For clarity, we have identified the rows in Table 4–3.

Guide 4.16 would allocate requests for Tier 1 services (native load, network, long-term firm) and Tier 2 services (short-term firm) on a first-come-first-served basis. A request for Tier 1 service could not be preempted. A request for Tier 2 service that is ''conditional'' could be preempted by a request for Tier 1 service without any right of first refusal.[96] A request for Tier 2 service that is ''conditional'' could also be preempted by a request for longer term Tier 2 service but, under this circumstance, it would receive the right of first refusal.[97]

Tier 3 service (network service from non-designated resources) could be preempted by requests for either Tier 1 or Tier 2 service and would not receive the right of first refusal. Tier 4 service (all non-firm PTP) could be preempted by requests for Tier 1, 2, or 3 service and would receive the right of first refusal. A Tier 4 request could be preempted (except in the hour before service begins) by a longer duration Tier 4 service and would receive the right of first refusal. Until a Tier 4 request is confirmed, it could be preempted by a preconfirmed Tier 4 request of equal duration and higher price.[98] The request would not receive the right of first refusal.

Comments

Cinergy asks how the terms ''conditional'' and ''unconditional'' appearing in Table 4–3 should be defined.[99]

ECI asserts that the concept in recommended Guide 4.16 (footnote 2 to Table 4–3), that ''[l]onger duration, in addition to being higher SERVICE__INCREMENT (*i.e.*, WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE__INCREMENT (*i.e.*, 3 Days may have priority over 2 Days),'' should also apply to firm service.

Discussion

Recommended Guide 4.16 defines the priorities of longer duration for non-firm PTP service to include both a higher service increment (weekly service has priority over daily service) and multiples of the same service increment (three day service has priority over two day service). ECI requests that this definition also be applied to firm service. We agree with ECI that multiple service increments should have similar priority for short-term firm service.[100] Accordingly, we will revise Table 4–3 of recommended Guide 4.16 so that the footnote, now referencing rows 7 and 8 of column 2 of Table 4–3, will also refer to row 3, column 2 of the table. Moreover, we find these reservation priorities to be consistent with section 14.2 of the *pro forma* tariff, which, by its terms, applies only to non-firm point-to-point transmission service. Accordingly, we propose to adopt Guide 4.16 as revised.

We find unpersuasive Cinergy's argument that Table 4–3 should define ''conditional'' and ''unconditional.'' As seen in note 100, the concepts of conditional and unconditional service are complicated and would be cumbersome to define in a table.

Section 4.17—Required Posting When a Reservation Request Is Preempted

This section provides that when a reservation request is preempted, the transmission provider must post the assignment reference number of the reservation that preempts the reservation request.

Comments

None of the comments take issue with this recommendation.

Discussion

We propose to adopt Guide 4.17 as recommended.

Section 4.18—Displaced and Superseded Pending Requests for Transmission Service

This section lays out the circumstances when a transmission provider may displace or supersede pending requests for service based on the priorities laid out in Table 4–3 (Guide 4.16). Recommended Guide 4.18, which addresses counteroffers, provides as follows:

Guide 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of

[96] The distinction between conditional and unconditional service, as related to firm point-to-point service, is discussed in Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,746, where we stated:

Accordingly, the Final Rule pro forma tariff provides a mechanism to address this concern while safeguarding the rights of potential customers to obtain access to unused capacity. The tariff provides that reservations for short-term firm point-to-point service (less than one year) will be conditional until one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. These conditional reservations may be displaced by competing requests for longer-term firm point-to-point service. For example, a reservation for daily firm point-to-point service could be displaced by a request for weekly firm point-to-point service during an overlapping period. Before the applicable reservation deadline, a holder of a conditional firm point-to-point reservation would have the right of first refusal to match any longer-term firm point-to-point reservation before being displaced. After the deadline, the reservation becomes unconditional, and the service would be entitled to the same priorities as any long-term point-to-point or network firm service.

Conditional reservations also are discussed in Madison Gas & Electric Company v. Wisconsin Power & Light Company, 80 FERC ¶ 61,331 at 62,102–03 (1997), *reh'g denied*, 82 FERC ¶ 61,099 at 61,372–73(1998).

[97] The rights of first refusal shown in Table 4–3 should not be confused with the right of first refusal available to a customer with a pre-existing expiring contract under Order No. 888, *see* FERC Stats. & Regs. ¶ 31,036 at 31,745.

[98] Under Table 4–3, requests for transmission service may be superseded before they are confirmed. After they are confirmed, they may be preempted (as provided).

[99] Cinergy Comments at 5.

[100] Except in cases where firm service becomes unconditional.

higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

Comments

Cinergy states that, under recommended Guide 4.18, when there are competing requests for constrained resources, a provider may change a confirmed reservation from the CONFIRMED status to DISPLACED status, if the competing request is of higher priority, based on the rules represented in Table 4–3. Cinergy asks—when does the transmission provider displace a request? Is it when the transmission provider accepts the offer from a second customer or when the second customer confirms the deal? Cinergy's suggested answer is that the transmission provider should displace a request at the time the second customer confirms the deal.[101] Cinergy also questions when ATC should be decremented. Cinergy argues that ATC should not be decremented until the customer confirms acceptance of the transmission provider's award of its capacity. It argues that a customer should not have rights to a transmission path or an amount of capacity until the customer commits to pay for it.[102]

Recommended Guide 4.18 would have transmission providers voluntarily use dynamic notification to notify their customers of changes in their requests from the CONFIRMED state to DISPLACED or from the ACCEPTED or COUNTEROFFER to SUPERSEDED.[103] ECI would require transmission providers to use dynamic notification to notify their customers of these events.[104]

In addition, ECI cites the statement in the June 19 Report that,

> it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price.

ECI argues that the Commission's ruling in the July 17 Order requires that customers get the right of first refusal in this situation. Otherwise, ECI argues, this proposal is inconsistent with the Commission's decision in its complaint against PJM.[105]

[101] Cinergy Comments at 4.

[102] Cinergy Comments at 4.

[103] In OASIS Phase IA, transmission providers use the Internet to notify customers automatically of when the status of a reservation request has changed.

[104] ECI Comments at 15.

[105] *See* discussion of PJM complaint in Section III.D.13, *supra*.

Discussion

First, Cinergy, referring to recommended Guide 4.18, asks when an accepted request for service is displaced by a transmission provider. Guide 4.18 states that, when there are competing requests for constrained resources, a provider may change a confirmed reservation from the CONFIRMED status to DISPLACED status, if the competing request is of higher priority, based on the priorities laid out in Table 4–3. Cinergy's view is that the first request should be displaced when the displacing customer confirms the deal. We agree. Otherwise, the displacing customer can walk away from a transaction, leaving the first customer with no service and the transmission provider with unused capacity.

Second, Cinergy also maintains that a customer should not have rights to capacity until it commits to pay for it. We agree. A customer's confirmation already is a commitment to pay and a customer's confirmation is what gives the customer its rights to capacity. After reviewing recommended Guide 4.18, we do not believe that any revision is needed to accommodate Cinergy's concern.

Third, as to Cinergy's specific question as to when ATC is decremented (when there are competing bids for constrained resources), we propose that the transmission provider decrement ATC when it accepts a request (without waiting for the customer's confirmation). Otherwise, a transmission provider could be placed in the awkward position of having accepted 10 requests for the same constrained capacity and having several customers confirm the deal at the same time. Nevertheless, we also invite specific comment on whether ATC should be decremented upon acceptance by a transmission provider of the customer's request or upon the customer's confirmation of its request, following acceptance.

Consistent with our findings in Order No. 889, however, ATC postings should be updated when the transmission service is reserved (after confirmation).[106] In Order No. 889, we stated,

> [a] posting for a constrained posted path must be updated when transmission service on the path is reserved or service ends or when the path's TTC changes by more than 10 percent.[107]

[106] The transmission provider adjusts its calculation of ATC internally before it is required to post a revised ATC on the OASIS.

[107] Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,606.

ECI reads recommended Guide 4.18 to allow transmission providers to provide customers with dynamic notification of changes in the status of their reservation requests on a ''best practice'' basis. It requests that such notification be made mandatory. We note that dynamic notification of changes in reservation status is required by the June 18 Order for customers requesting such notification.[108] It is not mandatory for those who do not make such a request. We believe that our finding in the June 18 Order is sufficient to address ECI's concern and are not proposing in this NOPR any extension of dynamic notification beyond that contained in Guide 4.18 as recommended by the June 19 Report.

ECI argues that the statement in the June 19 Report that ''it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED),'' is inconsistent with the Commission's findings in the July 17 Order. As discussed above, although the July 17 Order held that a customer making a request for short-term firm point-to-point service is to be afforded an opportunity to match a reservation for short-term firm point-to-point service of a longer duration, before losing its reservation priority, that order did not address other circumstances under which an unconfirmed request may be preempted.[109] Thus, ECI's comments provide no basis to reject Guide 4.18 and we propose its adoption as recommended.[110]

Section 4.19—Counteroffers When Right of First Refusal Is Required

Section 4.19 provides that, in instances where the customer is entitled to a right of first refusal, the transmission provider is to notify the customer through the use of a COUNTEROFFER of the opportunity to match the subsequent offer.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Guide 4.19 as recommended.

[108] 83 FERC at 62,463.

[109] 84 FERC at 61,196.

[110] Upon review, the definition of ''DISPLACED'' in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document is unclear. We propose to clarify the definition by inserting the words ''if any'' after the word ''refusal'' to make clear that the existence of a status value for ''DISPLACED'' in the S&CP Document is not meant to confer any right of first refusal. In addition, we propose to substitute the word ''replaced'' for the word ''displaced'' in the text of the definition. We invite the comments to this NOPR to address this issue.

Section 4.20—Time Limits for Right of First Refusal

When we addressed the issue of reservation time limits in the June 18 Order, we agreed with commenters that on-line negotiation of discounts requires predetermined time limits on responses by transmission providers and customers.[111] We asked the CPWG to examine the development of such deadlines and to make recommendations to us. The deadlines appearing in recommended Guides 4.13 and 4.20 reflect the recommendations of the CPWG/How Group.[112]

Comments

ECI argues that the confirmation time limits in recommended Guide 4.20 are inconsistent with the 24-hour time limit in the *pro forma* tariff. ECI argues that the *pro forma* tariff should be revised to match recommended Guide 4.20. Recommended Guide 4.20 provides as follows:

Guide 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of a) the Customer Confirmation Time Limit in Table 4–2 or b) 24 hours.

ECI reports that section 4.2 of the *pro forma* tariff provides a confirmation time limit of 24 hours and suggests that the tariff be revised in accordance with recommended Guide 4.20.

Discussion

ECI identifies what it asserts is an inconsistency between recommended Guide 4.20 and the *pro forma* tariff. Recommended Guide 4.20 provides that a customer who has been given the right of first refusal must respond in a time period equal to the lesser of the confirmation time in Guide 4.13 (Table 4–2) or 24 hours. The *pro forma* tariff provides, at section 17.5, that a response to a completed application be made ''as soon as possible.''

We already addressed this issue in connection with our discussion of Guide 4.13 and Table 4–2. As we explained above,[113] we find the time limits prescribed in Guide 4.13 to be both reasonable and consistent with the *pro forma* tariff.

Section 4.21—Non-discriminatory Right of First Refusal Comments

This recommended standard requires transmission providers to apply all rights of first refusal in a non-discriminatory and open manner.

Comments

None of the comments address this issue.

Discussion

This provision is entirely consistent with the provisions in 18 CFR 37.4(b)(5) that require transmission providers to operate their OASIS sites in an even handed non-discriminatory manner. We propose the adoption of Standard 4.21 as recommended.

Sections 4.22 & 4.23—When Confirmed Requests Shall Not Be Displaced

Recommended Standards 4.22 and 4.23 provide as follows:

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

This section does not distinguish between requests that are pre-confirmed and requests that are confirmed after acceptance. Once confirmed, both requests are treated alike.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Standards 4.22 and 4.23 as recommended.

Section 4.24—Requests on Unconstrained Paths

Recommended Guide 4.24 provides as follows:

Guide 4.24: A Transmission Provider should honor any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This guide applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Comments

None of the comments address this issue.

Discussion

We propose to adopt Guide 4.24 as recommended.

Section 4.25—Pre-Confirmation and Pre-Emption

Recommended Guide 4.25 would permit Tier 4 (non-firm point-to-point) service of equal term with a higher bid price to preempt a request for the same term and lower bid price, as long as the lower bid request is not confirmed and the higher bid request is preconfirmed. Specifically, the provision provides as follows:

Guide 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Comments

ECI asks that recommended Guide 4.25 be rejected for two reasons. First, it argues the guide introduces the concept of pre-confirmed requests for transmission service, a concept that does not appear in the *pro forma* tariff.[114] Second, it argues that the concept violates the first-come-first-served principle.

Discussion

ECI requests that we reject recommended Guide 4.25 because the concept of pre-confirmed requests for transmission service is not addressed in the *pro forma* tariff and because it violates the principle of first-come-first-served. We disagree for two reasons. First, the first-come-first-served reservation priority of section 14.2 of the *pro forma* tariff applies from the time when a request for transmission service is made, *not* from the time when a request is confirmed. Thus, the recommended confirmation policy in Guide 4.25 would not change any reservation priorities under section 14.2 of the *pro forma* tariff. Second, we find the concept of pre-confirmed requests in Guide 4.25 to be consistent with the reservation priorities in section 14.2 of the *pro forma* tariff. If approved, the recommended pre-confirmation policy advocated by the CPWG/How Group would, however, have an impact on the displacement of requests for service by subsequent requests for service at a higher price or for a longer duration.[115]

[111] 83 FERC at 62,464.

[112] Recommended Guide 4.13 (Table 4–2) is discussed above in Section III.D.14, *supra*.

[113] *See* discussion in Section III.D.14 above, *supra*.

[114] Under this concept, customers would be able to make pre-confirmed requests for service that would lock them into automatically confirming their requests for service (and committing them to take service) in the event transmission providers accept their requests for service. A pre-confirmed reservation would be finalized when the transmission provider accepts the customer's request for service, without the need (or opportunity) for subsequent customer confirmation.

[115] *Id*.

Section 4.26—Right of Customer Making Pre-Confirmed Request To Match a Subsequent Pre-Confirmed Request at Higher Price

Recommended Guide 4.26 provides as follows:

Guide 4.26: If during a negotiation of service (i.e., prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Provider *may* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner. [Emphasis in original.]

Comments

ECI suggests a wording change in recommended Guide 4.26.[116] ECI argues that to be consistent with the first-come-first-served and right of first refusal process, transmission providers electing to follow this guide *must* be required to offer a COUNTEROFFER.

Discussion

ECI requests that the word ''may'' in recommended Guide 4.26 be changed to ''must.'' Recommended Guide 4.26 states that under certain circumstances, ''the Provider *may* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer.'' ECI argues that, to achieve consistency with the first-come-first-served and right to match process, transmission providers must be *required* to offer a COUNTEROFFER. We agree with ECI for two reasons. First, customers must know what to expect from a transmission provider. If a transmission provider allows some customers the right to match, it must allow all customers the right to match. Second, even though the recommended guide provides that the ''practice must be implemented in a non-discriminatory manner,'' there is too much room for discrimination if providing the right to match is optional.

As we are proposing that Guide 4.26 be adopted as a guide rather than as a standard, a transmission provider would have the option not to follow this guideline. However, by proposing to adopt the suggested language change, we seek to assure that if the transmission provider elects to follow this guide, it will do so uniformly and not selectively.

[116] ECI Comments at 16.

Section 4.27—Curtailment of Nonfirm PTP Service

Recommended Guide 4.27 provides that curtailment of non-firm point-to-point transmission service should not be based on price. Specifically, it provides as follows:

Guide 4.27: Curtailment of non-firm PTP should not consider price.

Comments

Cinergy argues that curtailments are not within the scope of the Business Practices Report.

Discussion

Cinergy notes that recommended Guide 4.27, which recommends that curtailment of non-firm PTP not be based on price, is outside the scope of Phase IA business practices. We agree that the definition of curtailment practices is beyond the scope of this proceeding. In the June 18 Order, we agreed to displaying curtailment priority information in certain templates contained in the S&CP Document.[117] However, we specifically cautioned that,

our adoption of a place on the OASIS for these data elements does not constitute an approval of the NERC or other curtailment priorities.[118]

As we stated in *Coalition Against Private Tariffs*,[119] curtailment priorities are governed by the *pro forma* tariff.

Accordingly, we do not propose to adopt recommended Guide 4.27 for the reasons discussed above. Commenters disagreeing with this view should address this matter in their comments to this NOPR.

16. *Transmission Provider Requirements (Section 5B) of June 19 Report)*

Phase IA OASIS data templates allow the coupling of ancillary service arrangements with the purchase of transmission service for the purpose of simplifying the overall process for customers. Transmission providers must indicate (consistent with filed tariffs) what services are MANDATORY (must be taken from the Primary Provider), REQUIRED (must be provided for but may be procured from alternative sources), or OPTIONAL (not required as a condition of transmission service). While these interactions are available in the Phase IA S&CP Document, there is a need to clarify the associated BPS&G. The associated recommended Standards and Guides 5.1, 5.2, 5.3, and 5.4 apply to services defined in filed tariffs. Recommended Standards 5.1 and 5.3, and recommended Guides 5.2 and 5.4, provide as follows:

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Guide 5.2: A Transmission Provider may modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Guide 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Comments

With regard to section 5B of the June 19 Report, Cinergy asserts that ancillary services cannot be easily categorized as ''MANDATORY,'' ''REQUIRED,'' or ''OPTIONAL'' on the basis of transmission service. Instead, it suggests that services be categorized on the basis of path because different ancillary services are required depending on whether the service is into, out of, or across, a system.[120]

Discussion

We propose to adopt recommended Standards 5.1 and 5.3 and recommended Guides 5.2 and 5.4. Cinergy's concern that services be categorized on the basis of path would add undue complexity at this time and has not been shown to be needed since only Cinergy is seeking such information. Thus, no modification of these recommended Standards and Guides is warranted. Moreover, ancillary services are an essential part of a transmission service contract. Therefore, the process for making transmission contracts on the OASIS is improved through the proposed definitions and processes that spell out the mandatory, required, and optional ancillary services related to the transmission reservation.

[117] 83 FERC at 62,462.

[118] *Id.*

[119] 83 FERC at 61,043. *See* discussion of NERC and MAPP Orders in Section III.D.6 and notes 27–28, above, *supra*.

[120] Cinergy Comments at 5.

17. Transmission Customer Requirements (Section 5C of June 19 Report)

The June 19 Report recommends that the transmission customer should make known to the transmission provider (at the time of the reservation request) certain options related to arrangement of ancillary services, including taking all the MANDATORY and REQUIRED ancillary services from the primary provider, taking REQUIRED ancillary services from a third party seller, purchasing OPTIONAL services, and arranging for ancillary services in the future (prior to scheduling). The June 19 Report then recommends Guides 5.5 and 5.6. Recommended Guides 5.5 and 5.6 provide as follows:

Guide 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource.

Guide 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff.

Comments

No specific comments were filed on these guides.

Discussion

We propose to adopt recommended Guides 5.5 and 5.6.

E. Recommended Revisions to Pro Forma Tariff (Appendix A of the June 19 Report)

Based on the business practices recommended above, the June 19 Report recommends that we modify three sections, 14.2, 14.7 and 17.5, of the *pro forma* tariff.[121] As discussed below, we view the recommended revisions as either unwarranted or unnecessary and are not persuaded to make any modifications to the *pro forma* tariff at this time.

1. Section 14.2—Reservation Priority

Section 14.2 of the *pro forma* tariff provides, in pertinent part:

A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted.[122]

The CPWG/How Group argues that this creates problems. While not disputing that requests for service of greater duration or for a higher price should have priority over requests for shorter duration or lower price, the June 19 Report expresses a concern that a last-minute subsequent request for non-firm transmission service could displace an earlier request for non-firm transmission service without leaving the first bidder time to make alternate arrangements. CPWG/How Group recommends that customers be allowed to make pre-confirmed requests for service, locking themselves into automatically confirming their requests for service (and committing them to take service) in the event the transmission provider accepts their request for service. Although transmission providers could reject the request if a competing bid at a higher price or for a longer duration is received before the transmission provider accepts the request from the first customer, it is recommended that,

once an Eligible Customer confirms a reservation at a given price, a subsequent request of equal duration but at a higher price will not be allowed to displace the confirmed reservation.[123]

As to subsequent requests for a longer duration, it is recommended that,

once an Eligible Customer confirms a reservation, a subsequent request of longer duration made within an hour of the scheduled start of the confirmed reservation will not be allowed to displace the confirmed reservation for that next hour.[124]

Thus, under these proposals, if a customer makes a pre-confirmed reservation, it would obtain protection from displacement from competing bids earlier than if it waits to confirm its request after the transmission provider accepts the request. However, even without pre-confirmation, after confirmation, any customer confirming its request would receive the same protection against displacement from subsequent requests for service.

CPWG/How Group also recommends that the right to match subsequent requests for service (first refusal), currently guaranteed by § 14.2 of the *pro forma* tariff (to match subsequent requests for hourly non-firm transmission service of longer duration if matched ''immediately''), be extended to allow matching within five minutes.[125]

To implement these proposals, CPWG advocates revising § 14.2 of the *pro forma* tariff to read as follows:

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service, except that once an Eligible Customer confirms a reservation, a subsequent request of longer duration made within an hour of the scheduled start of the confirmed reservation will not be allowed to displace the confirmed reservation for that next hour. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service, except that once an Eligible Customer confirms a reservation at a given price, a subsequent request of equal duration but at a higher price will not be allowed to displace the confirmed reservation. Eligible Customers that have already reserved shorter-term service have the right of first refusal to match any longer-term reservation before being preempted. A longer-term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) immediately within five minutes for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in § 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

Comments

ECI argues that this provision needs to be reconciled with the Commission's findings in the July 17 Order.

Discussion

We agree with CPWG/How Group that it might be beneficial to allow customers to ''hedge'' their requests for service by making pre-confirmed requests for service. However, we disagree that this

[121] For convenience, sections 14.2, 14.7, and 17.5 of the *pro forma* tariff are provided in Attachment B to this NOPR.

[122] Order No. 888–A, FERC Stats. & Regs. ¶ 31,048 at 30,518.

[123] This proposal stems from recommended Standard 4.22 and recommended Guide 4.25 and the priorities appearing on row 8, Table 4–3 (recommended Guide 4.16).

[124] This proposal stems from recommended Standard 4.23 and the priorities appearing on row 7, Table 4–3 (recommended Guide 4.16).

[125] This change stems from the reservation timing guidelines appearing on row 1, Table 4–2 (recommended Guide 4.13).

requires any modification to § 14.2 of the *pro forma* tariff.

Section 14.2 creates reservation priorities based on price and duration that we have no inclination to revise. However, nothing in § 14.2 either condones or condemns the use of pre-confirmed reservations. In evaluating competing requests for transmission service, we believe that § 14.2 properly directs the transmission provider to give priority to requests for service at a higher price or for a longer duration. However, § 14.2 does not address displacement of an accepted and confirmed request for transmission service upon receipt of a subsequent request for service.

The remaining question, therefore, is whether transmission providers need to file a revision to their individual open access tariff to implement the pre-confirmation proposals outlined in CPWG/How Group's recommended revisions to § 14.2 of the *pro forma* tariff. Given the silence of § 14.2 on this subject, to the extent that a transmission provider seeks to add a pre-confirmation procedure, it would need to file, for Commission approval, a revision to its individual open access tariff.

As to the proposal that we revise section 14.2 of the *pro forma* tariff to allow a matching response to a competing request for hourly non-firm point-to-point transmission service within five minutes of notification by the transmission provider, we find this recommended revision unnecessary. Currently, section 14.2 requires an eligible customer with the right of first refusal to match the competing request immediately for non-firm point-to-point transmission service. A matching response required within five minutes of notification by the transmission provider would satisfy the intent of section 14.2 that a matching response be made immediately.

As to ECI's argument that the recommended revisions to section 14.2 of the *pro forma* tariff need to be reconciled with the Commission's findings in the July 17 Order,[126] we find that these concerns are moot in light of our determination to leave section 14.2 unchanged.[127]

2. Section 14.7—Curtailment or Interruption of Service

The June 19 Report recommends that we revise section 14.7 of the *pro forma* tariff to prevent the interruption of non-firm transmission service in favor of non-firm transmission service of the same duration, but at a higher price (for the same reasons advanced regarding similar changes to section 14.2). Specifically, the June 19 Report recommends that we revise section 14.7 of the *pro forma* tariff to provide as follows:

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, or (3) [a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4)] transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest-term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

Comments

Cinergy recommends that the recommended change not be made.[128]

Discussion

We agree with Cinergy that the recommended change should not be made. We reach this conclusion for several reasons. First, the June 19 Report (*see* pages A–4 and A–5) fails to provide any support for the proposal. Second, as discussed above, we have not been persuaded to revise the reservation priorities in section 14.2 and thus there is no need to revise section 14.7, for consistency. Third, in any event, curtailments and reservation priorities are completely distinct subjects. Thus, even if we were to revise the reservation priorities in section 14.2, we would need more of a reason than that to revise the curtailment priorities in section 14.7. Moreover, as we discussed in Section III.D.5 above, this order does not disturb the curtailment priorities of section 14.7 of the *pro forma* tariff.

3. Section 17.5—Response to a Completed Application

The recommended change to Section 17.5 would require transmission providers to use best efforts to respond promptly to applications for daily firm service made within 24 hours of start of the transaction. The June 19 Report recommends that section 17.5 of the *pro forma* tariff be revised to provide as follows:

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. [The] Except for a Completed Application for Daily Firm service received less than 24 hours prior to the commencement of the transmission service, the Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (I) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. For a Completed Application for Daily Firm service received less than 24 hours prior to the commencement of the transmission service, the Transmission Provider shall use its best efforts to respond promptly to notify the Eligible Customer if it will be able to provide the service. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

Comments

No comments were received on this issue.

Discussion

We do not agree that any revision to the *pro forma* tariff is needed to accommodate this proposal. Section 17.5 requires a response as soon as practicable. It would not be reasonable to interpret ''as soon as practicable,'' in

[126] Discussed in Section III.D.13 above, *supra.*

[127] As discussed in Section III.D.13, *supra,* we also find that ECI misinterprets the July 17 Order.

[128] Cinergy Comments at 6. Cinergy gives no reason for this comment.

dealing with a response for daily service, as allowing a transmission provider to take up to thirty days in responding to a request for service. The ''not longer than thirty (30) days'' language was not intended to allow transmission providers to stall in giving timely responses to requests for shorter duration services. The analysis needed to respond to requests for shorter duration service is simpler and can be accomplished much faster. We need not revise section 17.5 to require ''best efforts'' to respond promptly to customers requesting daily service, because that requirement already is implicit in the requirement to respond ''as soon as practicable.''

F. September 15th Filing of Standards for Naming Transmission Paths

In its July 1998 OASIS order, the Commission requested that CPWG/How Group recommend a consistent naming convention for transmission paths. On September 15, 1998, CPWG/How Group made a joint filing proposing such standards.

The existing S&CP Document contains a path naming convention. Paths are designated using a 50-character alphanumeric string:

RegionCode/transmissionProviderCode/PathName/Optional From-to (POR-POD)/Spare

CPWG/How Group asserts that the structure of the string is appropriate, but that more specificity is needed to assure consistency among transmission providers in the designation of path names. Since a single transaction may span multiple providers, consistent names will make it easier to move power across the systems of several transmission providers.

Specifically, CPWG/How Group recommend:

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX-CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX-CAYY/ PORPORPORPOR-PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Guide 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on *www.tsin.com*.

Comments

APPA was the only commenter. While APPA has some reservations about the recommended standards, it recommends that the standards be adopted. APPA's qualms are due to its fear that the standards could be used to impose anticompetitive burdens on market participants by requiring a higher degree of POR-POD specificity for customers than for the transmission providers' own use of their systems. APPA requests that the Commission remain vigilant and hear customer complaints if the standard is used to disadvantage competitors.[129]

Discussion

We propose to adopt the standards (6.1, 6.2, and 6.3) and guide (6.4) on this subject recommended by CPWG/How Group in their September 15, 1998 submittal. The approach which has been in use permitted flexibility in the use of optional fields, but has resulted in inconsistent path naming. The recommended standards and guides, which use the previously optional fields to specify control area codes for Point of Receipt and Point of Delivery, will provide consistency in path naming, and improve efficiency in the reservation process. There were no commenters objecting to the recommended standards and guides. We acknowledge APPA's concerns about the potential for abuse, and we will be responsive to complaints about possible abuses which might result from the requirement to specify control areas for POR-POD when making transmission reservations.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[130] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The mandatory standards and voluntary best practices guides proposed in this NOPR would be applicable to the same entities subject to the requirements of the OASIS Final Rule (*i.e.*, public utilities).[131] As we explained in Order No. 889–A, however, under appropriate circumstances the Commission will grant waiver of the OASIS Final Rule requirements to small public utilities. We further explained that the Commission's waiver policy follows the SBA definition of small electric utility[132] and that 34 small entities had received waivers of the requirement to establish and maintain an OASIS and five small entities had received waivers of the OASIS Standards of Conduct requirements.[133] These decisions show that the Commission carefully evaluates the effect of the OASIS Final Rule on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities.

The rules here proposed would merely increase the uniformity of the business practices public utilities would have to adopt in any event to comply with Order Nos. 888 and 889 and other Commission orders. This being the case, under section 605(b) of RFA, the Commission hereby certifies that this proposed rule will not, if promulgated, have a significant economic impact on a substantial number of small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the

[129] APPA Comments at 2–3.

[130] 5 U.S.C. 601–612.

[131] In the OASIS Final Rule, we noted that the entities that would have to comply with the OASIS Final Rule are public utilities. *See* Order No. 889–A, FERC Stats. & Regs ¶ 31,049 at 30,578.

[132] *See* 5 U.S.C. §§ 601(3) and 601(6) and 15 U.S.C. § 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. *See* 15 U.S.C. § 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. See 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services).

In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule and the OASIS Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirmed that conclusion in Order Nos. 888–A and 889–A.

[133] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,578.

human environment.[134] In the Commission's view, the environmental impact of this proposal is negligible. Transmission providers necessarily already follow business practices in conducting their OASIS transactions. This proposal merely adds some uniformity to the process. Accordingly, we find that this NOPR does not propose any action that may have a significant effect on the human environment and that no environmental impact statement is required.

VI. Information Collection Statement

Based on our experience in OASIS implementation over the past four years, the Commission refined the estimate of reporting entities covered by OASIS regulations. Our latest estimate is that 140 respondents are required to collect information under the OASIS regulations. However, as discussed above, this NOPR does not impose any new information collection burdens. Collectively, the OASIS rulemaking information collection is covered by FERC–717 as covered by our December 1, 1998 proposed information collection and request for comments in Docket No. IC99–717–000 as follows:

Information Collection Statement:

Title: FERC–717, Open Access Same-time Information Systems and Standards of Conduct.

Action: Proposed Collection.

OMB Control No: 1902–0173.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Notice of Proposed Rulemaking solicits public comments to respond to the proposed issuance of uniform business practices for OASIS Phase IA transactions and path name conventions, on replacing the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term ''AS__TYPE,'' and on clarifying the terms ''DISPLACED,'' ''SUPERSEDED,'' and ''REFUSED'' in the Data Dictionary Element and § 4.2.10.2. These requirements would support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents would operate under more uniform business practices. This would improve the operation of OASIS sites.

The Office of Management and Budget's (OMB) regulations,[135] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in the proposed rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this proposed rule to OMB. Persons wishing to comment on the collections of information proposed by this NOPR should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Public Comment Procedure

This NOPR gives notice of our intention to issue a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) nodes. In addition, we propose a consistent naming convention for path names, propose to replace the Data Dictionary Element ''ANC__SERVICE__TYPE'' in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term ''AS__TYPE,'' and propose to clarify the terms ''DISPLACED,'' ''SUPERSEDED,'' and ''REFUSED'' in the Data Dictionary Element and in section 4.2.10.2. of the S&CP Document.

Prior to taking final action on this proposed rulemaking, we are inviting comments from interested persons on the proposals discussed in this preamble and compiled in Attachment A to this NOPR. Additionally, the Commission specifically invites comments on whether any of the best practice guides proposed in this NOPR should instead be issued as mandatory standards and whether any mandatory standards proposed in this NOPR should instead be issued as best practice guides. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

The original and 14 copies of such comments must be received by the Commission by [insert date 60 days after publication in the **Federal Register**]. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426 and should refer to Docket No. RM95–9–003.

In addition to filing paper copies, the Commission encourages the filing of comments either on computer diskette or via Internet E-Mail. Comments may be filed in the following formats: WordPerfect 6.1 or lower version, MS Word Office 97 or lower version, or ASCII format.

For diskette filing, include the following information on the diskette label: Docket No. RM95–9–003; the name of the filing entity; the software and version used to create the file; and the name and telephone number of a contact person.

For Internet E-Mail submittal, comments should be submitted to ''comment.rm@ferc.fed.us'' in the following format. On the subject line, specify Docket No. RM95–9–003. In the body of the E-Mail message, include the name of the filing entity; the software and version used to create the file, and the name and telephone number of the contact person. Attach the comment to the E-Mail in one of the formats specified above. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt. Questions on electronic filing should be directed to Brooks Carter at 202–501–8145, E-Mail address brooks.carter@ferc.fed.us.

Commenters should take note that, until the Commission amends its rules and regulations, the paper copy of the filing remains the official copy of the document submitted. Therefore, any discrepancies between the paper filing and the electronic filing or the diskette will be resolved by reference to the paper filing.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, N.E., Washington D.C. 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Home Page using the RIMS link or the Energy Information

[134] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[135] 5 CFR 1320.11.

Online icon. User assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

List of Subjects in 18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission proposes to adopt the attached ''Business Practice Standards and Guides for Open Access Same-time Information System (OASIS) Transactions'' and to amend Part 37 in Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 37.5 is amended by revising paragraph (b) to read as follows:

§ 37.5 Obligations of Transmission Providers and Responsible Parties.

* * * * *

(b) A Responsible Party must: (1) Provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this part) pertaining to the transmission system for which it is responsible;

(2) Operate the OASIS in compliance with the standardized procedures and protocols found in *OASIS Standards and Communication Protocols,* which can be obtained from the Public Reference and Files Maintenance Branch, Room 2A, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426; and

(3) Operate the OASIS in compliance with the *Business Practice Standards and Guides for Open Access Same-time Information System (OASIS) Transactions,* which can be obtained at the same address as provided in paragraph (b)(2) of this section.

* * * * *

[Note: This attachment will not appear in the Code of Federal Regulations.]

Attachment A—Federal Energy Regulatory Commission, business practice standards and guides for open access same-time information system (oasis) transactions draft, version 1.0 (January 27, 1999)

Table of Contents

Section 1—Introduction

This document contains business practice standards and guides designed to implement the Commission's policy related to on-line price negotiation and to improve the commercial operation of the Open Access Same-Time Information System (OASIS).

Section 1.1 Business Practice Standards and Guides

This document distinguishes between OASIS business practice standards and ''best practices'' guides. The standards are adopted as mandatory requirements, while the guides are offered as voluntary best practices. However, in the event that a transmission provider elects to follow the voluntary practice guides, it must do so on a uniform, non-discriminatory basis.

Section 2—Standard Terminology for Transmission and Ancillary Services

Section 2.1 Attribute Values Defining the Period of Service

The data templates of the Phase IA Standards & Communication Protocols (S&CP) Document have been developed with the use of standard service attributes in mind. What the Phase IA S&CP Document does not offer are specific definitions for each attribute value. This section offers standards and guides for these service attribute definitions to be used in conjunction with the Phase IA data templates.

''Fixed'' services are associated with transmission services whose periods align with calendar periods such as a day, week, or month. ''Sliding'' services are fixed in duration, such as a week or month, but the start and stop time may slide. For example a ''sliding'' week could start on Tuesday and end on the following Monday. ''Extended'' allows for services in which the start time may ''slide'' and also the duration may be longer than a standard length. For example an ''extended'' week of service could be nine consecutive days. Various transmission service offerings using these terms are defined in Standards 2.1.1 through 2.1.13 below.

Table 1–1 identifies the definitions that are proposed as standard terminology in OASIS Phase IA for the attributes SERVICE_INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended). A definition is required for each combination of SERVICE_INCREMENT and WINDOW, except Hourly Sliding and Hourly Extended, which, at the present, are not sufficiently common in the market to require standard definitions.

TABLE 1–1.—STANDARD SERVICE ATTRIBUTE DEFINITIONS REQUIRED IN PHASE IA

	Fixed	Sliding	Extended*
Hourly	X	N/A	N/A
Daily	X	X	X
Weekly	X	X	X
Monthly	X	X	X
Yearly	X	X	X

*Included in the Phase IA S&CP Data Dictionary, Version 1.3, issued September 29, 1998.

The existence of a definition in this table does not imply the services must be offered by a Transmission Provider. Requirements as to which services must be offered are defined by regulation and tariffs.

Each definition assumes a single time zone specified by the Transmission Provider. It is recognized that daylight time switches must be accommodated in practice, but they have been omitted in the definitions for the purpose of simplicity.

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service__Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (See Section 3 for registration requirements.)

Standard 2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

Standard 2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

Standard 2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

Standard 2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

Standard 2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

Standard 2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

Standard 2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

Standard 2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

Standard 2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

Standard 2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 48 hours later.

Standard 2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than two weeks later.

Standard 2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later but less than two months later.

Standard 2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one calendar year later but less than two calendar years later.

Section 2.2 Attribute Values Defining Service Class

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.2.1: Firm—Transmission service that always has priority over NON-FIRM transmission service and includes Native Load Customers, Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff.

Standard 2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, Native Load Customers, and Network Customers in accordance with the definitions in the *pro forma* tariff.

Section 2.3 Attribute Values Defining Service Types

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.3.1: Point-to-point—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Standard 2.3.2: Network—Network Integration Transmission Service that is provided to serve a Network Customer load pursuant to Part III of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Section 2.4

Reserved for Future Use.

Section 2.5 Other Service Attribute Values

The Commission has defined six ancillary services in Order No. 888. Other services may be offered pursuant to filed tariffs.

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS__TYPEs offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

FERC Ancillary Services Definitions

Standard 2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area. This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.

Standard 2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities under the control of the control area operator. This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.

Standard 2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.

Standard 2.5.4: Energy Imbalance Service (EI)—is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.

Standard 2.5.5: Operating Reserve-Spinning Reserve Service (SP)—is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.

Standard 2.5.6: Operating Reserve-Supplemental Reserve Service (SU)—is generating capacity that can be used to respond to contingency situations. Supplemental reserve, is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.

Other Service Definitions

Other services may be offered to Transmission Customers through individual filed tariffs. Examples of other services that may be offered include the Interconnected Operations Services described below in Guides 2.5.7, 2.5.8, and 2.5.9. Ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings.

Guide 2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring, telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

Guide 2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated with transmission service on the Transmission Provider's system.

Guide 2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

Section 3—OASIS Registration Procedures

Section 3.1 Entity Registration

Operation of OASIS requires unambiguous identification of parties.

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase IA and renewed annually and whenever changes in identification occur and thereafter. An entity or person not complying with this requirement may be denied access by a provider to that provider's OASIS node.

The registration requirement applies to any entity logging onto OASIS for the purpose of using or updating information, including Transmission Providers, Transmission Customers, Observers, Control Areas, Security Coordinators, and Independent System Operators.

Section 3.2 Process to Register Non-Standard Service Attribute Values

Section 2 of the OASIS business practice standards and guides addresses the use of standard terminology in defining services on OASIS. These standard definitions for service attribute values will be posted publicly on the OASIS Home Page at www.tsin.com and may be used by all Providers to offer transmission and ancillary services on OASIS. If the Provider determines that the standard definitions are not applicable, the Provider may register new attribute values and definitions on the OASIS Home Page. Any Provider may use the attribute values and definitions posted by another Provider.

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Guide 3.3: Providers of transmission and ancillary services should endeavor to use on their OASIS nodes attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com whenever possible.

Section 3.3 Registration of Points of Receipt and Delivery

In order to improve coordination of path naming and to enhance the identification of commercially available connection points between Providers and regions, the business practice for Phase IA OASIS requires that:

- Transmission Providers register at the OASIS Home Page at www.tsin.com, all service points (Points of Receipt and Delivery) for which transmission service is available over the OASIS.
- Each Provider would then indicate on its OASIS node, for each Path posted on its OASIS node, the Points of Receipt and Delivery to which each Path is connected.

A Transmission Provider is not required to register specific generating stations as Points of Receipt, unless they were available as service points for the purposes of reserving transmission service on OASIS. The requirement also does not include registration of regional flowgates, unless they are service points for the purposes of reserving transmission on OASIS.

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS nodes, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Guide 3.6: When two or more Transmission Providers share common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting paths or common paths on the OASIS.

Section 4—On-Line Negotiation and Confirmation Process

Section 4.1 On-Line Price Negotiation in Short-Term Markets

Standard 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

Guide 4.2: Reserved.

Guide 4.3: Reserved.

Section 4.2 Phase IA Negotiation Process State Transition Diagram

The Phase IA S&CP Document provides a process state diagram to define the Customer and Provider interactions for negotiating transmission service. This diagram defines allowable steps in the reservation request, negotiation, approval and confirmation.

Guide 4.4: The state diagram appearing in Exhibit 4–1 in Section 4.2.10.2 of the Version 1.3 of the S&CP Document constitutes a recommended business practice in OASIS Phase IA.

Guide 4.5: The definitions in Section 4.2.10.2 of the Version 1.3 of the S&CP Document (status values) should be applied to the process states in OASIS Phase IA.

Table 4–1—Reserved.

Section 4.3 Negotiations—Without Competing Bids

The following practices are defined in order to enhance consistency of the reservation process across OASIS Phase IA nodes.

Guide 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the ''Provider Response Time Limit'' defined in Table 4–2 ''Reservation Timing Requirements''. The time limit is measured from the time the request is QUEUED. A Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED

Guide 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

Guide 4.8: For any request that is REFUSED or INVALID, the Transmission Provider should indicate in the COMMENTS field the reason the request was refused or invalid.

Guide 4.9: The Customer may change a request to WITHDRAWN at any time prior to it being CONFIRMED.

Guide 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED, WITHDRAWN, or REBID. The Customer has the amount of time designated as ''Customer Confirmation Time Limit'' in Table 4–2 ''Reservation Timing Requirements'' to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Guide 4.11: After expiration of the ''Customer Confirmation Time Limit,'' specified in Table 4–2 ''Reservation Timing Requirements'', the Provider has a right to move the request to the RETRACTED state.

Guide 4.12: Should the Customer elect to respond to a Provider's COUNTEROFFER by moving a reservation request to REBID, the Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the ''Provider Counter Time Limit,'' specified in Table 4–2 ''Reservation Timing Requirements''. The Provider response time is measured from the most recent REBID time.

Guide 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2.—RESERVATION TIMING GUIDELINES

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit after ACCEPTED or COUNTEROFFER [2]	Provider counter time limit after REBID [3]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours
Non-Firm	Monthly	N/A	2 days	24 hours	4 hours
Firm	Daily	<24 hours	Best effort	2 hours	30 minutes
Firm	Daily	N/A	30 days [4]	24 hours	4 hours
Firm	Weekly	N/A	30 days [4]	48 hours	4 hours
Firm	Monthly	N/A	30 days [4]	4 days	4 hours
Firm	Yearly	N/A	30 days	15 days	4 hours

[1] Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.
[2] Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.
[3] Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.
[4] Subject to expedited time requirements of Section 17.1 of the *pro forma* tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

Section 4.4 Negotiations—With Competing Bids for Constrained Resources

Competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity. One general rule is that OASIS requests should be evaluated and granted priority on a first-come-first-served basis established by OASIS QUEUED time. Thus, the first to request service should get it, all else being equal.

Exceptions to this first-come-first-served basis occur when there are competing requests for limited resources and the requests have different priorities established by FERC regulations and filed tariffs. Prior to the introduction of price negotiations, the attribute values that have served as a basis for determining priority include:

- Type (Network, Point-to-point)
- Class (Firm, Non-Firm)
- Increment (Hourly, Daily, Weekly, Monthly, Yearly)
- Duration (the amount of time between the Start Date and the Stop Date)
- Amount (the MW amount)

Under a negotiation model, price can also be used as an attribute for determining priority. The negotiation process increases the possibility that a Provider will be evaluating multiple requests that cannot all be accommodated due to limited resources. In this scenario, it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price.

Guide 4.14: Consistent with regulations and filed tariffs, the following are recommended relative priorities of Service Request Tiers.[1] Specific exceptions may exist in accordance with filed tariffs. The priorities refer only to negotiation of service and do not refer to curtailment priority.

4.4.1. Service Request Tier 1: Native load, Network, or Long-term Firm
4.4.2. Service Request Tier 2: Short-term Firm
4.4.3. Service Request Tier 3: Network on Non-designated Resources
4.4.4. Service Request Tier 4: Non-firm
4.4.5. Service Request Tier 5: Service over secondary receipt and delivery points

Guide 4.15: Consistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE__TIME.

Guide 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it also is intended to be applied in the more general case of more than two competing requests.

TABLE 4–3.—PRIORITIES FOR COMPETING RESERVATION REQUESTS

Request 1	Is preempted by request 2	Right of first refusal
Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request	N/A.
Tier 2: Short-term Firm	Tier 1: Long-term Firm, Native Load, and Network Firm), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
Tier 2: Short-term Firm	Tier 2: Short-term Firm of longer term (duration) [2], while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources	No.
Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration) [2]. Except in the last hour prior to start (see Standard 4.23).	Yes.

[1] Note: The term Tier is introduced to avoid confusion with existing terms such as TS__CLASS.

TABLE 4–3.—PRIORITIES FOR COMPETING RESERVATION REQUESTS—Continued

Request 1	Is preempted by request 2	Right of first refusal
Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration) [2] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (See Standards 4.22 and 4.25.).	No.
Tier 5: PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4	No.

[2] Longer duration, in addition to being higher SERVICE_INCREMENT (*i.e.,* WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE_INCREMENT (*i.e.*, 3 Days may have priority over 2 Days).

Guide 4.17: For a reservation request that is preempted, the Transmission Provider should indicate the Assignment Reference Number of the reservation that preempted the reservation request.

Guide 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

Guide 4.19: In those cases where right-of-first-refusal is required to be offered, the Provider shall notify the Customer, through the use of a COUNTEROFFER, of the opportunity to match the subsequent offer.

Guide 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of a) the Customer Confirmation Time Limit in Table 4–2 or b) 24 hours.

Standard 4.21: A Transmission Provider shall apply all rights-of-first-refusal in a non-discriminatory and open manner for all Customers.

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

Guide 4.24: A Transmission Provider should honor any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This guide applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Guide 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Guide 4.26: If during a negotiation of service (*i.e.,* prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Provider *must* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner.

Section 5—Procurement of Ancillary and Other Services

Section 5.1 Introduction

Phase IA OASIS data templates allow the coupling of ancillary service arrangements with the purchase of transmission service for the purpose of simplifying the overall process for Customers. Transmission Providers must indicate (consistent with filed tariffs), which services are MANDATORY (must be taken from the Primary Provider), REQUIRED (must be provided for but may be procured from alternative sources), or OPTIONAL (not required as a condition of transmission service).

The Transmission Customer should make known to the Transmission Provider at the time of the reservation request certain options related to arrangement of ancillary services. The Transmission Customer may indicate:

- I will take all the MANDATORY and REQUIRED ancillary services from the Primary Provider.
- I will take REQUIRED ancillary services from Third Party Seller ''X''.
- I would like to purchase OPTIONAL services.
- I will self provide ancillary services.
- I will arrange for ancillary services in the future (prior to scheduling).

While these interactions are available in the Phase IA S&CP Document, there is a need to clarify the associated business practices. The standards in Section 5 apply to services defined in filed tariffs.

Section 5.2 Transmission Provider Requirements

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Guide 5.2: A Transmission Provider may modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Guide 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Section 5.3 Transmission Customer Requirements

Guide 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource.

Guide 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff.

Section 6—Pathnaming Standards

Section 6.1 Introduction

The Data Element Dictionary of the OASIS S&CP Document, Version 1.3, defines a path name in terms of a 50-character alphanumeric string:

RR/TPTP/PATHPATHPATH/
OPTIONALFROM-OPTIONALTOTO/SPR

RegionCode/TransmissionProviderCode/
PathName/OptionalFrom–To(POR-POD)/
Spare

This definition leaves it to the Transmission Providers to name the paths from their own perspective. The following standards provide an unambiguous convention for naming paths and will produce more consistent path names.

Section 6.2 Transmission Provider Requirements

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX-CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX-CAYY/PORPORPORPOR-PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Guide 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on www.tsin.com.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Sections 13.2, 14.2, 14.7, and 17.5 of the *pro forma* tariff provide as follows:

13.2 Reservation Priority: Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis i.e., in the chronological sequence in which each Transmission Customer has reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines; one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer-term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*, hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. The Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. The Transmission Provider shall notify the Eligible Customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the Application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed applications (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Section 4.2.10.2 of the S&CP Document provides as follows:

4.2.10.2 Status Values: The possible STATUS values are:

QUEUED = initial status assigned by TSIP on receipt of ''customer services purchase request''.

INVALID = assigned by TSIP or Provider indicating an invalid field in the request, such as improper POR, POD, source, sink, etc. (Final state).

RECEIVED = assigned by Provider or Seller to acknowledge QUEUED requests and indicate the service request is being evaluated, including for completing the required ancillary services.

STUDY = assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.

REFUSED = assigned by Provider or Seller to indicate service request has been denied

due to availability of transmission capability. SELLER__COMMENTS should be used to communicate details for denial of service. (Final state).

COUNTEROFFER = assigned by Provider or Seller to indicate that a new OFFER__PRICE is being proposed.

REBID = assigned by Customer to indicate that a new BID__PRICE is being proposed.

SUPERSEDED = assigned by Provider or Seller when a request which has not yet been confirmed is displaced by another reservation request. (Final state).

ACCEPTED = assigned by Provider or Seller to indicate the service request at the designated OFFER__PRICE has been approved/accepted. If the reservation request was submitted PRECONFIRMED the OASIS Node shall immediately set the reservation status to CONFIRMED. Depending upon the type of ancillary services required, the Seller may or may not require all ancillary service reservations to be completed before accepting a request.

DECLINED = assigned by Provider or Seller to indicate that the BID__PRICE is unacceptable and that negotiations are terminated. SELLER__COMMENTS should be used to communicate reason for denial of service. (Final state).

CONFIRMED = assigned by Customer in response to Provider or Seller posting ''ACCEPTED'' status, to confirm service. Once a request has been ''CONFIRMED'', a transmission service reservation exists. (Final state, unless overridden by DISPLACED or ANNULLED state).

WITHDRAWN = assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state).

DISPLACED = assigned by Provider or Seller when a ''CONFIRMED'' reservation from a Customer is displaced by a longer term reservation and the Customer has exercised right of first refusal (i.e., refused to match terms of new request). (Final state).

ANNULLED = assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided. (Final state).

RETRACTED = assigned by Provider or Seller when the Customer fails to confirm or withdraw the request within the required time period. (Final state).

[FR Doc. 99–2388 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 54

[REG–121865–98]

RIN 1545–AW94

Continuation Coverage Requirements Applicable to Group Health Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance under section 4980B of the Internal Revenue Code relating to the COBRA continuation coverage requirements applicable to group health plans. The proposed regulations in this document supplement final regulations being published elsewhere in this issue of the **Federal Register**. The regulations will generally affect sponsors of and participants in group health plans, and they provide plan sponsors and plan administrators with guidance necessary to comply with the law.

DATES: Written or electronic comments and outlines of topics to be discussed at the public hearing scheduled for June 8, 1999 at 10 a.m. must be received by May 14, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–121865–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–121865–98), 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 scheduled for June 8, 1999 will be held in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Yurlinda Mathis at 202–622–4695; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, LaNita Van Dyke at 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) amended the Internal Revenue Code (Code) to add health care continuation coverage requirements. These provisions, now set forth in section 4980B,[1] generally apply to a group health plan maintained by an employer or employee organization, with certain exceptions, and require such a plan to offer each qualified beneficiary who would otherwise lose coverage as a result of a qualifying event an opportunity to elect, within the applicable election period, COBRA continuation coverage. The COBRA continuation coverage requirements were amended on various occasions,[2] most recently under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Proposed regulations providing guidance under the continuation coverage requirements as originally enacted by COBRA, and as amended by the Tax Reform Act of 1986, were published as proposed Treasury Regulation § 1.162–26 in the **Federal Register** of June 15, 1987 (52 FR 22716). Supplemental proposed regulations were published as proposed Treasury Regulation § 54.4980B–1 in the **Federal Register** of January 7, 1998 (63 FR 708). Final regulations are being published elsewhere in this issue of the **Federal Register**.

The new set of proposed regulations being published in this notice of proposed rulemaking addresses how the COBRA continuation coverage requirements apply in business reorganizations. Also proposed are rules relating to the interaction of the COBRA continuation coverage requirements and the Family and Medical Leave Act of 1993, which were previously published as Notice 94–103 (1994–2 C.B. 569), and certain other issues. These provisions in the new set of proposed regulations are summarized in the explanation below. For a summary of the new proposed regulations integrated with a summary of the final regulations, see the ''Explanation of Provisions'' section of the preamble to the final regulations published elsewhere in this issue of the **Federal Register**.

[1] The COBRA continuation coverage requirements were initially set forth in section 162(k), but were moved to section 4980B by the Technical and Miscellaneous Revenue Act of 1988 (TAMRA). TAMRA changed the sanction for failure to comply with the continuation coverage requirements of the Internal Revenue Code from disallowance of certain employer deductions under section 162 (and denial of the income exclusion under section 106(a) to certain highly compensated employees of the employer) to an excise tax under section 4980B.

[2] Changes affecting the COBRA continuation coverage provisions were made under the Omnibus Budget Reconciliation Act of 1986, the Tax Reform Act of 1986, the Technical and Miscellaneous Revenue Act of 1988, the Omnibus Budget Reconciliation Act of 1989, the Omnibus Budget Reconciliation Act of 1990, the Small Business Job Protection Act of 1996, and the Health Insurance Portability and Accountability Act of 1996. The statutory continuation coverage requirements have also been affected by an amendment made to the definition of group health plan in section 5000(b)(1) by the Omnibus Budget Reconciliation Act of 1993; that definition is incorporated by reference in section 4980B(g)(2).

Explanation of Provisions

Plans That Must Comply

The new proposed regulations would make a number of changes to the section in the final regulations that addresses which plans must comply with the COBRA continuation coverage requirements. The principal changes being proposed are to add rules simplifying the determination of whether the small-employer plan exception applies, giving employers and employee organizations broad discretion to determine the number of group health plans that they maintain, and providing an exception for certain health flexible spending accounts.

In determining whether a plan is eligible for the small-employer plan exception, part-time employees, as well as full-time employees, must be taken into account. Several commenters on the 1987 proposed regulations requested clarification of how to count part-time employees for the small-employer plan exception, and the new proposed regulations provide guidance on this issue. Under the new proposed regulations, instead of each part-time employee counting as a full employee, each part-time employee counts as a fraction of an employee, with the fraction equal to the number of hours that the part-time employee works for the employer divided by the number of hours that an employee must work in order to be considered a full-time employee. The number of hours that must be worked to be considered a full-time employee is determined in a manner consistent with the employer's general employment practices, although for this purpose not more than eight hours a day or 40 hours a week may be used. An employer may count employees for each typical business day or may count employees for a pay period and attribute the total number of employees for that pay period to each typical business day that falls within the pay period. The employer must use the same method for all employees and for the entire year for which the small-employer plan determination is made.

The new proposed regulations provide guidance, for purposes of the COBRA continuation coverage requirements, on how to determine the number of group health plans that an employer or employee organization maintains. Under these rules, the employer or employee organization is generally permitted to establish the separate identity and number of group health plans under which it provides health care benefits to employees. Thus, if an employer or employee organization provides a variety of health care benefits to employees, it generally may aggregate the benefits into a single group health plan or disaggregate benefits into separate group health plans. The status of health care benefits as part of a single group health plan or as separate plans is determined by reference to the instruments governing those arrangements. If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits (other than those for qualified long-term care services) provided by a single entity (determined without regard to the controlled group rules) constitute a single group health plan.

Under the new proposed regulations, a multiemployer plan and a plan other than a multiemployer plan are always separate plans. In addition, any treatment of health care benefits as constituting separate group health plans will be disregarded if a principal purpose of the treatment is to evade any requirement of law. Of course, an employer's flexibility to treat benefits as part of separate plans may be limited by the operation of other laws, such as the prohibition in section 9802 on conditioning eligibility to enroll in a group health plan on the basis of any health factor of an individual.

Many commenters on the 1987 proposed regulations requested clarification of the application of COBRA to health care benefits provided under flexible spending arrangements (health FSAs). Some commentators argued that health FSAs should not be subject to COBRA. Health FSAs satisfy the definition of group health plan in section 5000(b)(1) and, accordingly, are generally subject to the COBRA continuation coverage requirements. However, COBRA is intended to ensure that a qualified beneficiary has guaranteed access to coverage under a group health plan and that the cost of that coverage is no greater than 102 percent of the applicable premium.

The IRS and Treasury believe that the purposes of COBRA are not furthered by requiring an employer to offer COBRA for a plan year if the amount that the employer could require to be paid for the COBRA coverage for the plan year would exceed the maximum benefit that the qualified beneficiary could receive under the FSA for that plan year and if the qualified beneficiary could not avoid a break in coverage, for purposes of the HIPAA portability provisions,[3] by electing COBRA coverage under the FSA. Accordingly, the new proposed regulations contain a rule limiting the application of the COBRA continuation coverage requirements in the case of health FSAs.

Under this proposed rule, if the health FSA satisfies two conditions, the health FSA need not make COBRA continuation coverage available to a qualified beneficiary for any plan year after the plan year in which the qualifying event occurs. The first condition that the health FSA must satisfy for this exception to apply is that the health FSA is not subject to the HIPAA portability provisions in sections 9801 though 9833 because the benefits provided under the health FSA are excepted benefits. (See sections 9831 and 9832.)[4] The second condition is that, in the plan year in which the qualifying event of a qualified beneficiary occurs, the maximum amount that the health FSA could require to be paid for a full plan year of COBRA continuation coverage equals or exceeds the maximum benefit available under the health FSA for the year. It is contemplated that this second condition will be satisfied in most cases.

Moreover, if a third condition is satisfied, the health FSA need not make COBRA continuation coverage available with respect to a qualified beneficiary at all. This third condition is satisfied if, as of the date of the qualifying event, the maximum benefit available to the qualified beneficiary under the health FSA for the remainder of the plan year is not more than the maximum amount that the plan could require as payment for the remainder of that year to maintain coverage under the health FSA.

Duration of COBRA Continuation Coverage

The new proposed regulations would make two principal changes to the section in the final regulations

[3] Under HIPAA, a qualified beneficiary who maintains coverage after termination of employment under a group health plan that is subject to HIPAA can avoid a break in coverage and thereby avoid becoming subject to a preexisting condition exclusion upon later becoming covered by another group health plan.

[4] The IRS and Treasury, together with the U.S. Department of Labor and the U.S. Department of Health and Human Services, have issued a notice (62 FR 67688) holding that a health FSA is exempt from HIPAA because the benefits provided under it are excepted benefits under sections 9831 and 9832 if the employer also provides another group health plan, the benefits under the other plan are not limited to excepted benefits, and the maximum reimbursement under the health FSA is not greater than two times the employee's salary reduction election (or if greater, the employee's salary reduction election plus five hundred dollars).

addressing the duration of COBRA continuation coverage.

The 1987 proposed regulations reflect the statutory rules that were then in effect for the maximum period that a plan is required to make COBRA continuation coverage available. Since then the statute has been amended to add the disability extension, to permit plans to extend the notice period if the maximum coverage period is also extended (referred to as the optional extension of the required periods), and to add a special rule in the case of Medicare entitlement preceding a qualifying event that is the termination or reduction of hours of employment. The new proposed regulations reflect these statutory changes. The maximum coverage period for a qualifying event that is the bankruptcy of the employer has also been added to the new proposed regulations.

The 1987 proposed regulations incorporate the statutory bases for terminating COBRA continuation coverage except the rule (added in 1989 and amended in 1996) that COBRA coverage can be terminated in the month that is more than 30 days after a final determination that a qualified beneficiary is no longer disabled. The new proposed regulations add this statutory basis for terminating COBRA coverage, with two clarifications. First, the new proposed regulations clarify that a determination that a qualified beneficiary is no longer disabled allows termination of COBRA continuation coverage for all qualified beneficiaries who were entitled to the disability extension by reason of the disability of the qualified beneficiary who has been determined to no longer be disabled. Second, the new proposed regulations clarify that such a determination does not allow termination of the COBRA continuation coverage of a qualified beneficiary before the end of the maximum coverage period that would apply without regard to the disability extension.

Business Reorganizations

The 1987 proposed regulations provide little direct guidance on the allocation of responsibility for COBRA continuation coverage in the event of corporate transactions, such as a sale of stock of a subsidiary or a sale of substantial assets. Commenters on the 1987 proposed regulations requested further guidance on corporate transactions, pointing out that the existing degree of uncertainty tends to drive up the costs and risks of a transaction to both buyers and sellers. The IRS and Treasury share this view and believe also that greater certainty helps to protect the rights of qualified beneficiaries in these transactions. The IRS has been contacted by many qualified beneficiaries whose COBRA continuation coverage has been dropped or denied in the context of a corporate transaction. In many cases, these qualified beneficiaries have been told by each of the buyer and the seller that the other party is the one responsible for providing them with COBRA continuation coverage.

The preamble to the 1998 proposed regulations requested comments on a possible approach to allocating responsibility for COBRA continuation coverage in corporate transactions. Commenters suggested that, in a stock sale, as in an asset sale, it would be consistent with standard commercial practice to provide that the seller retains liability for all existing qualified beneficiaries, including those formerly associated with the subsidiary being sold. The IRS and Treasury have studied the comments and given consideration to several alternatives with a view to establishing rules that will minimize the administrative burden and transaction costs for the parties to transactions while protecting the rights of qualified beneficiaries and maintaining consistency with the statute.

Accordingly, the new proposed regulations make clear that the parties to a transaction are free to allocate the responsibility for providing COBRA continuation coverage by contract, even if the contract imposes responsibility on a different party than would the new proposed regulations. So long as the party to whom the contract allocates responsibility performs its obligations, the other party will have no responsibility for providing COBRA continuation coverage. If, however, the party allocated responsibility under the contract defaults on its obligation, and if, under the new proposed regulations, the other party would have the obligation to provide COBRA continuation coverage in the absence of a contractual provision, then the other party would retain that obligation. This approach would avoid prejudicing the rights of qualified beneficiaries to COBRA continuation coverage based upon the provisions of a contract to which they were not a party and under which the employer with the underlying obligation under the regulations to provide COBRA continuation coverage could otherwise contract away that obligation to a party that fails to perform. Moreover, the party with the underlying responsibility under the regulations can insist on appropriate security and, of course, could pursue contractual remedies against the defaulting party.

The new proposed regulations provide, for both sales of stock and sales of substantial assets, such as a division or plant or substantially all the assets of a trade or business, that the seller retains the obligation to make COBRA continuation coverage available to existing qualified beneficiaries. In addition, in situations in which the seller ceases to provide any group health plan to any employee in connection with the sale—whether such a cessation is in connection with the sale is determined on the basis of the facts and circumstances of each case—and thus is not responsible for providing COBRA continuation coverage, the new proposed regulations provide that the buyer is responsible for providing COBRA continuation coverage to existing qualified beneficiaries. This secondary liability for the buyer applies in all stock sales and in all sales of substantial assets in which the buyer continues the business operations associated with the assets without interruption or substantial change.

A particular type of asset sale raises issues for which the new proposed regulations do not provide any special rules. (Thus, the general rules in the new proposed regulations for business reorganizations would apply to this type of transaction.) This type of asset sale is one in which, after purchasing a business as a going concern, the buyer continues to employ the employees of that business and continues to provide those employees exactly the same health coverage that they had before the sale (either by providing coverage through the same insurance contract or by establishing a plan that mirrors the one that provided benefits before the sale). The application of the rules in the new proposed regulations to this type of asset sale would require the seller to make COBRA continuation coverage available to the employees continuing in employment with the buyer (and to other family members who are qualified beneficiaries). Ordinarily, the continuing employees (or their family members) would be very unlikely to elect COBRA continuation coverage from the seller when they can receive the same coverage (usually at much lower cost) as active employees of the buyer.

Consideration is being given to whether, under appropriate circumstances, such an asset sale would be considered not to result in a loss of coverage for those employees who continue in employment with the buyer after the sale. A countervailing concern,

however, relates to those qualified beneficiaries who might have a reason to elect COBRA continuation coverage from the seller. An example of such a qualified beneficiary would be an employee who continues in employment with the buyer, whose family is likely to have medical expenses that exceed the cost of COBRA coverage, and who has significant questions about the solvency of the buyer or other concerns about how long the buyer might continue to provide the same health coverage.

Under one possible approach, a loss of coverage would be considered not to have occurred so long as the purchasing employer in an asset sale continued to maintain the same group health plan coverage that the seller maintained before the sale without charging the employees any greater percentage of the total cost of coverage than the seller had charged before the sale. For this purpose, the coverage would be considered unchanged if there was no obligation to provide a summary of material modifications within 60 days after the change due to a material reduction in covered services or benefits under the rules that apply under Title I of ERISA. If these conditions were satisfied for the maximum coverage period that would otherwise apply to the seller's termination of employment of the continuing employees (generally 18 months from the date of the sale), then those terminations of employment would never be considered qualifying events. If the conditions were not satisfied for the full maximum coverage period, then on the date when they ceased to be satisfied the seller would be obligated to make COBRA continuation coverage available for the balance of the maximum coverage period.

Comments are invited on the utility of such a rule, either in situations in which the seller retains an ownership interest in the buyer after the sale (for example, a sale of assets from a 100-percent owned subsidiary to a 75-percent owned subsidiary) or, more generally, in situations in which the seller and the buyer are unrelated. Suggestions are also solicited for other rules that would protect qualified beneficiaries while providing relief to employers in these situations.

Although the new proposed regulations address how COBRA obligations are affected by a sale of stock (and a sale of substantial assets), the new proposed regulations do not address how the obligation to make COBRA continuation coverage available is affected by the transfer of an ownership interest in a noncorporate entity that causes the noncorporate entity to cease to be a member of a group of trades or businesses under common control (whether or not it becomes a member of a different group of trades or business under common control). Comments are invited on this issue.

Employer Withdrawals From Multiemployer Plans

The new proposed regulations also address COBRA obligations in connection with an employer's cessation of contributions to a multiemployer group health plan. The new proposed regulations provide that the multiemployer plan generally continues to have the obligation to make COBRA continuation coverage available to qualified beneficiaries associated with that employer. (There generally would not be any obligation to make COBRA continuation coverage available to continuing employees in this situation because a cessation of contributions is not a qualifying event.) However, once the employer provides group health coverage to a significant number of employees who were formerly covered under the multiemployer plan, or starts contributing to another multiemployer plan on their behalf, the employer's plan (or the new multiemployer plan) would have the obligation to make COBRA continuation coverage available to the existing qualified beneficiaries. This rule is contrary to the holding in *In re Appletree Markets, Inc.*, 19 F.3d 969 (5th Cir. 1994), which held that the multiemployer plan continued to have the COBRA obligations with respect to existing qualified beneficiaries after the withdrawing employer established a plan for the same class of employees previously covered under the multiemployer plan.

Interaction of FMLA and COBRA

The new proposed regulations set forth rules regarding the interaction of the COBRA continuation coverage requirements with the provisions of the Family and Medical Leave Act of 1993 (FMLA). The rules under the new proposed regulations are substantially the same as those set forth in Notice 94–103. The last two questions-and-answers in that notice have not been included in the new proposed regulations because they relate to general subject matter that is addressed elsewhere in the regulations.

Under the new proposed regulations, the taking of FMLA leave by a covered employee is not itself a qualifying event. Instead, a qualifying event occurs when an employee who is covered under a group health plan immediately prior to FMLA leave (or who becomes covered under a group health plan during FMLA leave) does not return to work with the employer at the end of FMLA leave and would, but for COBRA continuation coverage, lose coverage under the group health plan. (As under the general rules of COBRA, this would also constitute a qualifying event with respect to the spouse or any dependent child of the employee.) The qualifying event is deemed to occur on the last day of the employee's FMLA leave, and the maximum coverage period generally begins on that day. (The new proposed regulations provide a special rule for cases where coverage is not lost until a later date and the plan provides for the optional extension of the required periods.) In the case of such a qualifying event, the employer cannot condition the employee's rights to COBRA continuation coverage on the employee's reimbursement of any premiums paid by the employer to maintain the employee's group health plan coverage during the period of FMLA leave.

Any lapse of coverage under the group health plan during the period of FMLA leave and any state or local law requiring that group health plan coverage be provided for a period longer than that required by the FMLA are disregarded in determining whether the employee has a qualifying event on the last day of that leave. However, the employee's loss of coverage at the end of FMLA leave will not constitute a qualifying event if, prior to the employee's return from FMLA leave, the employer has eliminated group health plan coverage for the class of employees to which the employee would have belonged if she or he had not taken FMLA leave.

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 requirement on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. 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 Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (a signed original and eight (8) copies) to the IRS. Comments are specifically requested on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 8, 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 May 14, 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 Russ Weinheimer, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 54

Excise taxes, Health care, Health insurance, Pensions, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 54 is proposed to be amended as follows:

PART 54—PENSION EXCISE TAXES

Paragraph 1. The authority citation for part 54 is amended in part by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 54.4980B–9 also issued under 26 U.S.C. 4980B.

Section 54.4980B–10 also issued under 26 U.S.C. 4980B. * * *

Par. 2. Section 54.4980B–0 is amended by:

1. Revising the introductory text.
2. Adding entries for §§ 54.4980B–9 and 54.4980B–10 at the end of the list of sections.
3. Revising the entries for Q–3 and Q–6 of § 54.4980B–2 in the list of questions.
4. Revising the entry for Q–4 of § 54.4980B–7 in the list of questions.
5. Adding an entry for the section heading for § 54.4980B–9 in the list of questions.
6. Adding an entry for the section heading for § 54.4980B–10 in the list of questions.

The additions and revisions read as follows:

§ 54.4980B–0 Table of contents.

This section contains first a list of the section headings and then a list of the questions in each section in §§ 54.4980B–1 through 54.4980B–10.

List of Sections

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

§ 54.4980B–10 Interaction of FMLA and COBRA.

List of Questions

* * * * *

§ 54.4980B–2 Plans that must comply.

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Q–3: What is a multiemployer plan?

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Q–6: For purposes of COBRA, how is the number of group health plans that an employer or employee organization maintains determined?

* * * * *

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

Q–4: When does the maximum coverage period end?

* * * * *

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

Q–3: In the case of an asset sale, what are the selling group and the buying group?

Q–4: Who is an M&A qualified beneficiary?

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

§ 54.4980B–10 Interaction of FMLA and COBRA.

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

Q–3: If an employee fails to pay the employee portion of premiums for coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage

under a group health plan during FMLA leave?

Par. 3. Section 54.4980B–1, A–1 is amended by:

1. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (a).

2. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the third sentence and last sentence of paragraph (b).

3. Removing the last sentence of paragraph (c) and adding two sentences in its place to read as follows:

§ 54.4980B–1 COBRA in general.

* * * * *

A–1: * * *

(c) * * * Section 54.4980B–9 contains special rules for how COBRA applies in connection with business reorganizations and employer withdrawals from a multiemployer plan, and § 54.4980B–10 addresses how COBRA applies for individuals who take leave under the Family and Medical Leave Act of 1993. Unless the context indicates otherwise, any reference in §§ 54.4980B–1 through § 54.4980B–10 to COBRA refers to section 4980B (as amended) and to the parallel provisions of ERISA.

* * * * *

Par. 4. Section 54.4980B–2 is amended by:

1. Revising paragraph (a) in A–1.

2. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the first sentence of paragraph (b) in A–1.

3. Revising A–2.

4. Adding Q&A–3.

5. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (a) in A–4.

6. Adding a sentence immediately before the last sentence of the introductory text of paragraph (a) in A–5.

7. Removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place in the last sentence of paragraph (c) in A–5.

8. Adding paragraphs (d), (e), and (f) in A–5.

9. Adding Q&A–6.

10. Revising A–8.

11. Revising paragraph (a) in A–10.

The additions and revisions read as follows:

§ 54.4980B–2 Plans that must comply.

* * * * *

A–1: (a) For purposes of section 4980B, a group health plan is a plan maintained by an employer or employee organization to provide health care to individuals who have an employment-related connection to the employer or employee organization or to their families. Individuals who have an employment-related connection to the employer or employee organization consist of employees, former employees, the employer, and others associated or formerly associated with the employer or employee organization in a business relationship (including members of a union who are not currently employees). Health care is provided under a plan whether provided directly or through insurance, reimbursement, or otherwise, and whether or not provided through an on-site facility (except as set forth in paragraph (d) of this Q&A–1), or through a cafeteria plan (as defined in section 125) or other flexible benefit arrangement. (See paragraphs (b) through (e) in Q&A–8 of this section for rules regarding the application of the COBRA continuation coverage requirements to certain health flexible spending arrangements.) For purposes of this Q&A–1, insurance includes not only group insurance policies but also one or more individual insurance policies in any arrangement that involves the provision of health care to two or more employees. A plan maintained by an employer or employee organization is any plan of, or contributed to (directly or indirectly) by, an employer or employee organization. Thus, a group health plan is maintained by an employer or employee organization even if the employer or employee organization does not contribute to it if coverage under the plan would not be available at the same cost to an individual but for the individual's employment-related connection to the employer or employee organization. These rules are further explained in paragraphs (b) through (d) of this Q&A–1. An exception for qualified long-term care services is set forth in paragraph (e) of this Q&A–1, and for medical savings accounts in paragraph (f) of this Q&A–1. See Q&A–6 of this section for rules to determine the number of group health plans that an employer or employee organization maintains.

* * * * *

A–2: (a) For purposes of section 4980B, *employer* refers to—

(1) A person for whom services are performed;

(2) Any other person that is a member of a group described in section 414(b), (c), (m), or (o) that includes a person described in paragraph (a)(1) of this Q&A–2; and

(3) Any successor of a person described in paragraph (a)(1) or (2) of this Q&A–2.

(b) An employer is a successor employer if it results from a consolidation, merger, or similar restructuring of the employer or if it is a mere continuation of the employer. See paragraph (c) in Q&A–8 of § 54.4980B–9 for rules describing the circumstances in which a purchaser of substantial assets is a successor employer to the employer selling the assets.

Q–3: What is a multiemployer plan?

A–3: For purposes of §§ 54.4980B–1 through 54.4980B–10, a multiemployer plan is a plan to which more than one employer is required to contribute, that is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and that satisfies such other requirements as the Secretary of Labor may prescribe by regulation. Whenever reference is made in §§ 54.4980B–1 through 54.4980B–10 to a plan of or maintained by an employer or employee organization, the reference includes a multiemployer plan.

* * * * *

A–5: (a) * * * See Q&A–6 of this section for rules to determine the number of plans that an employer or employee organization maintains. * * * * * * * * *

(d) In determining the number of the employees of an employer, each full-time employee is counted as one employee and each part-time employee is counted as a fraction of an employee, determined in accordance with paragraph (e) of this Q&A–5.

(e) An employer may determine the number of its employees on a daily basis or a pay period basis. The basis used by the employer must be used with respect to all employees of the employer and must be used for the entire year for which the number of employees is being determined. If an employer determines the number of its employees on a daily basis, it must determine the actual number of full-time employees on each typical business day and the actual number of part-time employees and the hours worked by each of those part-time employees on each typical business day. Each full-time employee counts as one employee on each typical business day and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee and the denominator equal to the number of hours that must be worked on a typical business day in order to be considered

a full-time employee. If an employer determines the number of its employees on a pay period basis, it must determine the actual number of full-time employees employed during that pay period and the actual number of part-time employees employed and the hours worked by each of those part-time employees during the pay period. For each day of that pay period, each full-time employee counts as one employee and each part-time employee counts as a fraction, with the numerator of the fraction equal to the number of hours worked by that employee during that pay period and the denominator equal to the number of hours that must be worked during that pay period in order to be considered a full-time employee. The determination of the number of hours required to be considered a full-time employee is based upon the employer's employment practices, except that in no event may the hours required to be considered a full-time employee exceed eight hours for any day or 40 hours for any week.

(f) In the case of a multiemployer plan, the determination of whether the plan is a small-employer plan on any particular date depends on which employers are contributing to the plan on that date and on the workforce of those employers during the preceding calendar year. If a plan that is otherwise subject to COBRA ceases to be a small-employer plan because of the addition during a calendar year of an employer that did not normally employ fewer than 20 employees on a typical business day during the preceding calendar year, the plan ceases to be excepted from COBRA immediately upon the addition of the new employer. In contrast, if the plan ceases to be a small-employer plan by reason of an increase during a calendar year in the workforce of an employer contributing to the plan, the plan ceases to be excepted from COBRA on the January 1 immediately following the calendar year in which the employer's workforce increased.

* * * * *

Q–6: For purposes of COBRA, how is the number of group health plans that an employer or employee organization maintains determined?

A–6: (a) The rules of this Q&A–6 apply, for purposes of COBRA, in determining the number of group health plans that an employer or employee organization maintains. Except as provided in paragraph (c) of this Q&A–6, in the case of health care benefits provided under an arrangement or arrangements of an employer or employee organization, the number of group health plans pursuant to which those benefits are provided is determined by the instruments governing the arrangement or arrangements. However, a multiemployer plan and a nonmultiemployer plan are always separate plans. All references elsewhere in §§ 54.4980B–1 through 54.4980B–10 to a group health plan are references to a group health plan as determined under Q&A–1 of this section and this Q&A–6.

(b) If it is not clear from the instruments governing an arrangement or arrangements to provide health care benefits whether the benefits are provided under one plan or more than one plan, or if there are no instruments governing the arrangement or arrangements, all such health care benefits, except benefits for qualified long-term care services (as defined in section 7702B(c)), provided by a corporation, partnership, or other entity or trade or business, or by an employee organization, constitute one group health plan.

(c) Notwithstanding paragraph (a) of this Q&A–6, if a principal purpose of establishing separate plans is to evade any requirement of law, then the separate plans will be considered a single plan to the extent necessary to prevent the evasion.

(d) The significance of treating an arrangement as two or more separate group health plans is illustrated by the following examples:

Example 1. (i) Employer *X* maintains a single group health plan, which provides major medical and prescription drug benefits. Employer *Y* maintains two group health plans; one provides major medical benefits and the other provides prescription drug benefits.

(ii) *X*'s plan could comply with the COBRA continuation coverage requirements by giving a qualified beneficiary experiencing a qualifying event with respect to *X*'s plan the choice of either electing both major medical and prescription drug benefits or not receiving any COBRA continuation coverage under *X*'s plan. By contrast, for *Y*'s plans to comply with the COBRA continuation coverage requirements, a qualified beneficiary experiencing a qualifying event with respect to each of *Y*'s plans must be given the choice of electing COBRA continuation coverage under either the major medical plan or the prescription drug plan or both.

Example 2. If a joint board of trustees administers one multiemployer plan, that plan will fail to qualify for the small-employer plan exception if any one of the employers whose employees are covered under the plan normally employed 20 or more employees during the preceding calendar year. However, if the joint board of trustees maintains two or more multiemployer plans, then the exception would be available with respect to each of those plans in which each of the employers whose employees are covered under the plan normally employed fewer than 20 employees during the preceding calendar year.

* * * * *

A–8: (a) The provision of health care benefits does not fail to be a group health plan merely because those benefits are offered under a cafeteria plan (as defined in section 125) or under any other arrangement under which an employee is offered a choice between health care benefits and other taxable or nontaxable benefits. However, the COBRA continuation coverage requirements apply only to the type and level of coverage under the cafeteria plan or other flexible benefit arrangement that a qualified beneficiary is actually receiving on the day before the qualifying event. See paragraphs (b) through (e) of this Q&A–8 for rules limiting the obligations of certain health flexible spending arrangements. The rules of this paragraph (a) are illustrated by the following example:

Example: (i) Under the terms of a cafeteria plan, employees can choose among life insurance coverage, membership in a health maintenance organization (HMO), coverage for medical expenses under an indemnity arrangement, and cash compensation. Of these available choices, the HMO and the indemnity arrangement are the arrangements providing health care. The instruments governing the HMO and indemnity arrangements indicate that they are separate group health plans. These group health plans are subject to COBRA. The employer does not provide any group health plan outside of the cafeteria plan. *B* and *C* are unmarried employees. *B* has chosen the life insurance coverage, and *C* has chosen the indemnity arrangement.

(ii) *B* does not have to be offered COBRA continuation coverage upon terminating employment, nor is a subsequent open enrollment period for active employees required to be made available to *B.* However, if *C* terminates employment and the termination constitutes a qualifying event, *C* must be offered an opportunity to elect COBRA continuation coverage under the indemnity arrangement. If *C* makes such an election and an open enrollment period for active employees occurs while *C* is still receiving the COBRA continuation coverage, *C* must be offered the opportunity to switch from the indemnity arrangement to the HMO (but not to the life insurance coverage because that does not constitute coverage provided under a group health plan).

(b) If a health flexible spending arrangement (health FSA), within the meaning of regulations project EE–130–86 (1989–1 C.B. 944, 986) (see § 601.601(d)(2) of this chapter), satisfies the two conditions in paragraph (c) of this Q&A–8 for a plan year, the obligation of the health FSA to make COBRA continuation coverage available to a qualified beneficiary who

experiences a qualifying event in that plan year is limited in accordance with paragraphs (d) and (e) of this Q&A–8, as illustrated by an example in paragraph (f) of this Q&A–8.

(c) The conditions of this paragraph (c) are satisfied if—

(1) Benefits provided under the health FSA are excepted benefits within the meaning of sections 9831 and 9832; and

(2) The maximum amount that the health FSA can require to be paid for a year of COBRA continuation coverage under Q&A–1 of § 54.4980B–8 equals or exceeds the maximum benefit available under the health FSA for the year.

(d) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, then the health FSA is not obligated to make COBRA continuation coverage available for any subsequent plan year to any qualified beneficiary who experiences a qualifying event during that plan year.

(e) If the conditions in paragraph (c) of this Q&A–8 are satisfied for a plan year, the health FSA is not obligated to make COBRA continuation coverage available for that plan year to any qualified beneficiary who experiences a qualifying event during that plan year unless, as of the date of the qualifying event, the qualified beneficiary can become entitled to receive during the remainder of the plan year a benefit that exceeds the maximum amount that the health FSA is permitted to require to be paid for COBRA continuation coverage for the remainder of the plan year. In determining the amount of the benefit that a qualified beneficiary can become entitled to receive during the remainder of the plan year, the health FSA may deduct from the maximum benefit available to that qualified beneficiary for the year (based on the election made under the health FSA for that qualified beneficiary before the date of the qualifying event) any reimbursable claims submitted to the health FSA for that plan year before the date of the qualifying event.

(f) The rules of paragraphs (b), (c), (d), and (e) of this Q&A–8 are illustrated by the following example:

Example: (i) An employer maintains a group health plan providing major medical benefits and a group health plan that is a health FSA, and the plan year for each plan is the calendar year. Both the plan providing major medical benefits and the health FSA are subject to COBRA. Under the health FSA, during an open season before the beginning of each calendar year, employees can elect to reduce their compensation during the upcoming year by up to $1200 per year and have that same amount contributed to a health flexible spending account. The employer contributes an additional amount to the account equal to the employee's salary reduction election for the year. Thus, the maximum amount available to an employee under the health FSA for a year is two times the amount of the employee's salary reduction election for the year. This amount may be paid to the employee during the year as reimbursement for health expenses not covered by the employer's major medical plan (such as deductibles, copayments, prescription drugs, or eyeglasses). The employer determined, in accordance with section 4980B(f)(4), that a reasonable estimate of the cost of providing coverage for similarly situated nonCOBRA beneficiaries for 2002 under this health FSA is equal to two times their salary reduction election for 2002 and, thus, that two times the salary reduction election is the applicable premium for 2002.

(ii) Because the employer provides major medical benefits under another group health plan, and because the maximum benefit that any employee can receive under the health FSA is not greater than two times the employee's salary reduction election for the plan year, benefits under this health FSA are excepted benefits within the meaning of sections 9831 and 9832. Thus, the first condition of paragraph (c) of this Q&A–8 is satisfied for the year. The maximum amount that a plan can require to be paid for coverage (outside of coverage required to be made available due to a disability extension) under Q&A–1 of § 54.4980B–8 is 102 percent of the applicable premium. Thus, the maximum amount that the health FSA can require to be paid for coverage for the 2002 plan year is 2.04 times the employee's salary reduction election for the plan year. Because the maximum benefit available under the health FSA is 2.0 times the employee's salary reduction election for the year, the maximum benefit available under the health FSA for the year is less than the maximum amount that the health FSA can require to be paid for coverage for the year. Thus, the second condition in paragraph (c) of this Q&A–8 is also satisfied for the 2002 plan year. Because both conditions in paragraph (c) of this Q&A–8 are satisfied for 2002, with respect to any qualifying event occurring in 2002, the health FSA is not obligated to make COBRA continuation coverage available for any year after 2002.

(iii) Whether the health FSA is obligated to make COBRA continuation coverage available in 2002 to a qualified beneficiary with respect to a qualifying event that occurs in 2002 depends upon the maximum benefit that would be available to the qualified beneficiary under COBRA continuation coverage for that plan year. *Case 1:* Employee *B* has elected to reduce *B*'s salary by $1200 for 2002. Thus, the maximum benefit that *B* can become entitled to receive under the health FSA during the entire year is $2400. *B* experiences a qualifying event that is the termination of *B*'s employment on May 31, 2002. As of that date, *B* had submitted $300 of reimbursable expenses under the health FSA. Thus, the maximum benefit that *B* could become entitled to receive for the remainder of 2002 is $2100. The maximum amount that the health FSA can require to be paid for COBRA continuation coverage for the remainder of 2002 is 102 percent times 1/12 of the applicable premium for 2002 times the number of months remaining in 2002 after the date of the qualifying event. In *B*'s case, the maximum amount that the health FSA can require to be paid for COBRA continuation coverage for 2002 is 2.04 times $1200, or $2448. One-twelfth of $2448 is $204. Because seven months remain in the plan year, the maximum amount that the health FSA can require to be paid for *B*'s coverage for the remainder of the year is seven times $204, or $1428. Because $1428 is less than the maximum benefit that *B* could become entitled to receive for the remainder of the year ($2100), the health FSA is required to make COBRA continuation coverage available to *B* for the remainder of 2002 (but not for any subsequent year).

(iv) *Case 2:* The facts are the same as in *Case 1* except that *B* had submitted $1000 of reimbursable expenses as of the date of the qualifying event. In that case, the maximum benefit available to *B* for the remainder of the year would be $1400 instead of $2100. Because the maximum amount that the health FSA can require to be paid for *B*'s coverage is $1428, and because the $1400 maximum benefit for the remainder of the year does not exceed $1428, the health FSA is not obligated to make COBRA continuation coverage available to *B* in 2002 (or any later year). (Of course, the administrator of the health FSA is permitted to make COBRA continuation coverage available to every qualified beneficiary in the year that the qualified beneficiary's qualifying event occurs in order to avoid having to determine the maximum benefit available for each qualified beneficiary for the remainder of the plan year.)

* * * * *

A–10: (a) In general, the excise tax is imposed on the employer maintaining the plan, except that in the case of a multiemployer plan (see Q&A–3 of this section for a definition of multiemployer plan) the excise tax is imposed on the plan.

* * * * *

§ 54.4980 B–3 [Amended]

Par. 5. In § 54.4980B–3, the language ''54.4980B–8'' is removed and ''54.4980B–10'' is added in its place in the last sentence of paragraph (a)(3) and the first sentence of paragraph (g) in A–1; in the first and second sentences of paragraph (a)(1), the first sentence of paragraph (a)(2), and the first and last sentences in paragraph (b) in A–2; and in A–3.

Par. 6. Section 54.4980B–4 is amended by:

1. Adding a sentence at the end of paragraph (a) in A–1.

2. Removing the language ''Q&A–1'' and adding ''Q&A–4'' in its place in the fifth sentence of paragraph (c) of A–1.

3. Revising the third sentence in paragraph (e) of A–1.

The addition and revision read as follows:

§ 54.4980B–4 Qualifying events.

* * * * *

A–1: (a) * * * See Q&A–1 through Q&A–3 of § 54.4980B–10 for special rules in the case of leave taken under the Family and Medical Leave Act of 1993 (29 U.S.C. 2601–2619).

* * * * *

(e) * * * For example, an absence from work due to disability, a temporary layoff, or any other reason (other than due to leave that is FMLA leave; see § 54.4980B–10) is a reduction of hours of a covered employee's employment if there is not an immediate termination of employment. * * *

* * * * *

§ 54.4980B–5 [Amended]

Par. 7. In § 54.4980B–5, the penultimate sentence in paragraph (a) of A–1 is amended by removing the language ''54.4980B–8'' and adding ''54.4980B–10'' in its place.

Par. 8. In § 54.4980B–6, the *Example* in paragraph (c) of A–1 is revised to read as follows:

§ 54.4980B–6 Electing COBRA continuation coverage.

* * * * *

A–1: * * *

Example. (i) An unmarried employee without children who is receiving employer-paid coverage under a group health plan voluntarily terminates employment on June 1, 2001. The employee is not disabled at the time of the termination of employment nor at any time thereafter, and the plan does not provide for the extension of the required periods (as is permitted under paragraph (b) of Q&A–4 of § 54.4980B–7).

(ii) *Case 1:* If the plan provides that the employer-paid coverage ends immediately upon the termination of employment, the election period must begin not later than June 1, 2001, and must not end earlier than July 31, 2001. If notice of the right to elect COBRA continuation coverage is not provided to the employee until June 15, 2001, the election period must not end earlier than August 14, 2001.

(iii) *Case 2:* If the plan provides that the employer-paid coverage does not end until 6 months after the termination of employment, the employee does not lose coverage until December 1, 2001. The election period can therefore begin as late as December 1, 2001, and must not end before January 30, 2002.

(iv) *Case 3:* If employer-paid coverage for 6 months after the termination of employment is offered only to those qualified beneficiaries who waive COBRA continuation coverage, the employee loses coverage on June 1, 2001, so the election period is the same as in Case 1. The difference between Case 2 and Case 3 is that in Case 2 the employee can receive 6 months of employer-paid coverage and then elect to pay for up to an additional 12 months of COBRA continuation coverage, while in Case 3 the employee must choose between 6 months of employer-paid coverage and paying for up to 18 months of COBRA continuation coverage. In all three cases, COBRA continuation coverage need not be provided for more than 18 months after the termination of employment (see Q&A–4 of § 54.4980B–7), and in certain circumstances might be provided for a shorter period (see Q&A–1 of § 54.4980B–7).

* * * * *

Par. 9. Section 54.4980B–7 is amended by:

1. Revising paragraph (a) of A–1.
2. Adding Q&A–4.
3. Revising the second sentence in paragraph (c) of A–5.
4. Revising paragraph (b) of Q&A–6.
5. Removing the language ''Q&A–1'' and adding ''Q&A–4'' in its place in paragraph (a) of A–7.

The addition and revisions read as follows:

§ 54.4980B–7 Duration of COBRA continuation coverage.

* * * * *

A–1: (a) Except for an interruption of coverage in connection with a waiver, as described in Q&A–4 of § 54.4980B–6, COBRA continuation coverage that has been elected for a qualified beneficiary must extend for at least the period beginning on the date of the qualifying event and ending not before the earliest of the following dates—

(1) The last day of the maximum coverage period (see Q&A–4 of this section);

(2) The first day for which timely payment is not made to the plan with respect to the qualified beneficiary (see Q&A–5 in § 54.4980B–8);

(3) The date upon which the employer or employee organization ceases to provide any group health plan (including successor plans) to any employee;

(4) The date, after the date of the election, upon which the qualified beneficiary first becomes covered under any other group health plan, as described in Q&A–2 of this section;

(5) The date, after the date of the election, upon which the qualified beneficiary first becomes entitled to Medicare benefits, as described in Q&A–3 of this section; and

(6) In the case of a qualified beneficiary entitled to a disability extension (see Q&A–5 of this section), the later of—

(i) Either 29 months after the date of the qualifying event, or the first day of the month that is more than 30 days after the date of a final determination under Title II or XVI of the Social Security Act (42 U.S.C. 401–433 or 1381–1385) that the disabled qualified beneficiary whose disability resulted in the qualified beneficiary's being entitled to the disability extension is no longer disabled, whichever is earlier; or

(ii) The end of the maximum coverage period that applies to the qualified beneficiary without regard to the disability extension.

* * * * *

Q–4: When does the maximum coverage period end?

A–4: (a) Except as otherwise provided in this Q&A–4, the maximum coverage period ends 36 months after the qualifying event. The maximum coverage period for a qualified beneficiary who is a child born to or placed for adoption with a covered employee during a period of COBRA continuation coverage is the maximum coverage period for the qualifying event giving rise to the period of COBRA continuation coverage during which the child was born or placed for adoption. Paragraph (b) of this Q&A–4 describes the starting point from which the end of the maximum coverage period is measured. The date that the maximum coverage period ends is described in paragraph (c) of this Q&A–4 in a case where the qualifying event is a termination of employment or reduction of hours of employment, in paragraph (d) of this Q&A–4 in a case where a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, and in paragraph (e) of this Q&A–4 in the case of a qualifying event that is the bankruptcy of the employer. See Q&A–8 of § 54.4980B–2 for limitations that apply to certain health flexible spending arrangements. See also Q&A–6 of this section in the case of multiple qualifying events. Nothing in §§ 54.4980B–1 through 54.4980B–10 prohibits a group health plan from providing coverage that continues beyond the end of the maximum coverage period.

(b)(1) The end of the maximum coverage period is measured from the date of the qualifying event even if the qualifying event does not result in a loss of coverage under the plan until a later date. If, however, coverage under the plan is lost at a later date and the plan provides for the extension of the required periods, then the maximum coverage period is measured from the date when coverage is lost. A plan provides for the extension of the required periods if it provides both—

(i) That the 30-day notice period (during which the employer is required to notify the plan administrator of the occurrence of certain qualifying events

such as the death of the covered employee or the termination of employment or reduction of hours of employment of the covered employee) begins on the date of the loss of coverage rather than on the date of the qualifying event; and

(ii) That the end of the maximum coverage period is measured from the date of the loss of coverage rather than from the date of the qualifying event.

(2) In the case of a plan that provides for the extension of the required periods, whenever the rules of §§ 54.4980B–1 through 54.4980B–10 refer to the measurement of a period from the date of the qualifying event, those rules apply in such a case by measuring the period instead from the date of the loss of coverage.

(c) In the case of a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period ends 18 months after the qualifying event if there is no disability extension, and 29 months after the qualifying event if there is a disability extension. See Q&A–5 of this section for rules to determine if there is a disability extension. If there is a disability extension and the disabled qualified beneficiary is later determined to no longer be disabled, then a plan may terminate the COBRA continuation coverage of an affected qualified beneficiary before the end of the disability extension; see paragraph (a)(6) in Q&A–1 of this section.

(d)(1) If a covered employee becomes entitled to Medicare benefits under Title XVIII of the Social Security Act (42 U.S.C. 1395–1395ggg) before experiencing a qualifying event that is a termination of employment or reduction of hours of employment, the maximum coverage period for qualified beneficiaries other than the covered employee ends on the later of—

(i) 36 months after the date the covered employee became entitled to Medicare benefits; or

(ii) 18 months (or 29 months, if there is a disability extension) after the date of the covered employee's termination of employment or reduction of hours of employment.

(2) See paragraph (b) of Q&A–3 of this section regarding when a covered employee becomes entitled to Medicare benefits.

(e) In the case of a qualifying event that is the bankruptcy of the employer, the maximum coverage period for a qualified beneficiary who is the retired covered employee ends on the date of the retired covered employee's death. The maximum coverage period for a qualified beneficiary who is the spouse, surviving spouse, or dependent child of the retired covered employee ends on the earlier of—

(1) The date of the qualified beneficiary's death; or

(2) The date that is 36 months after the death of the retired covered employee.

* * * * *

A–5: * * *

(c) * * * For this purpose, the period of the first 60 days of COBRA continuation coverage is measured from the date of the qualifying event described in paragraph (b) of this Q&A–5 (except that if a loss of coverage would occur at a later date in the absence of an election for COBRA continuation coverage and if the plan provides for the extension of the required periods (as described in paragraph (b) of Q&A–4 of this section) then the period of the first 60 days of COBRA continuation coverage is measured from the date on which the coverage would be lost).

* * *

* * * * *

A–6: * * *

(b) The requirements of this paragraph (b) are satisfied if a qualifying event that gives rise to an 18-month maximum coverage period (or a 29-month maximum coverage period in the case of a disability extension) is followed, within that 18-month period (or within that 29-month period, in the case of a disability extension), by a second qualifying event (for example, a death or a divorce) that gives rise to a 36-month maximum coverage period. (Thus, a termination of employment following a qualifying event that is a reduction of hours of employment cannot be a second qualifying event that expands the maximum coverage period; the bankruptcy of an employer also cannot be a second qualifying event that expands the maximum coverage period.) In such a case, the original 18-month period (or 29-month period, in the case of a disability extension) is expanded to 36 months, but only for those individuals who were qualified beneficiaries under the group health plan in connection with the first qualifying event and who are still qualified beneficiaries at the time of the second qualifying event. No qualifying event (other than a qualifying event that is the bankruptcy of the employer) can give rise to a maximum coverage period that ends more than 36 months after the date of the first qualifying event (or more than 36 months after the date of the loss of coverage, in the case of a plan that provides for the extension of the required periods; see paragraph (b) in Q&A–4 of this section). For example, if an employee covered by a group health plan that is subject to COBRA terminates employment (for reasons other than gross misconduct) on December 31, 2000, the termination is a qualifying event giving rise to a maximum coverage period that extends for 18 months to June 30, 2002. If the employee dies after the employee and the employee's spouse and dependent children have elected COBRA continuation coverage and on or before June 30, 2002, the spouse and dependent children (except anyone among them whose COBRA continuation coverage had already ended for some other reason) will be able to receive COBRA continuation coverage through December 31, 2003. See Q&A–8(b) of § 54.4980B–2 for a special rule that applies to certain health flexible spending arrangements.

* * * * *

Par. 10. Sections 54.4980B–9 and 54.4980B–10 are added to read as follows:

§ 54.4980B–9 Business reorganizations and employer withdrawals from multiemployer plans.

The following questions-and-answers address who has the obligation to make COBRA continuation coverage available to affected qualified beneficiaries in the context of business reorganizations and employer withdrawals from multiemployer plans:

Q–1: For purposes of this section, what are a business reorganization, a stock sale, and an asset sale?

A–1: For purposes of this section:

(a) A *business reorganization* is a stock sale or an asset sale.

(b) A *stock sale* is a transfer of stock in a corporation that causes the corporation to become a different employer or a member of a different employer. (See Q&A–2 of § 54.4980B–2, which defines *employer* to include all members of a controlled group of corporations.) Thus, for example, a sale or distribution of stock in a corporation that causes the corporation to cease to be a member of one controlled group of corporations, whether or not it becomes a member of another controlled group of corporations, is a stock sale.

(c) An *asset sale* is a sale of substantial assets, such as a plant or division or substantially all the assets of a trade or business.

(d) The rules of § 1.414(b)–1 of this chapter apply in determining what constitutes a controlled group of corporations, and the rules of §§ 1.414(c)–1 through 1.414(c)–5 of this chapter apply in determining what constitutes a group of trades or businesses under common control.

Q–2: In the case of a stock sale, what are the selling group, the acquired organization, and the buying group?

A–2: In the case of a stock sale—

(a) The *selling group* is the controlled group of corporations, or the group of trades or businesses under common control, of which a corporation ceases to be a member as a result of the stock sale;

(b) The *acquired organization* is the corporation that ceases to be a member of the selling group as a result of the stock sale; and

(c) The *buying group* is the controlled group of corporations, or the group of trades or businesses under common control, of which the acquired organization becomes a member as a result of the stock sale. If the acquired organization does not become a member of such a group, the *buying group* is the acquired organization.

Q–3: In the case of an asset sale, what are the selling group and the buying group?

A–3: In the case of an asset sale—

(a) The *selling group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is selling the assets; and

(b) The *buying group* is the controlled group of corporations or the group of trades or businesses under common control that includes the corporation or other trade or business that is buying the assets.

Q–4: Who is an M&A qualified beneficiary?

A–4: (a) Asset sales: In the case of an asset sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was associated with the assets being sold.

(b) Stock sales: In the case of a stock sale, an individual is an M&A qualified beneficiary if the individual is a qualified beneficiary whose qualifying event occurred prior to or in connection with the sale and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the acquired organization.

(c) In the case of a qualified beneficiary who has experienced more than one qualifying event with respect to her or his current right to COBRA continuation coverage, the qualifying event referred to in paragraphs (a) and (b) of this Q&A–4 is the first qualifying event.

Q–5: In the case of a stock sale, is the sale a qualifying event with respect to a covered employee who is employed by the acquired organization before the sale and who continues to be employed by the acquired organization after the sale, or with respect to the spouse or dependent children of such a covered employee?

A–5: No. A covered employee who continues to be employed by the acquired organization after the sale does not experience a termination of employment as a result of the sale. Accordingly, the sale is not a qualifying event with respect to the covered employee, or with respect to the covered employee's spouse or dependent children, regardless of whether they are provided with group health coverage after the sale, and neither the covered employee, nor the covered employee's spouse or dependent children, become qualified beneficiaries as a result of the sale.

Q–6: In the case of an asset sale, is the sale a qualifying event with respect to a covered employee whose employment immediately before the sale was associated with the purchased assets, or with respect to the spouse or dependent children of such a covered employee who are covered under a group health plan of the selling group immediately before the sale?

A–6: (a) Yes, unless—

(1) The buying group is a successor employer under paragraph (c) of Q&A–8 of this section or Q&A–2 of § 54.4980B–2, and the covered employee is employed by the buying group immediately after the sale; or

(2) The covered employee (or the spouse or any dependent child of the covered employee) does not lose coverage (within the meaning of paragraph (c) in Q&A–1 of § 54.4980B–4) under a group health plan of the selling group after the sale.

(b) Unless the conditions in paragraph (a)(1) or (2) of this Q&A–6 are satisfied, such a covered employee experiences a termination of employment with the selling group as a result of the asset sale, regardless of whether the covered employee is employed by the buying group or whether the covered employee's employment is associated with the purchased assets after the sale. Accordingly, the covered employee, and the spouse and dependent children of the covered employee who lose coverage under a plan of the selling group in connection with the sale, are M&A qualified beneficiaries in connection with the sale.

Q–7: In a business reorganization, are the buying group and the selling group permitted to allocate by contract the responsibility to make COBRA continuation coverage available to M&A qualified beneficiaries?

A–7: Yes. Nothing in this section prohibits a selling group and a buying group from allocating to one or the other of the parties in a purchase agreement the responsibility to provide the coverage required under §§ 54.4980B–1 through 54.4980B–10. However, if and to the extent that the party assigned this responsibility under the terms of the contract fails to perform, the party who has the obligation under Q&A–8 of this section to make COBRA continuation coverage available to M&A qualified beneficiaries continues to have that obligation.

Q–8: Which group health plan has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries in a business reorganization?

A–8: (a) In the case of a business reorganization (whether a stock sale or an asset sale), so long as the selling group maintains a group health plan after the sale, a group health plan maintained by the selling group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that sale. This Q&A–8 prescribes rules for cases in which the selling group ceases to provide any group health plan to any employee in connection with the sale. Paragraph (b) of this Q&A–8 contains these rules for stock sales, and paragraph (c) of this Q&A–8 contains these rules for asset sales. Neither a stock sale nor an asset sale has any effect on the COBRA continuation coverage requirements applicable to any group health plan for any period before the sale.

(b)(1) In the case of a stock sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that stock sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the stock sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the stock sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the stock sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(c)(1) In the case of an asset sale, if the selling group ceases to provide any group health plan to any employee in connection with the sale and if the buying group continues the business operations associated with the assets purchased from the selling group without interruption or substantial change, then the buying group is a successor employer to the selling group in connection with that asset sale. If the buying group is a successor employer, a group health plan maintained by the buying group has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to that asset sale. A group health plan of the buying group has this obligation beginning on the later of the following two dates and continuing as long as the buying group continues to maintain a group health plan (but subject to the rules in § 54.4980B–7, relating to the duration of COBRA continuation coverage)—

(i) The date the selling group ceases to provide any group health plan to any employee; or

(ii) The date of the asset sale.

(2) The determination of whether the selling group's cessation of providing any group health plan to any employee is in connection with the asset sale is based on all of the relevant facts and circumstances. A group health plan of the buying group does not, as a result of the asset sale, have an obligation to make COBRA continuation coverage available to those qualified beneficiaries of the selling group who are not M&A qualified beneficiaries with respect to that sale.

(d) The rules of Q&A–1 through Q&A–7 of this section and this Q&A–8 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Stock Sale Examples

Example 1. (i) Selling Group *S* consists of three corporations, *A, B,* and *C.* Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all the stock of *C* from *S* effective July 1, 2002. Before the sale of *C, S* maintains a single group health plan for the employees of *A, B,* and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 48 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 15 of whom are M&A qualified beneficiaries with respect to the sale of *C.* (The other 33 qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B.*)

(ii) Under these facts, *S*'s plan continues to have the obligation to make COBRA continuation coverage available to the 15 M&A qualified beneficiaries under *S*'s plan after the sale of *C* to *P.* The employees who continue in employment with *C* do not experience a qualifying event by virtue of *P*'s acquisition of *C.* If they experience a qualifying event after the sale, then the group health plan of *P* has the obligation to make COBRA continuation coverage available to them.

Example 2. (i) Selling Group *S* consists of three corporations, *A, B,* and *C.* Each of *A, B,* and *C* maintains a group health plan for its employees (and their families). Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. As of June 30, 2002, there are 14 qualified beneficiaries receiving COBRA continuation coverage under *C*'s plan. *C* continues to employ all of its employees and continues to maintain its group health plan after being acquired by *P* on July 1, 2002.

(ii) Under these facts, *C* is an acquired organization and the 14 qualified beneficiaries under *C*'s plan are M&A qualified beneficiaries. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. *S* and *P* could negotiate to have *C*'s plan continue to make COBRA continuation coverage available to the 14 M&A qualified beneficiaries. In such a case, neither *A*'s plan nor *B*'s plan would make COBRA continuation coverage available to the 14 M&A qualified beneficiaries unless *C*'s plan failed to fulfill its contractual responsibility to make COBRA continuation coverage available to the M&A qualified beneficiaries. *C*'s employees (and their spouses and dependent children) do not experience a qualifying event in connection with *P*'s acquisition of *C,* and consequently no plan maintained by either *P* or *S* has any obligation to make COBRA continuation coverage available to *C*'s employees (or their spouses or dependent children) in connection with the transfer of stock in *C* from *S* to *P.*

Example 3. (i) The facts are the same as in *Example 2,* except that *C* ceases to employ two employees on June 30, 2002, and those two employees never become covered under *P*'s plan.

(ii) Under these facts, the two employees experience a qualifying event on June 30, 2002 because their termination of employment causes a loss of group health coverage. A group health plan of *S* (that is, either the plan maintained by *A* or the plan maintained by *B*) has the obligation to make COBRA continuation coverage available to the two employees (and to any spouse or dependent child of the two employees who loses coverage under *C*'s plan in connection with the termination of employment of the two employees) because they are M&A qualified beneficiaries with respect to the sale of *C.*

Example 4. (i) Selling Group S consists of three corporations, *A, B,* and *C.* Buying Group *P* consists of two corporations, *D* and *E. P* enters into a contract to purchase all of the stock of *C* from *S* effective July 1, 2002. Before the sale of *C, S* maintains a single group health plan for the employees of *A, B,* and *C* (and their families). *P* maintains a single group health plan for the employees of *D* and *E* (and their families). Effective July 1, 2002, the employees of *C* (and their families) become covered under *P*'s plan. On June 30, 2002, there are 25 qualified beneficiaries receiving COBRA continuation coverage under *S*'s plan, 20 of whom are M&A qualified beneficiaries with respect to the sale of *C.* (The other five qualified beneficiaries had qualifying events in connection with a covered employee whose last employment before the qualifying event was with either *A* or *B.*) *S* terminates its group health plan effective June 30, 2002 and begins to liquidate the assets of *A* and *B* and to lay off the employees of *A* and *B.*

(ii) Under these facts, *S* ceases to provide a group health plan to any employee in connection with the sale of *C* to *P.* Thus, beginning July 1, 2002 *P*'s plan has the obligation to make COBRA continuation coverage available to the 20 M&A qualified beneficiaries, but *P* is not obligated to make COBRA continuation coverage available to the other 5 qualified beneficiaries with respect to *S*'s plan as of June 30, 2002 or to any of the employees of *A* or *B* whose employment is terminated by *S* (or to any of those employees' spouses or dependent children).

Asset Sale Examples

Example 5. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells the assets of one of its divisions to Buying Group *P.* Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan. Immediately before the sale, there are two qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P.*

(ii) These two qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P.* Under these facts, a group health plan of *S* retains the obligation to make COBRA continuation coverage available to these two M&A qualified

beneficiaries. In addition, the one employee *P* does not hire as well as all of the employees *P* hires (and the spouses and dependent children of these employees) who were covered under a group health plan of *S* on the day before the sale are M&A qualified beneficiaries with respect to the sale. A group health plan of *S* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

Example 6. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P*, and *S* ceases to provide any group health plan to any employee on the date of the sale. *P* hires all but one of *S*'s employees on the date of the asset sale by *S*, gives those employees the same positions that they had with *S* before the sale, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. Immediately before the sale, there are 10 qualified beneficiaries receiving COBRA continuation coverage under a group health plan of *S* whose qualifying events occurred in connection with a covered employee whose last employment prior to the qualifying event was associated with the assets sold to *P*.

(ii) These 10 qualified beneficiaries are M&A qualified beneficiaries with respect to the asset sale to *P*. Under these facts, *P* is a successor employer described in paragraph (c) of this Q&A–8. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to these 10 M&A qualified beneficiaries.

(iii) The one employee that *P* does not hire and the family members of that employee are also M&A qualified beneficiaries with respect to the sale. A group health plan of *P* also has the obligation to make COBRA continuation coverage available to these M&A qualified beneficiaries.

(iv) The employees who continue in employment in connection with the asset sale (and their family members) and who were covered under a group health plan of *S* on the day before the sale are not M&A qualified beneficiaries because *P* is a successor employer to *S* in connection with the asset sale. Thus, no group health plan of *P* has any obligation to make COBRA continuation coverage available to these continuing employees with respect to the qualifying event that resulted from their losing coverage under *S*'s plan in connection with the asset sale.

Example 7. (i) Selling Group *S* provides group health plan coverage to employees at each of its two operating divisions. *S* sells the assets of one of its divisions to Buying Group *P1*. Under the terms of the group health plan covering the employees at the division being sold, their coverage will end on the date of the sale. *P1* hires all but one of those employees, gives them the same positions that they had with *S* before the sale, and provides them with coverage under a group health plan.

(ii) Under these facts, a group health plan of *S* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale to *P1*. (If an M&A qualified beneficiary first became covered under *P1*'s plan after electing COBRA continuation coverage under *S*'s plan, then *S*'s plan could terminate the COBRA continuation coverage once the M&A qualified beneficiary became covered under *P1*'s plan, provided that the remaining conditions of Q&A–2 of § 54.4980B–7 were satisfied.)

(iii) Several months after the sale to *P1*, *S* sells the assets of its remaining division to Buying Group *P2*, and *S* ceases to provide any group health plan to any employee on the date of that sale. Thus, under Q&A–1 of § 54.4980B–7, *S* ceases to have an obligation to make COBRA continuation coverage available to any qualified beneficiary on the date of the sale to *P2*. *P1* and *P2* are unrelated organizations.

(iv) Even if it was foreseeable that *S* would sell its remaining division to an unrelated third party after the sale to *P1*, under these facts the cessation of *S* to provide any group health plan to any employee on the date of the sale to *P2* is not in connection with the asset sale to *P1*. Thus, even after the date *S* ceases to provide any group health plan to any employee, no group health plan of *P1* has any obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. If *P2* is a successor employer under the rules of paragraph (c) of this Q&A–8 and maintains one or more group health plans after the sale, then a group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P2* by *S* (but in such a case employees of *S* before the sale who continued working for *P2* after the sale would not be M&A qualified beneficiaries). However, even in such a case, no group health plan of *P2* would have an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1* by *S*. Thus, under these facts, after *S* has ceased to provide any group health plan to any employee, no plan has an obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the asset sale to *P1*.

Example 8. (i) Selling Group *S* provides group health plan coverage to employees at each of its operating divisions. *S* sells substantially all of the assets of all of its divisions to Buying Group *P*. *P* hires most of *S*'s employees on the date of the purchase of *S*'s assets, retains those employees in the same positions that they had with *S* before the purchase, and continues the business operations of those divisions without substantial change or interruption. *P* provides these employees with coverage under a group health plan. *S* continues to employ a few employees for the principal purpose of winding up the affairs of *S* in preparation for liquidation. *S* continues to provide coverage under a group health plan to these few remaining employees for several weeks after the date of the sale and then ceases to provide any group health plan to any employee.

(ii) Under these facts, the cessation by *S* to provide any group health plan to any employee is in connection with the asset sale to *P*. Because of this, and because *P* continued the business operations associated with those assets without substantial change or interruption, *P* is a successor employer to *S* with respect to the asset sale. Thus, a group health plan of *P* has the obligation to make COBRA continuation coverage available to M&A qualified beneficiaries with respect to the sale beginning on the date that *S* ceases to provide any group health plan to any employee. (A group health plan of *S* retains this obligation for the several weeks after the date of the sale until *S* ceases to provide any group health plan to any employee.)

Q–9: Can the cessation of contributions by an employer to a multiemployer group health plan be a qualifying event?

A–9: The cessation of contributions by an employer to a multiemployer group health plan is not itself a qualifying event, even though the cessation of contributions may cause current employees (and their spouses and dependent children) to lose coverage under the multiemployer plan. An event coinciding with the employer's cessation of contributions (such as a reduction of hours of employment in the case of striking employees) will constitute a qualifying event if it otherwise satisfies the requirements of Q&A–1 of § 54.4980B–4.

Q–10: If an employer stops contributing to a multiemployer group health plan, does the multiemployer plan have the obligation to make COBRA continuation coverage available to a qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer that has stopped contributing to the multiemployer plan?

A–10: (a) In general, yes. (See Q&A–3 of § 54.4980B–2 for a definition of *multiemployer* plan.) If, however, the employer that stops contributing to the multiemployer plan establishes one or more group health plans (or starts contributing to another multiemployer plan that is a group health plan) covering a significant number of the employer's employees formerly covered under the multiemployer plan, the plan established by the employer (or the other multiemployer plan) has the obligation to make COBRA continuation coverage available to any qualified beneficiary who was receiving coverage under the multiemployer plan on the day before the cessation of contributions

and who is, or whose qualifying event occurred in connection with, a covered employee whose last employment prior to the qualifying event was with the employer.

(b) The rules of Q&A–9 of this section and this Q&A–10 are illustrated by the following examples; in each example, each group health plan is subject to COBRA:

Example 1. (i) Employer *Z* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Z* has been making contributions to *M*. *Z* experiences financial difficulties and stops making contributions to *M* but continues to employ all of the employees covered by the collective bargaining agreement. *Z*'s cessation of contributions to *M* causes those employees (and their spouses and dependent children) to lose coverage under *M*. *Z* does not establish any group health plan covering any of the employees covered by the collective bargaining agreement.

(ii) After *Z* stops contributing to *M*, *M* continues to have the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Z*. The loss of coverage under *M* for those employees of *Z* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 2. (i) Employer *Y* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *Y* has been making contributions to *M*. *Y* experiences financial difficulties and is forced into bankruptcy by its creditors. *Y* continues to employ all of the employees covered by the collective bargaining agreement. *Y* also continues to make contributions to *M* until the current collective bargaining agreement expires, on June 30, 2001, and then *Y* stops making contributions to *M*. *Y*'s employees (and their spouses and dependent children) lose coverage under *M* effective July 1, 2001. *Y* does not enter into another collective bargaining agreement covering the class of employees covered by the expired collective bargaining agreement. Effective September 1, 2001, *Y* establishes a group health plan covering the class of employees formerly covered by the collective bargaining agreement. The group health plan also covers their spouses and dependent children.

(ii) Under these facts, *M* has the obligation to make COBRA continuation coverage available from July 1, 2001 until August 31, 2001, and the group health plan established by *Y* has the obligation to make COBRA continuation coverage available from September 1, 2001 until the obligation ends (see Q&A–1 of § 54.4980B–7) to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *Y*. The loss of coverage under *M* for those employees of *Y* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

Example 3. (i) Employer *X* employs a class of employees covered by a collective bargaining agreement and participating in multiemployer group health plan *M*. As required by the collective bargaining agreement, *X* has been making contributions to *M*. The employees covered by the collective bargaining agreement vote to decertify their current employee representative effective January 1, 2002 and vote to certify a new employee representative effective the same date. As a consequence, on January 1, 2002 they cease to be covered under *M* and commence to be covered under multiemployer group health plan *N*.

(ii) Effective January 1, 2002, *N* has the obligation to make COBRA continuation coverage available to any qualified beneficiary who experienced a qualifying event that preceded or coincided with the cessation of contributions to *M* and whose coverage under *M* on the day before the qualifying event was due to an employment affiliation with *X*. The loss of coverage under *M* for those employees of *X* who continue in employment (and the loss of coverage for their spouses and dependent children) does not constitute a qualifying event.

§ 54.4980B–10 Interaction of FMLA and COBRA.

The following questions-and-answers address how the taking of leave under the Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. 2601–2619) affects the COBRA continuation coverage requirements:

Q–1: In what circumstances does a qualifying event occur if an employee does not return from leave taken under FMLA?

A–1: (a) The taking of leave under FMLA does not constitute a qualifying event. A qualifying event under Q&A–1 of § 54.4980B–4 occurs, however, if—

(1) An employee (or the spouse or a dependent child of the employee) is covered on the day before the first day of FMLA leave (or becomes covered during the FMLA leave) under a group health plan of the employee's employer;

(2) The employee does not return to employment with the employer at the end of the FMLA leave; and

(3) The employee (or the spouse or a dependent child of the employee) would, in the absence of COBRA continuation coverage, lose coverage under the group health plan before the end of the maximum coverage period.

(b) However, the satisfaction of the three conditions in paragraph (a) of this Q&A–1 does not constitute a qualifying event if the employer eliminates, on or before the last day of the employee's FMLA leave, coverage under a group health plan for the class of employees (while continuing to employ that class of employees) to which the employee would have belonged if the employee had not taken FMLA leave.

Q–2: If a qualifying event described in Q&A–1 of this section occurs, when does it occur, and how is the maximum coverage period measured?

A–2: A qualifying event described in Q&A–1 of this section occurs on the last day of FMLA leave. The maximum coverage period (see Q&A–4 of § 54.4980B–7) is measured from the date of the qualifying event (that is, the last day of FMLA leave). If, however, coverage under the group health plan is lost at a later date and the plan provides for the extension of the required periods (see paragraph (b) of Q&A–4 of § 54.4980B–7), then the maximum coverage period is measured from the date when coverage is lost. The rules of this Q&A–2 are illustrated by the following examples:

Example 1. (i) Employee *B* is covered under the group health plan of Employer *X* on January 31, 2001. *B* takes FMLA leave beginning February 1, 2001. *B*'s last day of FMLA leave is 12 weeks later, on April 25, 2001, and *B* does not return to work with *X* at the end of the FMLA leave. If *B* does not elect COBRA continuation coverage, *B* will not be covered under the group health plan of *X* as of April 26, 2001.

(ii) *B* experiences a qualifying event on April 25, 2001, and the maximum coverage period is measured from that date. (This is the case even if, for part or all of the FMLA leave, *B* fails to pay the employee portion of premiums for coverage under the group health plan of *X* and is not covered under *X*'s plan. See Q&A–3 of this section.)

Example 2. (i) Employee *C* and *C*'s spouse are covered under the group health plan of Employer *Y* on August 15, 2001. *C* takes FMLA leave beginning August 16, 2001. *C* informs *Y* less than 12 weeks later, on September 28, 2001, that *C* will not be returning to work. Under the FMLA regulations, 29 CFR Part 825 (§§ 825.100–825.800), *C*'s last day of FMLA leave is September 28, 2001. *C* does not return to work with *Y* at the end of the FMLA leave. If *C* and *C*'s spouse do not elect COBRA continuation coverage, they will not be covered under the group health plan of *Y* as of September 29, 2001.

(ii) *C* and *C*'s spouse experience a qualifying event on September 28, 2001, and the maximum coverage period (generally 18 months) is measured from that date. (This is the case even if, for part or all of the FMLA leave, *C* fails to pay the employee portion of premiums for coverage under the group health plan of *Y* and *C* or *C*'s spouse is not covered under *Y*'s plan. See Q&A–3 of this section.)

Q–3: If an employee fails to pay the employee portion of premiums for

coverage under a group health plan during FMLA leave or declines coverage under a group health plan during FMLA leave, does this affect the determination of whether or when the employee has experienced a qualifying event?

A–3: No. Any lapse of coverage under a group health plan during FMLA leave is irrelevant in determining whether a set of circumstances constitutes a qualifying event under Q&A–1 of this section or when such a qualifying event occurs under Q&A–2 of this section.

Q–4: Is the application of the rules in Q&A–1 through Q&A–3 of this section affected by a requirement of state or local law to provide a period of coverage longer than that required under FMLA?

A–4: No. Any state or local law that requires coverage under a group health plan to be maintained during a leave of absence for a period longer than that required under FMLA (for example, for 16 weeks of leave rather than for the 12 weeks required under FMLA) is disregarded for purposes of determining when a qualifying event occurs under Q&A–1 through Q&A–3 of this section.

Q–5: May COBRA continuation coverage be conditioned upon reimbursement of the premiums paid by the employer for coverage under a group health plan during FMLA leave?

A–5: No. The U.S. Department of Labor has published rules describing the circumstances in which an employer may recover premiums it pays to maintain coverage, including family coverage, under a group health plan during FMLA leave from an employee who fails to return from leave. See 29 CFR 825.213. Even if recovery of premiums is permitted under 29 CFR 825.213, the right to COBRA continuation coverage cannot be conditioned upon the employee's reimbursement of the employer for premiums the employer paid to maintain coverage under a group health plan during FMLA leave.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1519 Filed 2–2–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 63

[FRL–6230–1]

Section 112(l) Approval of the State of Florida's Construction Permitting Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Clarification.

SUMMARY: On February 1, 1996 (61 FR 3572), the Environmental Protection Agency published in the **Federal Register** a direct final rule for State Implementation Plan (SIP) and section 112(l) approval of the State of Florida's minor source operating permit program so that Florida could begin to issue federally-enforceable operating permits on a source's potential emissions and thereby avoid major source applicability. Today's action is taken to clarify that EPA's section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program to allow Florida to issue both Federally-enforceable construction permits and Federally-enforceable operating permits pursuant to section 112 of the Clean Air Act (CAA) as amended in 1990. In the Final Rules Section of this **Federal Register**, the EPA is clarifying that the section 112(l) approval of the Florida minor source operating permit program extended to the State's minor source preconstruction permitting program as well as the operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before March 5, 1999.

ADDRESSES: All comments should be addressed to: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303; page.lee@epamail.epa.gov. Copies of Florida's original submittal and accompanying documentation are available for public review during normal business hours, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Lee Page, U.S. Environmental Protection Agency, Region 4, Air and Radiation Technology Branch, Atlanta Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303, Phone: (404) 562–9131; page.lee@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: November 13, 1998.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–2556 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 90 and 91

[FRL–6229–3]

Control of Air Pollution: Minor Amendments to Emission Requirements Applicable to Small Nonroad Spark Ignition Engines and Marine Spark Ignition Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend provisions of two existing rules applicable to nonroad engines. This document proposes amendments to regulations applicable to small spark-ignition (Small SI) engines under 19 kilowatts (kW) and proposes specifically to revise the applicability of that rule to certain engines used in recreational applications and to revise the applicability of the handheld emission standards to accommodate cleaner but heavier four stroke engines. This document also proposes to amend regulations applicable to marine spark ignition (Marine SI) engines to provide compliance flexibility for small volume engine manufacturers during the standards phase in period. Lastly, this proposal contains a minor revision to the existing replacement engine provisions for Small SI and Marine SI engines to address issues that may arise concerning the importation of such engines. No significant air quality impact is expected from these amendments.

DATES: Written comments on this NPRM must be submitted on or before April 5, 1999. EPA will hold a public hearing on March 5, 1999 starting at 10:00 am; requests to present oral testimony must be received on or before March 1, 1999. The Agency will cancel this hearing if no one requests to testify. Members of the public should call the contact person indicated below to notify EPA of their interest in testifying at the hearing.

Interested persons may call the contact person after March 1, 1999 to determine whether and where the hearing will be held.

ADDRESSES: Written comments should be submitted (in duplicate, if possible) to: EPA Air and Radiation Docket, Attention Docket No. A–98–16, Room M–1500, (mail code 6102), 401 M Street, SW, Washington, DC 20460. Materials relevant to this rulemaking are contained in this docket and may be viewed from 8:00 a.m. to 5:30 p.m. weekdays. The docket may be reached by telephone at 202–260–7548. As provided in 40 CFR part 2, a reasonable fee may be charged by EPA for photocopying. The public hearing will be held in Washington, DC at a location to be determined; call 202–564–9276 for further information.

FOR FURTHER INFORMATION CONTACT: Beverly Brennan, Office of Mobile Sources, Engine Programs and Compliance Division. 202–564–9302. FAX 202–565–2057. E-mail: *brennan.beverly@epamail.epa.gov*

SUPPLEMENTARY INFORMATION:

Obtaining Electronic Copies of This Document

Electronic Copies of Rulemaking Documents

Electronic copies of the preamble and the regulatory text of this rulemaking are available via the Internet on the Office of Mobile Sources (OMS) Home Page (http://www.epa.gov/OMSWWW/). Users can find Nonroad Engines and Vehicles information and documents through the following path once they have accessed the OMS Home Page: ''Nonroad Engines and Vehicles,'' ''Equipment'' or ''Marine''.

Table of Contents

I. Regulated Entities

Entities potentially affected by this action are those that manufacture or introduce into commerce new small spark-ignition nonroad engines or equipment, new marine spark ignition engines or equipment, and new large compression ignition engines or equipment. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Manufacturers, importers and users of nonroad small (at or below 19 kW) spark ignition engines and equipment.
	Manufacturers, importers and users of marine spark ignition outboard, personal watercraft and jetboat engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your company is regulated by this action, you should carefully examine the applicability criteria in §§ 90.1 and 91.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Legal Authority and Background

A. Statutory Authority

Authority for the actions in this document is granted to EPA by sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a)).

B. Background

EPA promulgated final regulations applicable to spark-ignition nonroad engines at or below 19kW (Small SI engines) on July 3, 1995 (60 FR 34582, codified at 40 CFR Part 90) and final regulations applicable to spark-ignition marine outboard and personal watercraft (including jetboat) engines (Marine SI engines) on October 4, 1996 (61 FR 52088, codified at 40 CFR Part 91).[1]

The Small SI regulations took effect with model year 1997 for the majority of covered engines and in the 1998 model year for certain higher displacement handheld engines. The Marine SI rule takes effect with 1998 or 1999 engines, depending upon their usage, and involves a corporate average standard which tightens each year through 2006. Both rules prohibit engine manufacturers from introducing into commerce any engine not covered by a certificate of conformity issued by EPA under the regulations (40 CFR 90.1003(a)(1)(i); 40 CFR 91.1103(a)(1)(i)). The rules also prohibit equipment and vessel manufacturers from introducing new nonroad equipment and vessels into commerce unless the engine in the equipment or vessel is certified to comply with the applicable nonroad emission requirements (40 CFR 90.1003(a)(5); 40 CFR 91.1103(a)(5)).[2]

Provisions to allow engine manufacturers to produce replacement engines that were not certified to current standards were added to each of the two rules described above by a direct final rule issued August 7, 1997 (62 FR 42638).

A Notice of Proposed Rulemaking (NPRMs) to adopt Phase 2 standards for Small SI engines has been published (63 FR 3950, January 27, 1998). No Phase 2 program is contemplated at this time for the Marine SI rule. The amendments proposed below would apply to the Phase 1 programs of both rules and be carried forward into the future program for Small SI engines.

III. Description of Proposed Revisions

A. Revision to the Definition of Handheld To Accommodate Four Stroke Engines

The Small SI rule contains separate sets of exhaust emission standards for handheld and nonhandheld engines. The handheld standards were set at levels considerably less stringent than the nonhandheld standards to accommodate the lightweight, but high emission, two stroke engines that have

[1] The preamble to the final Marine SI rule (61 FR 52090) explains that for purposes of the Marine SI rule, jetboats are considered as personal watercraft, except where their engines are derived from sterndrive or inboard type marinized automotive blocks.

[2] The regulations also prohibit, in the case of any person, the importation of uncertified Small SI engines and Marine SI engines manufactured after the applicable implementation date for the engine. The regulations also prohibit the importation of equipment containing Small SI engines unless the engine is covered by a certificate of conformity. (40 CFR 90.1003(a)(1)(ii) and 40 CFR 91.1103(a)(1)(ii)).

historically been used in handheld equipment.

To limit the use of two stroke engines to that equipment that really require the weight advantage and multipositional capability afforded by two stroke technology, the criteria under which a piece of equipment may be deemed ''handheld'' are strictly defined by § 90.103(a)(2). Equipment must meet at least one of the following to be considered ''handheld'':

(i) The engine must be used in a piece of equipment that is carried by the operator throughout the performance of its intended function(s);

(ii) The engine must be used in a piece of equipment that must operate multipositionally, such as upside down or sideways, to complete its intended function(s);

(iii) The engine must be used in a piece of equipment for which the combined engine and equipment dry weight is under 14 kilograms, no more than two wheels are present on the equipment and at least one of the following attributes is also present:

(A) The operator must alternately provide support or carry the equipment throughout the performance of its intended function(s); (B) The operator must provide support or attitudinal control for the equipment throughout the performance of its intended function(s); and (C) The engine must be used in a generator or pump;

(iv) The engine must be used to power one-person augers, with a combined engine and equipment dry weight under 20 kilograms.

Since the Small SI rule was finalized, a few manufacturers have introduced lightweight four stroke engines that have multipositional capabilities and that have begun to be used in certain handheld products. These engines are somewhat heavier than two stroke engines but have exhaust emission levels that are much lower. One manufacturer of lightweight equipment, has proposed a portable pump, historically powered by a two stroke engine, that would exceed the 14 kilogram weight limit at 40 CFR 90.103(a)(2)(iii) because it would be built with a small, lightweight four stroke engine. The engine would be much cleaner than the alternative two stroke, but because of the weight limitation, the equipment could not be considered ''handheld''. The lightweight four stroke engines, while much cleaner than required by the handheld standards, can not yet meet the nonhandheld standards which were set based on the capabilities of other four stroke engines. In theory, a heavier four stroke engine certified to nonhandheld standards, could be used in these applications. However, EPA believes that the added weight would be a marketing problem and would cause the manufacturers to stick with higher emitting two stroke engines. To avoid the undesirable situation where the regulations encourage an equipment manufacturer to use a higher emitting engine, we are today proposing an amendment to both weight limits described above (14 kilograms in (iii) and 20 kilograms in (iv)) that would permit an equipment manufacturer to exceed the weight limits in cases where the manufacturer could demonstrate that the extra weight was the result of using a four stroke engine or other technology cleaner than the otherwise allowed two stroke.

EPA considered whether to simply raise the weight limits across the board, but believes that they are appropriate as promulgated, needing only to be raised where needed to cover the incremental weight of cleaner technologies. Further, raising the weight limits across the board could, in the long run, encourage manufacturers to convert four stroke nonhandheld equipment to two stroke power. EPA requests comment on whether there are other facets to the criteria surrounding the term ''handheld'' that could impede adoption of cleaner technology engines on these tools.

B. Applicability of the Small SI Rule to Engines Used in Certain Recreational Applications

The Small SI rule as currently written covers all nonroad spark ignition engines at or below 19 kW ''used for any purpose'', subject to certain exclusions. Specific exclusions are provided for certain engines used in underground mining, for engines used in motorcycles that are subject to emission regulation under 40 CFR Part 86, for engines used in passenger aircraft, and for engines used in recreational vehicles which meet certain prescribed criteria.

Those criteria which serve to define an engine as an engine used in a recreational vehicle are: (i) The engine's rated speed is greater than or equal to 5,000 rpm; (ii) the engine has no installed speed governor; (iii) the engine is not used for the propulsion of a marine ''vessel'' as that term is defined by the U.S. Coast Guard; and (iv) the engine does not meet the criteria cited above in Section A of this preamble to be categorized as a Class III, IV or V engine (i.e., the criteria by which an engine is determined to be ''handheld''). Criteria (i) and (ii) reflect the Agency's belief that engines used to operate recreational vehicles will operate at high rated speeds and will differ significantly in design and operation from those used to power nonhandheld equipment such as lawn, garden and construction equipment. Recreational vehicles also typically have a variable throttle that is held open by the operator to achieve speeds above idle and returns to idle when released. These vehicles experience extremely transient operation. Further, these vehicles do not have the types of governors commonly present on nonhandheld lawn and garden type engines which serve to automatically open the throttle farther when the engine experiences increased loading as is encountered when, for example, moving a lawnmower from an area of short grass into an area of long grass. Finally, EPA stated that the steady-state test procedures being adopted for the Small SI rule would not be appropriate for these more transient applications.

The criteria which serve to define an engine as ''handheld'' were established to restrict the use of the more lenient Class III, IV or V standards to engines in equipment that needed to be extremely light in weight so that it may be easily carried or easily supported during its operation, and/or which needed to be able to operate multipositionally. The need for very low weight has historically been addressed through the use of two stroke technology, which produces greater power for a given weight and size (but higher emissions) than a four stroke engine and does so without the need for a sump full of oil at the bottom of the engine.

The Small SI rule was written without the knowledge that approximately 8,000 Small SI engines per year are built by a variety of companies (including a number of very small entities) for specific application in model boats, aircraft and cars. These engines were not included in any calculations of emission inventories, nor were reductions from these engines or costs of compliance considered in the development of the Phase 1 Small SI rule or the Phase 2 NPRM. EPA has no emission data from these engines and does not have data appropriate to determine whether the test cycle used for handheld (or nonhandheld) engines is appropriate for these engines. These vehicles are predominantly radio controlled model airplanes and as such are clearly ''recreational'' in nature as that term is generally understood. However, according to the definition of that term in the Small SI rule, such engines could be considered handheld because of their multi positional capabilities and therefore fall outside of

coverage under the term ''recreational''.[3] EPA believes that these engines would be better addressed by a future rulemaking intended specifically to address recreational engines. EPA is therefore proposing in this rulemaking to amend the existing regulations to consider these vehicles and engines as recreational and therefore excluded from coverage under the Small SI rule. Thus, engines used to propel vehicles in flight through air provided those engines meet the other existing criteria to be categorized as recreational, would be excluded from the scope of the rule. EPA believes that model cars and boats are not required to operate ''multipositionally'' to complete their intended function so that the spark ignition engines used in model cars and boats are therefore considered ''recreational'' by the existing regulatory text and are already excluded from the Small SI rule. EPA requests comment on all aspects of this proposed change.

C. The Addition of Provisions to the Marine SI Rule To Provide Phase-In Flexibility for Small Volume Manufacturers

The emission requirements for Marine SI engines were promulgated on October 4, 1996 and took effect with the 1998 model year for outboard engines and the 1999 model year for personal watercraft and jetboats. The Marine SI rule was written with considerable input from large volume marine engine manufacturers and their association, the National Marine Manufacturers Association. This rule results in a 75% reduction in exhaust hydrocarbons when calculated from uncontrolled engines. The standards phase in via incremental reductions each year through 2006. The standards will result in considerable shifts in technology away from high emitting two stroke technology to cleaner four stroke or direct injection two stroke designs.

The standards are ''averaging standards'' in that some engine families are expected to be below the standards and generate emission credits while some are expected to be above the standards and use credits. Similar to other mobile source programs, these credits may be banked for future use or traded between manufacturers.

The phase in of the standards was designed to permit marine engine manufacturers to introduce new technology engines and phase out old technology engines in an orderly and cost effective fashion. In addition, flexible certification testing requirements and exemptions from production line and in-use testing requirements were implemented for old technology engines to reduce the compliance costs of the rule for engines destined for phase out.

The development of the Marine SI rule took several years and involved numerous meetings with manufacturers. Both an NPRM (59 FR 55930, November 9, 1994) and SNPRM (Supplemental Notice of Proposed Rulemaking, 61 FR 4600, February 7, 1996) were published. Both EPA and NMMA did considerable outreach to marine engine manufacturers during this period to inform them of progress and likely requirements of various proposals. Despite this process, there was no input from small volume outboard and personal watercraft engine manufacturers until after the closing date of the comment period for the SNPRM. In this one comment,[4] Tanaka expressed concerns about the appropriateness of the averaging standards on an engine manufacturer with likely only one engine family. Tanaka also expressed doubts that credits would be available in the marketplace and whether, even if available, they would be affordable to a manufacturer with a very small annual sales volume. EPA's Response to Comments[5] document addresses small volume concerns by pointing out that the final rule provided reduced production line and in-use testing requirements, simplified certification procedures and administrative flexibilities for existing technology engines [the likely products of small volume manufacturers]. Beyond those flexibilities, the Response to Comments document explains that:

> For smaller volume manufacturers the final regulation allows these manufacturers to purchase emission credits from the market place as an alternative to employing control technologies to meet the standard.

Since implementation of the Marine SI rule began, EPA has received further correspondence from Tanaka petitioning EPA to amend the rule[6] on the basis that the rule's fleet averaging concept provides benefits to manufacturers with diverse product lines but not to a company like Tanaka, which has only one engine family—a very low production, low powered engine. Tanaka argues that its competitors could sell similar engines with higher emissions because they could offset those emissions with credits from larger engines. Tanaka desires flexibility to continue production of its engine until the final phase-in of the standards at which time it will exit the market. Tanaka believes it can comply with the Marine SI requirements through about the 2002 model year through engine improvement and credits it plans to generate in earlier years. After that, it desires flexibility to stage an orderly exit from the market. It does not wish to commit the funds necessary to meet the final phase in standards for its low level of U.S. sales.

EPA has also been contacted by Inboard Marine Corporation, a low volume manufacturer of personal watercraft engines. This company maintains that it is dependent upon ''off-the-shelf'' technology to reduce its emissions. Like Tanaka, it has a narrow product line and argues that the averaging, banking and trading program in the Marine SI rule can not be counted on to provide credits through trading, nor to provide them at a reasonable price. Inboard Marine believes it can comply in the early years of the Marine SI rule but may need relief in the late years of the standard phase-in. It intends to discontinue its current engine by the final phase-in year (2005) and meet the ultimate standards of 2006 with a redesigned engine.

EPA recognizes that the Marine SI standards are technology forcing. Thus, it was appropriate to include averaging, banking and trading (ABT) provisions to facilitate their economical implementation. However, ABT is most useful to manufacturers with diverse product offerings. The two companies mentioned above appear to be at a disadvantage to their competitors because of their limited offerings. Further, EPA can not provide any certainty that credits will be available to them. EPA notes that in the on-highway heavy-duty engine program, there were no credit transactions between manufacturers until approximately seven years after the ABT provisions were added to the rules.

In rules proposed since the Marine SI rule was promulgated, EPA has gone to considerable lengths to provide mechanisms to ease the implementation of new standards and requirements for low volume producers. Both the Small SI Phase 2 NPRM and the Nonroad CI Phase 2 and 3 NPRM contain numerous

[3] A few of these vehicles may be controlled by flexible tether lines, but in any case they are not held in hand during operation.

[4] Letter of May 13, 1996 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

[5] EPA's Response To Comments document prepared for the final Marine SI rule can be found in the docket for this rulemaking. (Docket No. A–98–16.)

[6] Letter of June 30, 1997 from Randy W. Haslam, Vice-President, Tanaka International Sales and Marketing. Contained in the docket for this rulemaking. (Docket No. A–98–16.)

special provisions to delay or otherwise ease the impact of the standards on low volume engine families, low volume equipment manufacturers or low volume engine manufacturers. By contrast, the Marine SI rule contains no such provisions.

In this document, EPA proposes to add provisions to the Marine SI rule to permit small volume engine manufacturers to have family emission limits (FELs) in excess of applicable standards where credits are not available to cover such excess. This provision would be limited to one period of four consecutive model years which could not begin until the 2000 model year. EPA believes that the affected manufacturers can likely make changes to the affected engines to achieve compliance with standards in the early years and even bank a few credits, but may have more difficulty as the standards tighten later in the phase-in. This flexibility would expire at the end of the 2009 model year. EPA believes this expiration date will provide adequate time for small volume engine manufacturers to adapt off the shelf technology to their engines, if available, or to redesign their engines to comply with the final standards. EPA believes that the inclusion of this provision is consistent with its approach in other rules, and that it will meet the needs of small volume manufacturers without creating adverse impacts on air quality or adverse competitive situations. Further, EPA believes that the way this provision is structured may lead the affected manufacturers to clean up their engines more in the early years than their competitors. EPA proposes that the applicability of this provision be limited to engine manufacturers who sell no more than 1000 marine outboards and personal watercraft engines per year in the United States.

Based on the technological limitations that these small volume manufacturers have, and their limited abilities to use flexibilities offered by averaging, banking, and trading to avoid increased costs, EPA believes additional flexibility is appropriate. The implementation of this additional flexibility does not change EPA's overall conclusion that the category of Marine SI engines will allow the greatest achievable emission reduction considering technology and cost. EPA requests comment on the appropriate quantitative limit for this provision and on all other aspects of this proposal.

D. Revisions of Rules Involving Replacement Engines To Address Issues Related to Imported Engines

In a recent direct final rule, EPA modified its regulations applicable to Small SI and Marine SI engines (62 FR 42638, August 7, 1997) to permit the sale of uncertified engines for replacement purposes. The direct final rule addressed limited instances involving equipment built before EPA regulations went into effect where engine replacement is a more economical alternative than engine repair and certified engines are not available to fit.

Under the direct final rule, the engine manufacturer being approached to sell an uncertified engine for replacement purposes is required to first ascertain that no certified engine produced by itself or the manufacturer of the original engine (if different) is available with suitable physical or performance characteristics to repower the equipment. When the manufacturer ascertains that no certified engine is available that will fit or perform adequately, it can sell an uncertified engine subject to certain controls, e.g. it must take the old engine in exchange and the new engine must be clearly labeled for replacement purposes only.

EPA's Small SI and Marine SI engines regulations adopt the Clean Air Act definition for the term ''manufacturer.'' EPA has become concerned that the term ''manufacturer'' by definition in the Clean Air Act can include an importer who may have had nothing to do with the actual production of the engine.[7] In such a case the requirement to ascertain whether a certified engine produced by itself has suitable physical or performance characteristics could lead to abuse. EPA is concerned that importers could misinterpret this provision to permit, for example, an equipment operator to import an uncertified engine and determine, since the importer does not make engines, that no certified engines are available from itself to appropriately power the vehicle. EPA proposes to amend the replacement engine provisions in both rules to require that, in cases where a replacement engine might be imported, the determination be made by the manufacturer's U.S. representative that holds a current certificate of conformity from EPA for the make of engine requiring replacement. As an alternative and especially if no such entity exists, such as may happen in a piece of imported equipment built prior to the effective date of EPA's regulations whose engine manufacturer has not certified, the equipment operator could approach other engine manufacturers to obtain a suitable replacement engine under the existing replacement engine provisions. EPA requests comment on this proposed amendment.

[7] Section 216(1) of the Clean Air Act defines *manufacturer* as ''any person engaged in the manufacturing or assembling of new * * * nonroad engines or importing such * * * engines for resale * * * but shall not include any dealer with respect to * * * new nonroad engines received by him in commerce''.

IV. Environmental Benefit Assessment

This rule is being proposed to reduce the burden or prevent abuse of various provisions of several existing rules. No significant air quality impacts one way or the other are expected. The provisions applicable to Small SI handheld engines to accommodate cleaner but heavier engines remove a barrier to the incorporation of cleaner engine technology in handheld equipment. The provisions applicable to recreational engines will have no significant impact on air quality. The subject engines were not included in Small SI inventory calculations or in benefits attributed to the Small SI rule. The revisions to provide phase-in flexibility to very small marine engine manufacturers will also have no impact on air quality. The marine rule revisions are designed to encourage these companies to clean up their engines as much as possible in the early phase-in years and may actually result in the production of small quantities of engines that are cleaner than those of similar power built by larger competitors using credits. Lastly, the revisions to replacement engine provisions will reduce the likelihood of abuse in cases where older design engines may be desired for replacement needs.

V. Economic Impacts

The revisions contained in this rulemaking are not expected to increase costs for any entity. In fact, the revisions to the recreational provisions in the Small SI rule will eliminate potential costs under the Small SI rule for affected manufacturers. The revisions affecting the weight of handheld equipment provide greater flexibility in engine choice to handheld equipment manufacturers. The revisions to the Marine SI rule are intended to reduce adverse economic impacts of that rule on small entities. The revisions to replacement engine provisions serve only to remove a potential unintended benefit that would accrue only to importers of replacement engines who were not also engine producers. Therefore, because this notice proposes to alter existing provisions, and that

alteration provides regulatory relief, there are no additional costs to original equipment manufacturers associated with this specific proposal.

The costs and emission reductions associated with the Small SI rule were developed for the July 3, 1995 final rulemaking. The costs and emission reductions associated with the Marine SI rule were developed for the October 4, 1996 rulemaking. Costs for future programs for Small SI engines were developed for the proposal of January 27, 1998. We do not believe the changes being implemented today affect the costs and emission reductions published as part of those rulemakings.

VI. Public Participation

This rulemaking action is being prepared largely as a result of letters that have been received from engine manufacturers concerning the various nonroad rules that are addressed by these revisions. Copies of all such letters are available in the docket. EPA expects to provide copies of this NPRM to trade groups representing Small SI and Marine SI engine and equipment manufacturers as well as to environmental groups and state organizations. EPA welcomes written comment on any aspect of the revisions and issues discussed in this document. EPA will hold a public hearing on this rulemaking if anyone requests to speak at such a forum.

EPA welcomes comment on any aspect of these revisions and will consider all comments presented at a public hearing (if one occurs) as well as all written comments received before the deadline described above.

VII. Administrative Requirements

A. Administrative Designation

Under Executive Order 12866 (58 FR 51735, 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. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. The Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements that apply to the Small SI final rulemaking or the Small SI Phase 2 NPRM (60 FR 34582, July 3, 1995 and 63 FR 3950, January 27, 1998, respectively) or submitted to OMB in association with the Marine SI final rulemaking (61 FR 52088, October 4, 1996).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant adverse economic impact on a substantial number of small entities. This is because today's document will provide regulatory relief to both large and small volume engine and equipment manufacturers by excluding them from regulation or by permitting greater flexibility in engine choices in equipment or by providing additional time to comply. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the action proposed today 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. Therefore, EPA has not prepared a budgetary impact statement for this document. Moreover, no small governments will be significantly or uniquely impacted by this rule.

E. Executive Order 12875: Enhancing Intergovernmental Partnerships

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 changes do not create a mandate on State, local or tribal governments. The rule changes do 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.

F. 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 complied 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 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 changes do not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule changes do not create a mandate for any tribal governments. The rule changes do not impose any enforceable duties on these entities. Today's proposed rule changes will affect only those small spark-ignition (Small SI) engines under 19 kilowatts (kW) used in recreational applications, cleaner four stroke small SI engines, existing replacement engine provisions for Small SI and marine spark ignition (Marine SI) engines, and Marine SI small volume engine manufacturers during the standards phase in period. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

G. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

H. Children's Health Protection

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 risks that may disproportionately affect children.

List of Subjects in 40 CFR Parts 90 and 91

Environmental protection, Air pollution control, Confidential business information, Imports, Incorporation by reference, Labeling, Nonroad source pollution, Reporting and recordkeeping requirements, Research.

Dated: January 27, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations, is proposed to be amended as follows:

PART 90—CONTROL OF EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES

1. The authority citation of part 90 is revised to read as follows:

Authority: Sections 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).)

2. Section 90.1(b)(5)(iv) is revised to read as follows:

§ 90.1 Applicability.

* * * * *

(b) * * *

(5) * * *

(iv) The engine does not meet the criteria to be categorized as a Class III, IV or V engine, as indicated in § 90.103, except for cases where the engine will be used only to propel a flying vehicle forward, sideways, up, down or backward through air.

* * * * *

3. Section 90.3 is amended by revising the definition of Handheld equipment engine to read as follows:

§ 90.3 Definitions.

* * * * *

Handheld equipment engine means a nonroad engine that meets the requirements specified in § 90.103(a)(2)(i) through (v).

* * * * *

4. Section 90.103 is amended by adding paragraph (a)(2)(v) to read as follows:

§ 90.103 Exhaust emission standards.

(a) * * *

(2) * * *

(v) Where a piece of equipment otherwise meeting the requirements of paragraphs (a)(2)(iii) or (a)(2)(iv) of this section exceeds the applicable weight limit, emission standards for class III, IV or V, as applicable, may still apply if the equipment exceeds the weight limit by no more than the extent necessary to allow for the incremental weight of a four stroke engine or the incremental weight of a two stroke engine having enhanced emission control acceptable to the Administrator. Any manufacturer utilizing this provision to exceed the subject weight limitations shall maintain and make available to the Administrator upon request, documentation to substantiate that the exceedence of either weight limitation is a direct result of application of a four stroke or enhanced two stroke engine having the same, less or very similar power to two stroke engines that could otherwise be used to power the equipment and remain within the weight limitations.

* * * * *

5. Section 90.1003 is amended by adding and reserving paragraphs (b)(5)(iv) through (b)(5)(vii) and adding paragraph (b)(5)(viii) to read as follows:

§ 90.1003 Prohibited acts.

* * * * *

(b) * * *

(5) * * *

(iv) [Reserved].

(v) [Reserved].

(vi) [Reserved].

(vii) [Reserved].

(viii) In cases where an engine is to be imported for replacement purposes

under the provisions of this paragraph (b), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

PART 91—CONTROL OF EMISSIONS FROM MARINE SPARK-IGNITION ENGINES

6. The authority citation of part 91 is revised to read as follows:

Authority: Secs. 202, 203, 204, 205, 206, 207, 208, 209, 213, 215, 216, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7523, 7524, 7525, 7541, 7542, 7543, 7547, 7549, 7550, and 7601(a).)

7. Section 91.207 is amended by adding paragraph (e) to read as follows:

§ 91.207 Credit calculation and manufacturer compliance with emission standards.

* * * * *

(e) Notwithstanding other provisions of this part, for model years beginning with MY 2000, a manufacturer having a negative credit balance during one period of up to four consecutive model years will not be considered to be in noncompliance in a model year up through and including model year 2009 where:

(1) The manufacturer has a total annual production of engines subject to regulation under this part of 1000 or less; and

(2) The manufacturer has not had a negative credit balance other than in three immediately preceding model years, except as permitted under paragraph (c) of this section; and

(3) The FEL (FELs) of the family or families produced by the manufacturer are no higher than those of the corresponding family or families in the previous model year, except as allowed by the Administrator; and

(4) The manufacturer submits a plan acceptable to the Administrator for coming into compliance with future model year standards including projected dates for the introduction or increased sales of engine families having FELs below standard and projected dates for discontinuing or reducing sales of engines having FELs above standard; and

(5)(i) The manufacturer has set its FEL using emission testing as prescribed in subpart E of this part; or

(ii) The manufacturer has set its FEL based on the equation and provisions of § 91.118(h)(1)(i) and the manufacturer has submitted appropriate test data and revised its FEL(s) and recalculated its credits pursuant to the provisions of § 91.118(h)(1); or

(iii) The manufacturer has set its FEL using good engineering judgement, pursuant to the provisions of § 91.118(h)(1)(ii) and (h)(2).

8. Section 91.1103 is amended by adding paragraph (b)(4)(v) to read as follows:

§ 91.1103 Prohibited acts.

* * * * *

(b) * * *

(4) * * *

(v) In cases where an engine is to be imported for replacement purposes under the provisions of this paragraph (b), the term ''engine manufacturer'' shall not apply to an individual or other entity that does not possess a current Certificate of Conformity issued by EPA under this part.

[FR Doc. 99–2450 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[OPPTS–62156G; FRL–6060–9]

RIN 2070–AC63

Lead; Identification of Dangerous Levels of Lead; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public meeting.

SUMMARY: EPA will be holding a public meeting on a proposed rule for managing lead in paint, dust, and soil in residences and child-occupied facilities. This public meeting is in response to requests from various parties to provide for additional participation by the environmental justice community in the development of the proposed rule.

DATES: The public meeting will be held on February 16, 1999, from 9 a.m. to 12 noon. Written comments on the proposed rule must be received on or before March 1, 1999.

ADDRESSES: The meeting will be held at the Hyatt Regency Washington—Capitol Hill, 400 New Jersey Ave., NW., Washington D.C.

Each written comment must bear the docket control number OPPTS–62156G. All comments should be sent in triplicate to: OPPT Document Control Officer (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. G–099, East Tower, Washington, DC 20460.

Written comments and data may also be submitted electronically to: oppt.ncic@epa.gov. Follow the instructions in Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

All written comments which contain information claimed as CBI must be clearly marked as such. Three copies, sanitized of any comments containing information claimed as CBI, must also be submitted and will be placed in the public record for this rulemaking. Persons submitting information, any portion of which they believe is entitled to treatment as CBI by EPA, must assert a business confidentiality claim in accordance with 40 CFR 2.203(b) for each such portion. This claim must be made at the time that the information is submitted to EPA. If a submitter does not assert a confidentiality claim at the time of submission, EPA will consider this as a waiver of any confidentiality claim and the information may be made available to the public by EPA without further notice to the submitter.

FOR FURTHER INFORMATION CONTACT: *For general information:* National Lead Information Center's Clearinghouse, 1–800–424–LEAD (5323). *For technical and policy questions*: Jonathan Jacobson; telephone: (202) 260–3779; e-mail address: jacobson.jonathan@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 3, 1998 (63 FR 30302) (FRL–5791–9), EPA published a proposed rule under section 403 of TSCA (15 U.S.C. 2683). This proposed rule identifies lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil in residences and child-occupied facilities. Section 402 of TSCA (15 U.S.C. 2682) directs EPA to promulgate regulations governing lead-based paint activities. Section 404 of TSCA (15 U.S.C. 2684) requires that any State that seeks to administer and enforce the requirements established by the Agency under section 402 of TSCA must submit to the Administrator a request for authorization of such a program.

On October 1 and November 5, 1998, EPA announced in the **Federal Register** two extensions to the comment period for this proposed rule (63 FR 52662 (FRL–6037–7) and 63 FR 59754 (FRL–6044–9), respectively). The latest extension was until December 31, 1998. EPA has received additional comments from various parties involved with environmental justice to extend the comment period and to provide additional participation by this community in the development of the

proposed rule. In response, EPA reopened the public comment period until March 1, 1999, in order to ensure that all parties, including those that may lack access to the various publications in which EPA has publicized the issuance of the proposal, have sufficient opportunity to submit their comments. Notice of this extension was published in the **Federal Register** of January 14, 1999 (43 FR 2460) (FRL–6056–1).

EPA has also decided to hold a public meeting with interested members of the Agency's National Environmental Justice Advisory Council (NEJAC) and the public to offer additional opportunity for representatives of the environmental justice community to participate in the rulemaking process. During the first hour of the meeting, EPA officials will provide an overview of the proposal, focusing on environmental justice-related. In the second hour of the meeting, NEJAC members will have the opportunity to offer oral comments on the proposed rule. Other members of the public may offer oral comment on a first come, first served basis. Individuals interested in speaking must register at the meeting and are requested to limit their presentations to 3 minutes in order to allow as many persons as possible a fair chance to participate.

II. Public Record and Electronic Submissions

The official record for this rulemaking, as well as the public version, has been established for this rulemaking under docket control number OPPTS–62156G (including comments and data submitted electronically as described in this unit). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. Electronic comments can be sent directly to EPA at:

oppt.ncic@epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPPTS–62156G. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects in 40 CFR Part 745

Environmental protection, Hazardous substances, Lead-based paint, Lead poisoning, Reporting and recordkeeping requirements.

Dated: January 28, 1999.

William H. Sanders, III,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2674 Filed 2–1–99; 2:55 pm]

BILLING CODE 6560–50–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 99–5045]

RIN 2127–AH11

Federal Motor Vehicle Safety Standards: Air Brake Systems

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

ACTION: Notice of proposed rulemaking; partial grant/partial denial of petition for rulemaking.

SUMMARY: Pursuant to the agency's partial grant of a petition for rulemaking from the Truck Manufacturers Association, NHTSA proposes to amend the air brake standard to correct an inconsistency between two provisions concerning emergency brake stops, provide that single-unit truck axles should not be overloaded, clarify the wheel-lock provisions by adding a definition of ''tandem axle,'' and permit the use of roll bars on vehicles undergoing brake testing.

NHTSA denies requests by the petitioner to amend the standard by revising the braking test sequence, changing the provisions regarding manual brake adjustments, changing the burnish procedure, specifying application of the service brake prior to applying the parking brake, and clarifying that emergency brake requirements for trucks and buses do not become effective until March 1, 1998.

DATES: Comment closing date: Comments on this notice must be received by NHTSA not later than April 5, 1999.

Proposed effective date: If adopted, the amendments proposed in this notice would become effective 30 days after publication of the final rule. Optional early compliance would be permitted on and after the date of publication of a final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number for this rule noted above and be submitted to: Docket Management Room, PL–401, 400 Seventh Street, SW, Washington, DC 20590. Docket Room hours are from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

For technical issues: Mr. Joseph Scott, Safety Standards Engineer, Office of Crash Avoidance Standards, Vehicle Dynamics Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2720, fax (202) 493–2739.

For legal issues: Mr. Walter Myers, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590; telephone (202) 366–2992, fax (202) 366–3820.

SUPPLEMENTARY INFORMATION:

1. Background

Federal Motor Vehicle Safety Standard (Standard) No. 121, *Air brake systems,* specifies performance and equipment requirements for trucks, buses, and trailers equipped with air brake systems to ensure safe braking performance under normal and emergency conditions.

Pursuant to the March 4, 1995 directive entitled ''Regulatory Reinvention Initiative'' from the President to the heads of departments and agencies of the Federal government, NHTSA reviewed its standards and regulations to identify superseded or unneeded regulations as well as to amend and update regulations as appropriate. One such regulation identified by NHTSA for revising and upgrading was Standard No. 121. Consequently, on May 31, 1996, NHTSA published a revision of Standard No. 121 in the **Federal Register** to remove obsolete provisions and update and reorganize the standard (61 FR 27288). The revision substantially clarified and simplified the standard without changing any of its substantive requirements. The effective date of this revision was March 1, 1997. Optional early compliance with the revised standard was permitted for vehicles manufactured prior to that date.

2. The Petition

The Truck Manufacturers Association (TMA) submitted a petition for rulemaking to NHTSA dated January 6, 1997. The TMA is a trade association

whose members include all the major U.S. manufacturers of medium and heavy trucks, i.e., those trucks with a gross vehicle weight rating (GVWR) greater than 8,845 kilograms (19,500 pounds). The petition was a followup to TMA's comments submitted in connection with the rulemaking action culminating with the final rule of May 31, 1996, discussed above.

In its petition, the TMA stated that it, through a Society of Automotive Engineers (SAE) task force, reviewed Standard No. 121 in detail. As a result of that evaluation, SAE developed a recommended practice, J1626, *Braking, Stability, and Control Performance Test Procedures for Air-Brake Equipped Trucks (REV APR96),* to provide a process for verifying vehicle compliance while minimizing test variability. TMA commended NHTSA for its efforts to update and reorganize Standard No. 121, but stated that some inconsistencies remain. TMA stated that Standard No. 121 and SAE J1626 should be aligned to improve test efficiency and decrease testing costs to the industry with no detrimental impact on motor vehicle safety. Accordingly, TMA suggested amending Standard No. 121 as follows:

a. Test sequence. Change the braking test sequence to perform the unloaded straight line stops and then the loaded straight line stops immediately following the braking-in-a-curve test. TMA asserted that the standard currently allows the truck tractor braking-in-a-curve control and stability tests to be performed loaded and unloaded (bobtail) on a surface with 0.5 coefficient of friction. This simplifies the logistics of moving vehicles from one test site to another and limits the need to water the test track to only a single time. TMA asserted, however, that the test sequence has little impact on the test results as long as the burnish procedure is performed first and final inspection follows all other required tests. The number of times that a vehicle must be loaded and unloaded has a significant impact on the time and effort to complete the sequence of tests. Thus, the suggestion to conduct the unloaded straight line stops before the loaded straight line stops would eliminate one loading/unloading sequence, thereby simplifying the test sequence to that extent.

b. Brake adjustments. Adopt the following language of SAE J1626: ''(O)ther than during the burnish, brakes can be adjusted per the vehicle manufacturer's procedure at any time.'' Although automatic brake adjusters are required by the standard, TMA stated that some automatic brake adjusters overadjust during Standard No. 121 testing, but not in normal service. SAE J1626 recognizes this and would allow brakes to be adjusted in accordance with the manufacturer's procedure at any time to reduce brake performance variability.

c. Brake test and burnish procedure. Require that the entire brake test procedure, including the burnish procedure, be conducted with the transmission in neutral or with the clutch disengaged. Standard No. 121 specifies that tests are conducted with the vehicle's transmission in neutral or with the clutch disengaged. This minimizes the effect of engine and driveline drag on stopping distance test results and also relieves the manufacturer of the burden of having to test every engine and driveline package offered on a given chassis. TMA asserts that engine and driveline drag can also affect burnish temperatures and the conditioning that brake linings receive. Thus, TMA argues that conducting the entire test sequence as well as the burnish procedure with the transmission in neutral or the clutch disengaged would eliminate variability in the burnish and the need to test with numerous combinations of engines and drivelines that are offered with each chassis.

d. Service brake application prior to parking brake application. Permit a full service brake application prior to applying the parking brakes, and clarify S5.6.3.1 to provide that it applies to the case in which a single leakage failure occurs in the service brake system after the parking brakes are applied. As a practical matter, when parking on a hill, the vehicle operator first applies the service brakes to hold the vehicle in place, then applies the parking brake before releasing the service brakes. TMA stated that it is not clear whether S5.6 permits this procedure. It argues that Standard 105, *Hydraulic and electric brake systems,* clearly permits a procedure in which the service brake is applied prior to application of the parking brake. Further, that standard permits reapplication of the service brake and parking brake up to two additional times if the vehicle does not hold on the grade. Thus, TMA requests that NHTSA clarify the parking brake requirements of Standard No. 121 to make them more consistent with those of Standard No. 105 in permitting a full application of the service brakes prior to application of the parking brake, with reservoirs at compressor cut-out pressure.

e. Clarify that emergency brake requirements for trucks and buses do not become effective until March 1, 1998. Section S5.3 of the standard specifies a schedule of effective dates for service brake stopping distance requirements, which indicates that trucks and buses have until March 1, 1998 to comply. Section S5.7 does not contain such a schedule for emergency brake requirements. TMA considers that an oversight on the agency's part that should be clarified.

f. Correction of inconsistency. TMA stated that the rulemaking process confirmed that emergency brake stops for loaded tractors with unbraked control trailers (item 4(b), Table I) are ''inappropriate.'' Subsection S5.7.3(b), however, retained the loaded tractor emergency test that was in effect earlier. Therefore, TMA requested that NHTSA delete S5.7.3(b) to correct the inconsistency.

g. Roll bar provision. Permit the use of a roll bar for any vehicle conducting the brake test sequence, including the 60-mile-per-hour (mph) straight-line stops and the 30-mph stops in a curve. TMA asserted that the safety of drivers and technicians is a primary concern during vehicle testing, and that use of a roll bar would protect them in the event of a vehicle rollover. TMA pointed out that truck tractors are permitted to be so equipped during the braking-in-a-curve stability and control tests. It said that this protection is just as important for short-wheelbase, high center of gravity trucks. A roll bar would ensure the safety of the driver in all tests and would eliminate the need to remove the roll bar after completing the braking-in-a-curve test sequence.

h. Single-unit truck axles should not be overloaded. Paragraph 6.1.10.4 of the standard provides for loading the tractor control trailer in such a manner as to avoid overloading the tractor's axles. The axles of a single-unit truck should likewise not be overloaded to achieve GVWR. Thus, the same provision should be incorporated into paragraph S5.3.1.1.

i. Need for additional clarification of the wheel lock provisions. TMA stated that the wheel lock provisions are not consistent with the ABS provisions. Specifically, TMA pointed out that paragraph S5.1.6.1(b) provides that ''the wheels of at least one rear axle'' of a truck tractor must be equipped with an antilock brake system (ABS) that directly controls the wheels on that axle. On the other hand, TMA stated that subparagraph S5.3.1(a) places wheel lock restrictions on 2 rear axles, and that S5.3.1(b) allows one of those 2 axles to lock up both of its wheels, but only if it is a tandem axle. TMA believes that the wheel lock provisions were originally written for the stopping

distance NPRM, when it was not clear that ABS would be mandatory. When the ABS and stopping distance proposals were combined for the final rule, however, the conflict developed but went unnoticed until recently.

By way of illustration of the suggested inconsistency between the ABS and wheel lock requirements, TMA gives the example of a 3-axle truck, bus or tractor. If the vehicle had 2 driven rear axles in tandem, known as a 6x4 configuration, the wheels on both sides of one rear axle might lock up during an entire stopping distance test. Conversely, if one of the two rear axles were a nonliftable tag or pusher axle, known as a 6x2 arrangement, then neither of the rear axles could lock up on both its wheels. Thus, TMA argues that the 6x4 vehicle needs ABS control on only one of its rear axles, while the 6x2 must have ABS control on both rear axles.

TMA stated that drive axles are the most logical location on the vehicle's rear for ABS, regardless of the number of axles trailing behind. These axles have the greatest rolling inertia, are the heaviest loaded, and are the only axles that can be used for traction control. The wheel lockup provisions, however, discourage this approach on vehicles with nonliftable tag axles. TMA therefore requested that the wheel lockup provisions of S5.3.1(a) through (d) be rescinded, and that S5.3.1 be redrafted to read:

S5.3.1 Stopping distance—trucks and buses. When stopped six times * * * without any part of the vehicle leaving the roadway.

j. Typographical errors. TMA pointed out 2 typographical errors:

- Paragraph S6.1.8, line 23, ''* * * in 1 mph* * *'' should read ''* * * in 1 mile * * *;'' and
- Paragraph S6.2.5, line 2, ''* * * dynamometer or responding * * *'' should read ''* * * dynamometer corresponding * * *.''

3. Denials of Certain Requests by the Petitioner

a. Test sequence (see 2a above). TMA suggested allowing the tester to ''perform the unloaded straight line stops and then the loaded straight line stops immediately following the braking-in-a-curve tests.'' The following table shows the current test sequence and TMA's proposed sequence:

Current sequence	TMA's proposed sequence
1. Burnish (GVWR) ...	1. Burnish (GVWR)
2. a. Braking-in-Curve (GVWR); b. Braking-in-Curve (LLVW).	2. a. Braking-in-Curve (GVWR); b. Braking-in-Curve (LLVW)
3. Service Brake (GVWR); Emergency Brake (GVWR).	3. Service Brake (LLVW); Emergency Brake (LLVW)
4. Parking Brake (GVWR).	4. Parking Brake (LLVW)
5. Service Brake (LLVW).	5. Service Brake (GVWR)
6. Emergency Brake (LLVW).	6. Emergency Brake (GVWR)
7. Parking Brake (LLVW).	7. Parking Brake (GVWR)
8. Final Inspection	8. Final Inspection

This request is denied because—

(1) The current GVWR/LLVW (lightly-loaded vehicle weight) is consistent with the other tests in the overall test sequence.

(2) Flat-spotting of tires is minimized when GVWR tests are conducted first. Since not all wheels are required to be ABS-controlled and are therefore permitted to lock up, conducting the LLVW tests first, particularly for the 60-mph stopping distance tests, could result in severe flat-spotting of the tires on the non-ABS-controlled axles. Subsequent vehicle test runs would be difficult with the tires in that condition.

(3) The TMA proposal would eliminate one loading/unloading sequence for truck tractors, but it would necessitate an additional unloading sequence for single unit trucks and buses. The current test sequence for single unit trucks and buses does not necessitate any load change before the stopping distance tests are conducted since these vehicles are not currently required to be tested to the braking-in-a-curve test procedure. For these vehicles, TMA's proposed sequence would require the next test after the burnish, which is conducted at GVWR, to be the 60-mph stopping distance test at LLVW. TMA did not address this issue.

(4) Not all vehicle manufacturers have the necessary test facility to conduct the braking-in-a-curve test. Some manufacturers must transfer their vehicles to a different site for testing. Therefore, if TMA's test sequence were adopted, overall test efficiency would not necessarily improve, particularly for these manufacturers.

b. Brake adjustments (see 2b above). The TMA request that the agency permit brake adjustments at any time, other than during burnish, is denied. Standard No. 121 requires air-braked vehicles to be equipped with automatic brake adjusters. The potential for over-adjustment by automatic brake adjusters during the series of full-treadle brake applications required for braking-in-a-curve tests does exist. However, the agency believes that it is important to specify when manual adjustments are allowed since this enhances repeatability for compliance testing.

The agency further believes that manual adjustment of the brakes after each test sequence is inappropriate because it would be less representative of real-world braking conditions. Standard No. 121 allows some brake adjustment during testing. For example, two manual brake adjustments are allowed, one at the end of the braking-in-a-curve test and the other at the end of the GVWR parking brake test. For single unit trucks and buses, one manual brake adjustment is allowed at the end of the GVWR parking brake test. NHTSA believes that current limitations on the number of manual brake adjustments during the test sequence sufficiently addresses the potential for brake over-adjustment while preserving a well-defined test procedure.

c. Brake test and burnish procedure (see 2c above). The TMA request that the entire brake test procedure, including the burnish procedure, be conducted with the transmission in neutral or with the clutch disengaged is denied.

Before a vehicle's brakes are tested for compliance with Standard No. 121, the vehicle's brakes are burnished, also known as ''break-in,'' by a series of brake applications called ''snubs''. The burnish procedure is intended to simulate the break-in period that a vehicle's brakes will receive when it is initially used on the public roads. The current burnish procedures, which became effective in September, 1993 (53 FR 8190, March 14, 1988) specified that the brakes on heavy vehicles be burnished without regard to the brake temperatures generated during the burnish. The agency believes that this burnish procedure is more realistic and representative of the break-in that the vehicle brakes receive in actual service without favoring one brake design over another.

The burnish procedure is required to be conducted with the vehicle in gear. The agency believes that TMA's proposal to allow the vehicle's brakes to be burnished with the clutch disengaged or the transmission in neutral will result in a higher temperature burnish similar to the old burnish procedure. The burnish procedure rulemaking rejected this temperature-based approach to burnishing brake linings on heavy vehicles. The current burnish procedure allows the brakes to reach whatever temperatures they are designed to reach when driven in typical stop-and-go driving. Therefore, any braking system

design will be conditioned fairly under this approach.

In addition, the procedure described in S7 of Standard No. 105, when testing a vehicle in neutral, requires a four-part procedure that is appropriate for a performance requirement, but would be very time-consuming if applied to a 500-snub burnish procedure. The agency believes that using this method in conducting the burnish procedure would not be in the interest of testing efficiency that manufacturers are striving to achieve.

TMA is also concerned about the burden on manufacturers to test every engine and driveline package offered on a given chassis. The agency notes that vehicle manufacturers are not required to and currently do not test every combination of engine and drivetrain that is offered on each vehicle. The legal requirement is that a manufacturer exercise due care in assuring itself that its vehicle is capable of meeting the performance requirements of applicable standards when tested as prescribed in the standards.

d. Service brake application prior to parking brake application (see 2d above). TMA's request that a full service brake application be permitted prior to applying the parking brake is denied. The agency has no test data comparing the grade holding ability of heavy truck air brake systems using full service brake application prior to engaging the parking brakes, nor did TMA supply such data.

The agency is concerned that, by allowing a full treadle application prior to engaging the parking brake, colloquially referred to as ''compounding,'' some vehicles may have reduced grade holding ability. For example, in some applications, such as the construction industry, trucks are often stopped on a grade in the unloaded condition by a partial treadle application, after which the driver applies the parking brake. In the lightly-loaded condition, a full treadle application may not be needed to stop the vehicle on the grade. If the vehicle were then loaded, however, it is possible that the parking brake would not hold and the vehicle would roll away.

NHTSA is also concerned about the effects of full service brake applications prior to engaging the parking brake on the durability of foundation brake components such as brake chamber support brackets. For a brief time when the air-applied service brakes and the mechanical spring brakes both exert a braking force on the slack adjusters and other foundation brake components, these additive forces can cause damage to these brake components. Another concern is the effect on foundation brake components when vehicles are parked with their brakes at high temperatures. As those brake drums cool, they would impose greater loads on the foundation brakes which could lead to permanent deformation of some components.

The agency notes that this issue is an ongoing concern to the industry in certifying vehicles to Standard No. 121. However, since NHTSA has no test data with which to evaluate the feasibility of this proposal and TMA did not provide any data to support its proposal, the agency has decided to conduct vehicle research to evaluate the issue of brake compounding. Since this research is not expected to be completed until mid-1999, the agency denies this portion of the petition. However, when our research has been completed and the test results analyzed, it is the agency's intent to propose a clarification of the test procedure or a revision of the regulatory language in S5.6.2 of Standard No. 121.

e. Clarify that emergency brake requirements for trucks and buses do not become effective until March 1, 1998 (see 2e above). This TMA request is denied as being moot. Emergency brake requirements are now in effect for all air braked vehicles as of March 1, 1998. Thus, subsection S5.7 of Standard No. 121 will not now be amended to state the effective dates of applicable requirements for the emergency brakes of trucks and buses. The following table, however, is shown here for information purposes:

EMERGENCY BRAKE REQUIREMENTS FOR TRUCKS AND BUSES: EFFECTIVE DATES

(by vehicle and brake configuration)

March 1:	
1997 (Air)	New Truck Tractors.
1998 (Air)	New air-braked trailers & single-unit trucks, buses.
1999 (Hydraulic).	New single-unit trucks and buses with hydraulic brakes.

4. Grants of Certain Requests by Petitioner; Agency Proposals

a. Correction of inconsistency (see 2f above). TMA suggested that emergency brake stops for loaded tractors with unbraked control trailers are inappropriate. TMA is correct. The agency grants the request and proposes to delete S5.7.3(b) since there is no longer a requirement for emergency brake stops for truck tractors in the loaded condition.

b. Roll bar provision (see 2g above). TMA suggested permitting the use of a roll bar for any vehicle in this test sequence, including the 60-mph straight line stops and the 30-mph stops in a curve. The agency grants the request and, in order to provide adequate protection for test vehicle drivers in the event of a rollover during testing, proposes to permit the use of roll bars in all test vehicles utilized in the braking-in-a-curve tests and the straight line stopping distance tests. Further, for the 60-mph straight line stops in the unloaded condition, NHTSA proposes to include an allowance of up to 1,500 pounds for driver, instrumentation, and roll bar. This allowance is not applicable to tests in the loaded condition since the weight of these items would be included as part of the load.

c. Single-unit truck axles should not be overloaded (see 2h above). TMA suggested that paragraph S5.3.1.1 be amended to provide that single-unit trucks should not be overloaded to achieve GVWR. The agency grants the request and proposes to amend paragraph S5.3.1.1 to so provide.

d. Need for additional clarification of the wheel lock provisions (see 2i above). TMA suggested that the wheel lockup provisions be clarified by rescinding the provisions of S5.3.1(a) through (d) (see b(9) above). Although NHTSA does not agree with TMA's rationale for deleting the wheel lock provision, the agency proposes to clarify any misconceptions about the wheel lock provisions with respect to vehicles with tandem axles.

The agency believes that the lack of a definition for ''tandem axle'' is a primary cause for the misunderstanding of the wheel lock restrictions of S5.3.1. The industry considers a tandem to be two or more drive axles that are placed in a close arrangement one behind the other, whereas NHTSA considers a tandem to be two or more axles (driven or non-driven) placed in a close arrangement one behind the other. Accordingly, NHTSA believes that for a 2-axle rear tandem with one driven axle and one pusher axle, if ABS is on the driven axle and not on the pusher axle, the two wheels on the pusher axle are permitted to lock up for the duration of the stop, while the 2 ABS-controlled wheels on the driven axle are allowed to lock up for only a duration of 1 second or less.

If, as TMA assumes, the two rear axles in the configuration of one driven and one tag or pusher axle are not considered a tandem, TMA would be correct that the lockup restriction of one wheel per axle would apply and prevent both wheels on any one of the axles

from locking simultaneously. However, NHTSA believes that TMA is incorrect in its statement that ''neither of the rear axles can have lockup on both its wheels'' because NHTSA considers the 2-axle configuration to be a tandem.

The agency believes that a definition of ''tandem axle'' is needed in the standard to clarify the wheel lock provisions. That definition would not include a requirement that all axles in a tandem be driven. That should resolve the issue of having implied differences in the stringency of the ABS requirements for heavy vehicles with 3 or more axles based on the drivetrain configuration. Thus, a 6x2 single truck (3-axle truck with one drive axle) could comply with the wheel lock provisions using a 4-sensor/2-modulator antilock system since the two rear axles would be defined as a tandem. That would allow any two wheels on the tandem, that is either the tag or the pusher axle, to lock for the duration of the test, if the axle is not ABS-controlled. This definition has recently been included in Standard No. 105, *Hydraulic and electric brake systems*, and NHTSA proposes adding it to Standard No. 121 at this time.

e. Typographical errors (see 2j above). TMA is correct that 2 typographical errors appear in S6.1.8 and S6.2.5 respectively. NHTSA will correct the 2 typographical errors identified by TMA, namely line 23 of the first paragraph of S6.1.8 which now reads ''1 mph'' will be corrected to read ''1 mile.'' Similarly, line 2 of S6.2.5 that now reads ''dynamometer or responding'' will be corrected to read ''dynamometer corresponding.''

5. Rulemaking Analyses and Notices

a. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has not been reviewed under Executive Order 12866, *Regulatory Planning and Review.*

NHTSA has analyzed the impact of this rulemaking action and has determined that it is not ''significant'' within the meaning of DOT's regulatory policies and procedures. This action proposes to clarify and amend certain provisions of Federal Motor Vehicle Safety Standard No. 121, *Air brake systems*, to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. The amendments proposed herein would not impose any additional costs on manufacturers of medium and heavy trucks. Although the installation of roll bars on test vehicles would involve additional costs, that provision is optional to manufacturers who may voluntarily want to install them. Further, even if manufacturers chose to install the bars on their test vehicles, the number of affected vehicles would be very small. Thus, the agency estimates that implementation of the proposals herein would not result in any increased costs to manufacturers, distributors, or consumers. Accordingly, a full regulatory evaluation was not prepared.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* I hereby certify that this notice of proposed rulemaking would not have a significant impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments proposed herein would primarily affect manufacturers of medium and heavy trucks. The Small Business Administration (SBA) regulation at 13 CFR part 121 defines a small business as a business entity which operates primarily within the United States (13 CFR 121.105(a)).

SBA's size standards are organized according to Standard Industrial Classification (SIC) codes. SIC code No. 3711, *Motor Vehicles and Passenger Car Bodies,* prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories,* prescribes a small business size standard of 750 or fewer employees.

The amendments proposed in this rulemaking action would amend Standard No. 121 to permit the addition of a rollbar on test vehicles when undergoing brake testing, clarify when wheel lockup is permitted when brake testing, provide that single-unit truck axles should not be overloaded when brake testing, and delete an obsolete requirement. These proposed amendments were requested by the trade organization that represents the major manufacturers of medium and heavy trucks in the U.S. The proposed amendments, if adopted, would not mandate any increased costs or other burdens on truck manufacturers, most if not all of which would not qualify as small businesses under SBA guidelines. Neither would the proposed amendments result in any increased costs for small businesses or consumers. Accordingly, there would be no significant impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons, the agency has not prepared a preliminary regulatory flexibility analysis.

c. Executive Order No. 12612, Federalism

NHTSA has analyzed this rulemaking action in accordance with the principles and criteria of E.O. 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act and has determined that implementation of this rulemaking action would not have any significant impact on the quality of the human environment.

e. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, Pub. L. 96–511, NHTSA states that there are no information collection requirements associated with this rulemaking action.

f. Civil Justice Reform

The amendments proposed herein would not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision thereof may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. Section 30161 of Title 49, U.S. Code sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

6. Comments

Interested persons are invited to submit comments on the amendments proposed herein. It is requested but not required that any such comments be submitted in duplicate (original and 1 copy).

Comments must not exceed 15 pages in length (49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary

arguments in concise fashion. Necessary attachments, however, may be appended to those comments without regard to the 15-page limit.

If a commenter wishes to submit certain information under a claim of confidentiality, 3 copies of the complete submission, including the purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address noted above, and 1 copy from which the purportedly confidential information has been deleted should be submitted to Docket Management. A request for confidentiality should be accompanied by a cover letter setting forth the information called for in 49 CFR part 512, *Confidential Business Information.*

All comments received on or before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available to the public for examination in the docket at the above address both before and after the closing date. To the extent possible, comments received after the closing date will be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on today's proposal will be available for public inspection in the docket. NHTSA will continue to file relevant information in the docket after the comment closing date, and it is recommended that interested persons continue to monitor the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rule docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

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

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

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

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

2. Section 571.121 would be amended in S4 by adding a definition of ''tandem axle'' in alphabetical order; by revising S5.3.1.1 (a) through (c) and S5.7.3(b); by removing and reserving S5.7.3(c); and by revising S6.1.8 and S6.2.5, to read as follows:

§ 571.121 Air brake systems.

* * * * *

S4. *Definitions.*

* * * * *

Tandem axle means a group or set of two or more axles placed in a close arrangement, one behind the other, with the centerlines of adjacent axles not more than 72 inches apart.

* * * * *

S5.3.1.1 * * *

(a) Loaded to its GVWR so that the load on each axle, measured at the tire-ground interface, is most nearly proportional to the axles' respective GAWRs, without exceeding the GAWR of any axle.

(b) In the truck tractor only configuration plus up to 500 lbs. or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) and plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle, and

(c) At its unloaded vehicle weight (except for truck tractors) plus up to 500 lbs. (including driver and instrumentation) or, at the manufacturer's option, at its unloaded weight plus up to 500 lbs. (including driver and instrumentation) plus not more than an additional 1,000 lbs. for a roll bar structure on the vehicle. If the speed attainable in two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is four to eight mph less than the speed attainable in two miles.

* * * * *

S5.7.3 * * *

(b) Be capable of modulating the air in the supply or control line to the trailer by means of the service brake control with a single failure in the towing vehicle service brake system as specified in S5.7.1.

(c) [Removed and reserved]

* * * * *

S6.1.8 For vehicles with parking brake systems not utilizing the service brake friction elements, burnish the friction elements of such systems prior to the parking brake test according to the manufacturer's recommendations. For vehicles with parking brake systems utilizing the service brake friction elements, burnish the brakes as follows: With the transmission in the highest gear appropriate for a speed of 40 mph, make 500 snubs between 40 mph and 20 mph at a deceleration rate of 10 f.p.s.p.s., or at the vehicle's maximum deceleration rate if less than 10 f.p.s.p.s. Except where an adjustment is specified, after each brake application accelerate to 40 mph and maintain that speed until making the next brake application at a point 1 mile from the initial point of the previous brake application. If the vehicle cannot attain a speed of 40 mph in 1 mile, continue to accelerate until the vehicle reaches 40 mph or until the vehicle has traveled 1.5 miles from the initial point of the previous brake application, whichever occurs first. Any automatic pressure limiting valve is in use to limit pressure as designed. The brakes may be adjusted up to three times during the burnish procedure, at intervals specified by the vehicle manufacturer, and may be adjusted at the conclusion of the burnishing, in accordance with the vehicle manufacturer's recommendation.

* * * * *

S6.2.5 The rate of brake drum or disc rotation on a dynamometer corresponding to the rate of rotation on a vehicle at a given speed is calculated by assuming a tire radius equal to the static loaded radius specified by the tire manufacturer.

* * * * *

Issued on January 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2486 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 64, No. 22

Wednesday, February 3, 1999

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 COMMERCE

International Trade Administration

[A–122–506]

Oil Country Tubular Goods From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce has received a request from Atlas Tube, Inc., to conduct a new shipper review of the antidumping duty order on oil country tubular goods from Canada (51 FR 21782, June 16, 1986). In accordance with the Department of Commerce's regulations, we are initiating this new shipper review.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–4114 or (202) 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR part 351 (April 1998).

Background

The Department of Commerce (Department) has received a timely request from Atlas Tube, Inc. (Atlas), to conduct a new shipper administrative review of the antidumping duty order on oil country tubular goods from Canada in accordance with section 751(a)(2)(B) of the Act, and 19 CFR 351.214(b) of the Department's regulations.

Initiation of Review

In its request of December 30, 1998, Atlas certified that it did not export the subject merchandise to the United States during the period of investigation (POI), and it has not been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI. Accompanying its request, Atlas provided certifications which indicate the date the merchandise was first entered for consumption in the United States, the volume of the first and the subsequent shipments and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on oil country tubular goods from Canada. Since this new shipper review was requested in the six-month period following the anniversary month of the order and is being initiated in the month immediately following the semiannual anniversary month, the period of review will be June 1, 1998 to November 30, 1998. *See* 19 CFR 351.214(g)(1). We intend to issue the preliminary results of the review not later than 180 days from the publication of this notice.

Antidumping duty proceeding	Period to be reviewed
Canada: Oil Country Tubular Goods, A–122–506: Atlas Tube Inc	06/01/98–11/30/98

Concurrent with publication of this notice, we will instruct the Customs Service to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, in accordance with 19 CFR 351.214(e).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 353.34(b).

This initiation and this notice are in accordance with section 751(a) of the Act, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: January 28, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Import Administration, Group II.

[FR Doc. 99–2560 Filed 2–2–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Custodianship Certificate to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces; DD Form 2790; OMB Number 0730–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 300.

Responses Per Respondent: 1.

Annual Responses: 300.

Average Burden Per Response: 12 minutes.

Annual Burden Hours: 60.

Needs and Uses: The information is used by the Directorate of Annuity Pay, Defense Finance and Accounting Service, Denver Center (DFAS–DE), to pay the annuity to the correct person on behalf of a child under the age of majority. The annuity for a minor child is paid to the legal guardian, or if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. The annuity cannot be paid until the custodian certifies that he/she has the care and custody of the child(ren).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required To Obtain or Maintain Benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: January 28, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–2470 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Due to the unforeseen specific scheduling for finalizing this meeting date unable to allow the 15 day notification as required by law. Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463.

As amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting Of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 2–3 February 1999 (800am to 1600pm).

ADDRESSES: Air Force Technical Applications Center, Patrick Air Force Base, FL 32925.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–2468 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92–463, as amended by Section 5 of Pub. L. 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: 17 February 1999 (900am to 1600pm).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: January 28, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–2469 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Battle Space Infosphere Study Kickoff Meeting in support of the HQ USAF Scientific Advisory Board will meet at Hurlburt AFB, FL on February 23, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to kick off the 1999 Battle Space Infosphere Study.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

FOR FURTHER INFORMATION CONTACT: The HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–2480 Filed 2–2–99; 8:45 am]

BILLING CODE 5000–05–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Proposed Solicitation for Cooperative Agreement Applications

AGENCY: Defense Logistics Agency, DOD.

ACTION: Proposed Solicitation for Cost Sharing Cooperative Agreement Applications.

SUMMARY: The Defense Logistics Agency (DLA) intends to issue a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs). These centers help business firms market their goods and service to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. This solicitation, when issued, governs the submission of applications for calendar years 1999, 2000, 2001, and 2002. The Defense Logistics Agency will be issuing a similar solicitation for cooperative agreement proposals to assist Indian-owned economic enterprises and tribal organizations.

The proposed SCAA is available for review on the Internet Website: **http://www.dla.mil/ddas.** Printed copies are not available for distribution.

You are requested to post any comments, questions, or concerns that you might have with this proposed SCAA directly to the above-cited Website. All comments must be received by February 28, 1999. Both solicitations will be advertised, on this Website in early March 1999. Information on the pre-solicitation conferences as well as how to obtain the required access codes will be provided after the solicitation has been formally advertised.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth G. Dougherty, at (703) 767–1657.

Kenneth G. Dougherty,

Grants Officer.

[FR Doc. 99–2478 Filed 2–2–99; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by February 10, 1999 . The regular collection will be submitted through the discretionary streamlined process (1890–0001). Interested persons are invited to submit comments on or before April 5, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov,* or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: January 28, 1999.

Kent H. Hannaman,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.

Title: Even Start Statewide Family Literacy Initiative Grants (84.314B).

Abstract: The Even Start Statewide Family Literacy Initiative is designed for States to plan and implement Statewide family literacy initiatives, coordinate and, where appropriate, integrate existing Federal, State, and local literacy resources for the purpose of strengthening and expanding family literacy services in the State. The Department will use the information to make awards.

Additional Information: The Department is seeking emergency clearance by February 10, 1999 to ensure that States pursue a coordinated approach to family literacy and avoid the public harm that otherwise might occur from separate planning processes. If normal clearance procedures were followed, potential grantees would not receive State-level Reading Excellence Act (REA) awards.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 52. Burden Hours: 624.

[FR Doc. 99–2490 Filed 2–2–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Office of Science Financial Assistance Program Notice 99–13; Complex and Collective Phenomena

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for innovative research on the topic of complex and collective phenomena. Opportunities exist for research covering the entire range of disciplines supported by the BES program, including research in the materials sciences, chemical sciences, engineering sciences, geosciences and energy biosciences.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–13, should be received by DOE by 4:30 P.M., E.S.T., March 2, 1999. A response to the preapplications encouraging or discouraging a formal application generally will be communicated to the applicant within 21 days of receipt. The deadline for receipt of formal applications is 4:30 P.M., E.S.T., April 21, 1999, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 1999.

ADDRESSES: All preapplications, referencing Program Notice 99–13,

should be sent to Dr. Jerry J. Smith, Division of Materials Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown MD 20874–1290.

Formal applications referencing Program Notice 99–13 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–13. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant.

FOR FURTHER INFORMATION CONTACT: For questions concerning research topics in specific technical areas, contact the following individuals in the appropriate division of interest:

Dr. Jerry J. Smith, Division of Materials Sciences, SC–13, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4269, e-mail: (jerry.smith@oer.doe.gov).

Dr. William S. Millman, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–5805, e-mail: (william.millman@oer.doe.gov).

Dr. James Tavares, Division of Energy Biosciences, SC–17, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903-6190, e-mail: (jim.tavares@oer.doe.gov).

Dr. Robert Price, Division of Engineering, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–3565, e-mail: (bob.price@oer.doe.gov).

Dr. Nick Woodward, Division of Geosciences, SC–15, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–4061, e-mail: (nick.woodward@oer.doe.gov).

SUPPLEMENTARY INFORMATION: Much of the research supported by the BES program and its predecessor organizations during the past 50 years has been devoted to solving very difficult problems in idealized, simple systems. The challenge now is to use that knowledge to understand complex systems. This program will support work at the frontiers of basic research. Work is intended to be revolutionary rather than evolutionary, and it is expected that it may involve multidisciplinary and/or interdisciplinary efforts. Further it is expected to strengthen the basis for understanding complex and collective phenomena currently viewed from a single domain such as the atomic level (reductionist view) or continuum mechanics (classical view). The program is open to the entire range of disciplines supported by the BES program. Additional information on the BES Research Program is available at the following web site address: http://www.er.doe.gov/production/bes/bes.html.

Some important categories of studies that might be included within the initiative in Complex and Collective Phenomena are:

- Materials that are beyond binary; that lack stoichiometry; that are far from equilibrium; that have little or no symmetry or low dimensionality. Often desired properties and behaviors exist only in ''non-ideal compounds,'' i.e., those that are made from more than a few elements, made in non-stoichiometric combinations, made far from equilibrium; or made in one or two dimensions. As examples, high-temperature superconductors are complex compounds of four or more elements that are not stoichiometric with respect to oxygen; the glassy metal state, which has many desirable properties, has no long range order or symmetry; and many interesting and useful properties exist in atomic and molecular arrangements that have only one or two dimensions, such as is found in thin films, membranes, and quantum dots. These classes of materials, which will dominate the next generation of energy technologies, pose new challenges and opportunities because of their complexity.
- Functional synthesis. Although chemists routinely synthesize molecules to desired elemental composition and structure, the ability to predict structure/function relationships remains elusive. Because function can be exquisitely sensitive to even minor changes in both composition and structure and because the number of combinations is virtually boundless, we are unable to predict what combinations of elements and arrangements of atoms give rise to desired properties such as superconductivity, magnetism, ductility, toughness, strength, resistance, catalytic function, or enzymatic function.
- The control of entropy. To a scientist, entropy has a precise mathematical definition; however, to a nonscientist, entropy can be viewed as synonymous with disorder. A standard maxim in physics is that ''the entropy of the universe tends to increase,'' i.e., things become increasingly disordered with time. Interestingly, most of our energy now comes from fossil fuels that were derived from photosynthesis—the ability of plants to reduce entropy locally by absorbing sunlight and converting carbon dioxide to lower-entropy hydrocarbons, polysaccharides, and other compounds. However, even though photosynthesis has been studied for decades, we still do not completely understand it nor have we been able to duplicate or improve on it. This one example of the control of entropy—the ability to mimic the functions of plants—remains one of the outstanding challenges in the natural sciences.
- Phenomena beyond the independent particle approximation. Phenomena beyond the independent particle model—that by their nature are collective—challenge our understanding of the natural world and require major advances in theory, modeling, computing, and experiment. Collective phenomena include widely diverse phenomena in the gas and condensed phases, including Bose-Einstein condensation, high-temperature superconductivity, and electron correlation.
- Scaling in space and time. Research in chemistry, materials, engineering, geosciences, and biosciences covers lengths from the atomic scale to the cellular scale to the hundreds of kilometers scale and times from femtoseconds to millennia. We understand single atoms, molecules, and pure crystals fairly well; but, when we go beyond these simple systems to larger more complex systems, our understanding is limited. The relationships between constituent and collective properties and behavior of systems over a wide range of spatial scales, and their response to processes operating over a wide range of time scales, are not well understood. Improving our understanding of phenomena over wide time scales—from femtoseconds in spectroscopy to decades in the regulatory system of plants to thousands of years in radioactive waste disposal—and over spatial scales from atomic to geologic is important.

Program Funding

It is anticipated that an estimated $1.5 million will be available for grant awards during FY 1999, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its

current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

Preapplications

A brief preapplication may be submitted. The preapplication should identify, on the cover sheet, the institution, principal investigator name, address, telephone, fax and e-mail address, title of the project, and the field of scientific research. The preapplication should consist of no more than a three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Complex and Collective Phenomena initiative.

Preapplications are strongly encouraged but not required prior to submission of a formal application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued to DOE FFRDCs. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the grant face page, form DOE F 4650.2, block 15, provide the principal investigator's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on January 27, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–2540 Filed 2–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Golden Field Office; Hydrogen-Fuel-Cell Mining Vehicle

AGENCY: The Department of Energy (DOE).

ACTION: Notice of Supplemental Announcement (09) to the Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development, and Demonstration for Renewable Energy and Energy Efficiency Technologies, DE–PS36–99GO10383.

SUMMARY: The Hydrogen Program of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE–PS36–99GO10383, dated November 9, 1998. Under this Supplemental Announcement, DOE is seeking research and development (R&D) proposals that can advance the use of fuel cell technology in hydrogen-powered, mobile, underground mining equipment.

Awards under this Supplemental Announcement will be Cooperative Agreements for Phase I research with a term of up to 12 months. Subject to availability, the total DOE funding under this Supplemental Announcement will be about $160,000. It is anticipated that only one Phase I award will be made.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement on January 25, 1999. The closing date of the Supplemental Announcement is March 5, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on January 21, 1999.

Dated: January 23, 1999.

Ruth E. Adams,

Contracting Officer, Golden Field Office.

[FR Doc. 99–2539 Filed 2–2–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–363–000, ER99–374–000, ER99–423–000, ER99–424–000, ER99–425–000, ER99–426–000, ER99–427–000, ER99–428–000, ER99–429–000, ER99–430–000, ER99–431–000, ER99–432–000, ER99–433–000, ER99–434–000, ER99–435–000, ER99–447–000, ER99–448–000, ER99–796–000, and EL99–27–000]

Southern Company Services, Inc.; Notice of Initiation of Proceeding and Refund Effective Date

January 28, 1999.

Take notice that on January 27, 1999, the Commission issued an order in the above-indicated dockets initiating a proceeding in Docket No. EL99–27–000

under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL99–27–000 will be 60 days after publication of this notice in the **Federal Register**.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2485 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–122–000]

Williams Gas Pipelines Central, Inc.; Notice of Application

January 28, 1999.

Take notice that on December 17, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an abbreviated application pursuant to Section 7(b) and Section 7(c) of the Natural Gas Act, as amended, and Part 157 of the Commission's Regulations for an order to abandon by reclaim two 230 horsepower Ajax compressor units and appurtenant facilities at the South Welda Compressor Station located in Anderson County, Kansas, and replace them with a 353 horsepower Caterpillar unit, driving a Knight KOA three-stage compressor unit and appurtenant facilities. The new unit will be located in the same site but a different building, all as more fully set forth in the application on file with the Commission and open to public inspection.

The project cost is estimated to be approximately $257,414.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1999, 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 and 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 be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its 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 Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–2529 Filed 2–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6230–2]

Notice of Public Meetings

AGENCY: Environmental Protection Agency, Region III.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Environmental Protection Agency Region III Office will hold a series of six public meetings to obtain information from stakeholders regarding their use of and access to environmental information.

DATES: The 6 meetings will be held in late February and March, 1999. Specific dates and locations are listed under **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane McCreary, Region III Information Systems Branch, at (215) 814–5519 or email mccreary.diane@epa.gov.

SUPPLEMENTARY INFORMATION: EPA Region III will hold a series of 6 public meetings throughout the Region to define public environmental information needs. Each meeting will focus on the needs of a particular stakeholder group. Each group represents an information intermediary, i.e., the information affects or is transferred to a larger group such as customers, students, patients, etc. Results of the meetings will be used to improve the Region's response to the public's demand for environmental information. One possible improvement, for example, would be a revised Regional website. The public is invited to attend these meetings as observers and/or to provide comment during a public comment period at the end of each meeting. Requests to attend the meetings and/or provide oral comments at the meetings must be received at least 10 working days prior to the scheduled meetings. The times and addresses of the meetings can be obtained from the EPA contact person (listed above) two weeks prior to each meeting. As presently planned, the schedule for the public meetings is as follows:

Librarians	Charlottesville, VA	February 23, 1999.
Media	Pittsburgh, PA	March 4, 1999.
Pediatric Medical Practitioners	Pittsburgh, PA	March 4, 1999.
Environmental Educators	Frederick, MD	March 9, 1999.
Local Environmental Groups	Salisbury, MD	March 11, 1999.
Small Businesses	York, PA	March 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–2554 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–28–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30467; FRL–6054–7]

American Cyanamid Co.; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register the pesticide product Chlorfenapyr 25 WP Termiticide Insecticide, containing a new active ingredient not included in any previously registered product 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 March 5, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30467] File Symbol (241–GOO) 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, 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: Ann Sibold, Registration Division (7505C), 401 M St., SW., Washington, DC 20460. Office location/telephone number and e-mail address: Rm. 212, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–6502; e-mail: sibold.ann@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received an application from American Cyanamid Company, Agricultural Research Div., P.O. Box 400, Princeton, NJ 08543–0400, to register the pesticide product Chlorfenapyr 25 WP Termiticide/Insecticide (EPA file symbol 241–GOO), containing active ingredient chlorfenapyr 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1*H*-pyrrole-3-carbonitrile at 25.00%, an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Chlorfenapyr 25 WP is intended for use by Pest Management Professionals as a spot or crack and crevice spray for residual pest control of termite infestations in and around houses, apartments or other residential structures or commercial, institutional and warehousing establishments (such as schools, supermarkets, restaurants, and other areas). Notice of receipt of this application does not imply a decision by the Agency on the application.

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.

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–30467] (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–30467] 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: January 21, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–2201 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66263; FRL 6054–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by August 2, 1999, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act

further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 34 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000279 WA–95–0017	Furadan CR - 10	2,3-Dihydro-2,2-dimethyl-7-benzofuranyl methylcarbamate
000499–00409	TC 73 Weed Killer	Dimethylamine 2,4-dichlorophenoxyacetate Triethylammonium triclopyr
002393–00517	Diphacinone 110 S Concentrate Rodenticide	2-(Diphenylacetyl)-1,3-indandione
002393 AZ–88–0019	Ramik Green	2-(Diphenylacetyl)-1,3-indandione
010182–00020	Talon Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00021	Talon Rodenticide Bait Pack (mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00024	Talon Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00025	Talon-G Rodenticide Mini-Pellets In Mouse Box	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00026	Talon Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00038	Talon-G Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00039	Talon-G Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00040	Talon-G Rodenticide Bait Pack (Mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00041	Talon-G Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00048	Weatherblok Bait	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00060	Havoc Rodenticide Bait Pack (Mini-Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00061	Havoc Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00075	Havoc Rodenticide Mini-Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00076	Havoc Rodenticide Pellets	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00093	Havoc Rodenticide Bait Pack (Pellets)	3-(3-(4'-(Bromo-(1,1-biphenyl)-4-yl)-1,2,4,4-tetrahydro-1-naphthyl)-4-hydroxycoumarin
010182–00152	Eptam 6-E	*S*-Ethyl dipropylthiocarbamate
010182–00390	Flexstar Herbicide	5-(2-Chloro-4-(trifluoromethyl)phenoxy)-*N*-(methylsulfonyl)-2-nitrobenzamide, sodium
010182 LA–95–0015	Starfire Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 LA–96–0009	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 MS–95–0014	Gramoxone Super Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
041878–00002	M-100 Mosquito Repellent Solution	*N,N*-Diethyl-meta-toluamide and other isomers
042519–00013	Dorsan Insecticide	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
045639–00058	Ficam Insecticidal-Shelf + Drawer Paper	Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00140	Ficam Wasp & Hornet Spray	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)
045639–00152	Ficam Plus R/S	(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Bendiocarb (2,2-dimethyl-1,3-benzoldioxol-4-yl methylcarbamate)

TABLE 1—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
056473–00002	Amerstat 10	Methylenebis(thiocyanate)
065229 WA–90–0026	Vinco Formaldehyde Solution	Formaldehyde
071176–00001	Cyfly Technical	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
071176–00002	Cyfly 1% Premix	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
071240–00003	Zerepel 2	3-Iodo-2-propynyl butylcarbamate

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000279	FMC Corp., Agricultural Products Group, 1735 Market St., Philadelphia, PA 19103.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct Industrial Blvd, St Louis, MO 63122.
002393	HACO, Inc., Box 7190, Madison, WI 53707.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
041878	LJB Laboratories, 1001 E Cass, St Johns, MI 48879.
042519	Luxembourg-Pamol, Inc., 5100 Poplar Ave., Suite 2746, Memphis, TN 38137.
045639	Agrevo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
056473	Drew Ameroid Marine Division, Ashland Chemical, Division of Ashland Inn, One Drew Plaza, Boonton, NJ 07005.
065229	John G. Gardner, Dba/West Shore Acres, 956 Downey Rd., Mount Vernon, WA 98273.
071176	Blue Ridge Pharmaceuticals Inc., 212 B Burgess Rd., Greensboro, NC 27409.
071240	William Zinsser & Co., Inc., 173 Belmont Drive, Somerset, NJ 08873.

III. Procedures for Withdrawal of Requests

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before August 2, 1999. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** June 26, 1991, (56 FR 29362) (FRL 3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: January 25, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–2552 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–851; FRL–6052–1]

Notice of Filing; Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain

pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–851, must be received on or before March 5, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 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: Marshall Swindell, Antimicrobial Division (7510C), 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 Highway, Arlington, VA 22202, (703) 308–6411; e-mail:swindell.marshall @epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–851] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF–851) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 13, 1999.

Frank Sanders,

Director, Antimicrobial Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Ecolab Inc.

9F5038

EPA has received a pesticide petition (9F5038) from Ecolab Inc., 370 Wabasha Street N., St. Paul, MN 55102, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the residues of hydrogen peroxide in or on all foods when the residues are the result of the lawful application of a food contact surface sanitizer containing hydrogen peroxide up to 1,100 ppm as a sanitizing solution in food handling establishments.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Ecolab Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Ecolab Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The request is to exempt from the requirement of a tolerance, residues of hydrogen peroxide in or on all food when such residues result from the lawful use of hydrogen peroxide as a component in a food contact surface sanitizer.

The residues which do remain are not of toxicological significance.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Residues of hydrogen peroxide are not expected because hydrogen peroxide reacts immediately on contact with materials such as food, reducing agents and catalysts and is degraded to moieties which present no toxicological concern (Reregistration Eligibility Decision, Peroxy Compounds, U.S. EPA. EPA 738-R-93-030, the ''1993 RED''). The ultimate degradation products of hydrogen peroxide are water and oxygen (1993 RED). The degradation products of hydrogen peroxide are not of toxicological concern.

2. *Magnitude of residue and method used to determine the hydrogen peroxide residue.* Not applicable.

3. *A statement of why an analytical method for detecting and measuring the hydrogen peroxide levels of the pesticide residue are not needed.* Because this petition is a request for an exemption and residues are not expected on food from use of hydrogen peroxide as a component of a food

contact surface sanitizer on food contact surfaces.

C. Mammalian Toxicological Profile

Based on the current body of toxicological literature available, adverse effects are not expected when used in the proposed manner.

D. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. There are no established U.S. food tolerances for hydrogen peroxide. The U.S. EPA established an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide hydrogen peroxide, in or on raw agricultural commodities, in processed commodities, when such residues result from the lawful use of hydrogen peroxide as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grains, herbs, and spices up to 120 ppm. According to the 1993 RED, hydrogen peroxide is used in dairy/cheese processing plants, on food-processing equipment and in pasteurizers in breweries, wineries and beverage plants. While some contact may occur between treated equipment and food, no residues are expected since only trace amounts would come in contact with food having contacted treated equipment and the compound degrades rapidly in air and in contact with organic materials to oxygen and water. In addition, hydrogen peroxide may be safely used on food-processing equipment, utensils, and other food-contact articles according to the Food and Drug Administration (FDA) (21 CFR 178.1010, Sanitizing Solutions).

Dietary exposure from these uses is possible; however, hydrogen peroxide reacts instantly upon contact with materials such as food and degrades to moieties which present no toxicological concern. The addition to dietary aggregate exposure of hydrogen peroxide as described in this petition is expected to be zero.

ii. *Drinking water*. There is no concern about the potential for transfer of hydrogen peroxide residues (both the parent compound and any degradates) to human drinking water because the use sites for hydrogen peroxide listed in the 1993 RED include indoor food, indoor non-food, indoor medical, and indoor residential. Hydrogen peroxide is approved for use as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. It is unlikely that residues from these uses or the proposed use will transfer hydrogen peroxide residues (both the parent and any degradates) to any sources of human drinking water. In addition, the degradation products of hydrogen peroxide in aqueous solutions are water and oxygen. These degradation products are not of toxicological concern.

Because of the physical chemistry of this pesticide, it is unlikely that any States are conducting water monitoring programs for hydrogen peroxide.

iii. *Non-dietary exposure*. The estimated non-occupational exposure to hydrogen peroxide has been evaluated based on its proposed use pattern.

According to the 1993 RED, the compound, in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

Hydrogen peroxide use in homes is medicinal and exposures are expected to be infrequent and at extremely short duration as a topical antimicrobial agent or a mouthwash.

Hydrogen peroxide is highly reactive and short-lived because of the inherent instability of the peroxide bond (O-O bond) and, because the peroxide bond is weak, transformation to water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of hydrogen peroxide in aqueous solutions are water and oxygen. The degradation products of hydrogen peroxide are not of toxicological concern.

The potential for significant non-occupational exposure under the use proposed in this petition to the general population (including infants and children) is unlikely. Hydrogen peroxide is proposed in this petition to be used only at commercial establishments (including farms) and is not to be used in or around the home.

E. Cumulative Exposure

When used as proposed, hydrogen peroxide decomposes quickly; there is no reasonable expectation that residues of these compounds will remain in human food items in accordance with 40 CFR 180.3. The mode of action of this pesticide is oxidation. Other chemicals that may share a similar mode of action are peroxyacetic acid and potassium peroxymonosulfate sulfate as listed in the 1993 RED. Combining exposures to these compounds could be appropriate; however, each degrades rapidly (due to the peroxy bond, the O-O bond) into compounds that are not toxicologically significant (including water, oxygen, and carbon dioxide).

F. Safety Determination

1. *U.S. population*. Hydrogen peroxide naturally degrades to water and oxygen which would not pose a health risk to the U.S. general population. These degradation products are not of toxicological concern.

2. *Infants and children*. Hydrogen peroxide naturally degrades to water and oxygen which would not pose a health risk to the U.S. population subgroup of infants and children. These degradation products are not of toxicological concern. Residues are not expected on food from use of hydrogen peroxide as a component of a food contact surface sanitizer on food contact surfaces. The residues do not bioaccumulate in livestock and/or poultry that consume treated feedstuffs because hydrogen peroxide is highly reactive and short-lived due to the inherent instability of the peroxide bond (O-O bond). Because the peroxide bond is weak, transformation to water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of hydrogen peroxide are water and oxygen. Therefore, exposure of the pesticide chemical (from the use proposed in this petition) to the U.S. general population should not occur.

G. Effects on the Immune and Endocrine Systems

Hydrogen peroxide is not structurally similar to any known chemical capable of producing adverse effect on the endocrine system.

H. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels (MRLs) for hydrogen peroxide.

2. Ecolab Inc.

PP 9F5039

EPA has received a pesticide petition (9F5039) from Ecolab Inc., 370 Wabasha Street, N., St. Paul, MN 55102, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the residues of peroxyacetic acid in or on all foods when the residues are the results of the lawful application of a foods contact surface sanitizer containing peroxyacetic acid up to 500 ppm as a sanitizing solution in food handling establishments.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Ecolab Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by Ecolab Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the

summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

A. Product Name and Proposed Use Practices

The request is to exempt from the requirement of a tolerance, residues of peroxyacetic acid in or on all food when such residues result from the lawful use of peroxyacetic acid as a component in a food contact surface sanitizer.

The residues which do remain are not of toxicological significance.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Residues of peroxyacetic acid are not expected on food because peroxyacetic acid reacts immediately on contact with materials such as food, reducing agents and catalysts and is degraded to moieties which present no toxicological concern (Reregistration Eligibility Decision, Peroxy Compounds, U.S. EPA. EPA 738-R-93-030). The ultimate degradation products of peroxyacetic acid are acetic acid (which is generally regarded as safe in food up 0.15 %, 21 CFR 184.1,005), water and oxygen. The degradation products of peroxyacetic acid are not of toxicological concern.

2. *Magnitude of residue and method used to determine the peroxyacetic acid residue.* Not Applicable.

3. *A statement of why an analytical method for detecting and measuring the peroxyacetic acid levels of the pesticide residue are not needed.* Because this petition is a request for an exemption and residues are not expected on food from use of peroxyacetic acid as a component of a food contact surface sanitizer on food contact surfaces.

C. Mammalian Toxicological Profile

Based on the current body of toxicological literature available, adverse effects are not expected when used in the proposed manner.

D. Aggregate Exposure

Dietary exposure—i. Food. There are no established U.S. food tolerances for peroxyacetic acid. The U.S. EPA established an exemption from the requirement of a tolerance for residues of the antimicrobial pesticide peroxyacetic acid, in or on raw agricultural commodities, in processed commodities, when such residues result from the lawful use of peroxyacetic acid as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grains, herbs, and spices up to 100 ppm. According to the 1993 RED, peroxyacetic acid is used in dairy/cheese processing plants, on food-processing equipment and in pasteurizers in breweries, wineries and beverage plants. While some contact may occur between treated equipment and food, no residues are expected since only trace amounts would come in contact with food having contacted treated equipment and the compound degrades rapidly in air and in contact with organic materials to acetic acid (which is generally regarded as safe in food up 0.15 %, see 21 CFR 184.1005), oxygen and water. In addition, peroxyacetic acid may be safely used on food-processing equipment, utensils, and other food-contact articles according to the Food and Drug Administration (FDA) (21 CFR 178.1010, Sanitizing Solutions).

Dietary exposure from these uses is possible; however, peroxyacetic acid reacts immediately upon contact with materials such as food and degrades to moieties which present no toxicological concern. The addition to dietary aggregate exposure of peroxyacetic acid as described in this petition is expected to be zero.

ii. *Drinking water.* There is no concern about the potential for transfer of peroxyacetic acid residues (both the parent compound any degradates) to human drinking water because the use sites for peroxyacetic acid listed in the 1993 RED include indoor food, indoor non-food, indoor medical,and indoor residential. Peroxyacetic acid is approved for use as an antimicrobial agent on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. It is essentially impossible that residues from these uses or the proposed use will transfer peroxyacetic acid residues (both the parent and any degradates) to any sources of human drinking water. In addition, the degradation products of peroxyacetic acid in aqueous solutions are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. These degradation products are not of toxicological concern.

Because of the physical chemistry of this pesticide, it is unlikely that any States are conducting water monitoring programs for peroxyacetic acid.

iii. *Non-dietary exposure.* The estimated non-occupational exposure to peroxyacetic acid has been evaluated based on its proposed use pattern.

According to the 1993 RED, the compound, in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

Peroxyacetic acid is highly reactive and short-lived because of the inherent instability of the peroxide bond (O-O bond) and, because the peroxide bond is weak, transformation to acetic acid, water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of peroxyacetic acid in aqueous solutions are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. The degradation products of peroxyacetic acid are not of toxicological concern.

The potential for any non-occupational exposure under the use proposed in this petition to the general population (including children) is unlikely. Peroxyacetic acid is proposed in this petition to be used only at commercial establishments (including farms) and is not proposed for use in or around the home.

E. Cumulative Exposure

When used as proposed, peroxyacetic acid decomposes quickly; there is no reasonable expectation that residues of these compounds will remain in human food items in accordance with 40 CFR 180.3. The mode of action of this pesticide is oxidation. Other chemicals that may share a similar mode of action are peroxyacetic acid and potassium peroxymonosulfate sulfate as listed in the 1993 RED. Combining exposures to these compounds could be appropriate; however, each degrades rapidly (due to the peroxy bond, the O-O bond) into compounds that are not toxicologically significant (including water, oxygen, and carbon dioxide).

F. Safety Determination

1. *U.S. population.* Peroxyacetic acid naturally degrades to acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen which would not pose a health risk to the U.S. general population. These degradation products are not of toxicological concern.

2. *Infants and children.* Peroxyacetic acid naturally degrades to acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen which would not pose a health risk to the U.S. population subgroup of infants and children. These degradation products are not of toxicological concern. Residues of peroxyacetic acid are not expected on food from use of peroxyacetic acid as a component of a food contact surface sanitizer on food contact surfaces. The residues do not bioaccumulate in livestock and/or poultry that consume treated feedstuffs because peroxyacetic acid is highly reactive and short-lived due to the inherent instability of the peroxide bond (O-O bond). Because the

peroxide bond is weak, transformation to acetic acid, water and oxygen is very highly favored thermodynamically (1993 RED). The degradation products of peroxyacetic acid are acetic acid (which is generally regarded as safe in food up 0.15%, see 21 CFR 184.1005), water and oxygen. Therefore, exposure of the pesticide chemical (from the use proposed in this petition) to the U.S. general population should not occur.

G. Effects on the Immune and Endocrine Systems

Peroxyacetic acid is not structurally similar to any known chemical capable of producing adverse effect on the endocrine system.

H. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels (MRL) for peroxyacetic acid.

[FR Doc. 99–2553 Filed 2–2–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6228–7]

Response to Recommendations from the Children's Health Protection Advisory Committee Regarding Evaluation of Existing Environmental Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA asked the federal Children's Health Protection Advisory Committee (CHPAC) to recommend five existing standards that may merit reevaluation in order to further protect children's environmental health. This document includes EPA's response to the CHPAC recommendations. EPA will reevaluate the chloralkali National Emission Standard for Hazardous Air Pollutants (mercury); the implementation and enforcement of the (Farm) Worker Protection Standards; pesticide tolerances for organophosphates (chlorpyrifos, dimethoate, methyl parathion); atrazine pesticide tolerances and Maximum Contaminant Level in drinking water; and will review indoor and ambient air quality as they relate to asthma. EPA's decision to reevaluate is based in large part on recommendations from the Children's Health Protection Advisory Committee and public comments in response to a **Federal Register** document of October 3, 1997.

In September 1996, EPA issued a report on Environmental Health Threats to Children (EPA 175–F–96–001) that described how and why children are affected by an array of complex environmental threats to their health. The report included a National Agenda to Protect Children's Health from Environmental Threats in which EPA called for a national commitment to ensure a healthy future for our children. We called on national, state and local policy makers—as well as each community and family—to learn about the environmental threats our children face; to participate in an informed national policy debate on how together we can best reduce health risks for children; and to take action to protect our Nations's future by protecting our children.

The first element of the National Agenda committed the Administration to ''. . . ensure, as a matter of national policy, that all standards EPA sets are protective enough to address the potentially heightened risks faced by children—so as to prevent environmental health threats wherever possible—and that the most significant current standards be reevaluated as we learn more.'' We further state that '' . . . EPA will select—with public input and scientific peer review—five of its most significant public health and environmental standards to reissue on an expedited basis under this new policy.''

Background

In order to meet our commitment to public input, EPA sought advice through two channels: formal notice and comment, and the formation of a Federal Advisory Committee composed of individuals representing diverse viewpoints. On October 3, 1997, EPA issued a document and request for comments from the public as to existing EPA standards that, if revised as a result of review and evaluation, would strengthen and increase children's environmental health protection. EPA received comments from 18 individuals and organizations. (Attachment A to this document includes the list of submitters, a summary of the comments, and EPA's response to the public comments.) Further, on September 9, 1997, EPA issued a document in the **Federal Register** that it had established a Children's Health Protection Advisory Committee (CHPAC) under the Federal Advisory Committee Act, Public Law 92–463, to advise the Administrator on various issues of children's environmental health protection.

One of the first actions undertaken by the CHPAC, at the request of EPA, was to develop a set of recommendations to the Administrator concerning which existing rules EPA should reevaluate. They started by reviewing the public comments that were submitted in response to the October 3, 1997, **Federal Register** document. Based on extensive deliberations the CHPAC submitted their recommendations in a consensus report dated May 28, 1998. (See Attachment B for the selection criteria used by the CHPAC in their deliberations.) The following section lists the CHPAC recommendations, excerpts the discussion that accompanied the recommendations in the report (in italics), and outlines EPA's response.

We congratulate the Children's Health Protection Advisory Committee for their success in deliberating and recommending actions to improve EPA's regulations. We believe that EPA's response to these recommendations advances our goal to better protect our Nation's children.

FOR FURTHER INFORMATION CONTACT: If you have a need for further information you may write to Meg Kelly, Office of Children's Health Protection, USEPA (MS1107), 401 M Street, SW, Washington, D.C. 20460; (kelly.margaret@epa.gov).

SUPPLEMENTARY INFORMATION:

CHPAC Recommendation: Reevaluate the National Emission Standard for Hazardous Air Pollutants (NESHAP) for Chloralkali Plants

CHPAC Report Discussion: ''The CHPAC recommends that EPA take a holistic approach to evaluate all sources of mercury emissions. Mercury is a relevant issue to more than one media (air, water), which contributes to its entry into the environment, for example, by electricity (coal-burning) generation, incineration and discharge into water sources. Human exposure occurs primarily through fish consumption. Mercury exposure is associated with adverse health effects in humans. Depending on dose, the effects can range from severe to less severe, most notably, neurological, developmental, and reproductive effects.

By the end of 1998, EPA is scheduled to complete a multimedia strategy addressing mercury. We support EPA's multimedia approach and schedule for the issuance of this strategy.

We encourage EPA to proceed diligently with implementation to protect children from mercury emissions, including those from municipal, medical, and hazardous waste combustion.

Although the CHPAC selected the National Emission Standard for

Hazardous Air Pollutants (NESHAP) for chloralkali plants for reevaluation, EPA resources should not be diverted from the evaluation of other larger sources of mercury emission. Important criteria for its selection are that the standard has not been re-evaluated or revised since its promulgation in 1973, children's health was not considered in the original development of the standard, and new information and data based on peer reviewed science suggest that risks to children and the persistent and bioaccumulative nature of mercury were not considered during the setting of the standard.

The CHPAC recognizes the Water Quality Criteria Standard as one means by which the EPA can regulate the prevention of contaminated fish by mercury and ensure children's protection from hazardous levels of mercury. The CHPAC recommends that EPA address the largest sources of mercury emissions expeditiously and prevent further contamination of fish by revising the Water Quality Criteria Standard. Studies have shown that once mercury enters water, either directly or through air deposition, it can bioaccumulate in fish and animal tissue at the top of the food chain in concentrations much greater than those found in water.

Another specific concern is the emission of mercury from electric (coal-burning) utility boilers (regulatory determination by the EPA is due in November 1998). Important criteria for its selection are that there is currently no regulation of hazardous air pollutant emissions, such as mercury, from electric utility boilers, and electric utility boilers are the largest contributor of overall anthropogenic sources of mercury emissions in the United States (EPA Mercury Report to Congress 1997).''

EPA's Response: EPA agrees with the CHPAC recommendation that the NESHAP for chloralkali plants be revisited and has begun a process to revise this standard. A proposed rule will include emissions limits based on control technology and on management practices. EPA projects a proposal date of November 1999, and expects to issue a final standard in November 2000. In order to ensure protection of children, the Office of Air and Radiation (OAR) will analyze the risk from chloralkali plants to support the rule making—an unusual step for a technology-based standard. However, OAR believes the risk assessment will provide us with information on potential children's risks that is important to determining the appropriate level of the standard. Results of the risk analysis may be used to justify setting a standard more stringent than the maximum achievable control technology (MACT) floor, but any standard set will be no less stringent than the floor.

Discussion: On November 16, 1998, EPA issued a draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic Pollutants (http://www.EPA.gov/pbt/strategy.htm). This strategy includes a multifaceted draft Action Plan for Mercury. EPA believes that this action plan addresses the concerns expressed by the CHPAC in their report. It recognizes the multimedia threat posed by methyl mercury—the compound to which mercury is transformed through natural environmental processes—and the need to control human exposure to methyl mercury, through multiple concerted approaches targeted at air, water, sediment and land. Further, EPA is proposing additional reporting of mercury releases under the Toxic Release Inventory to improve citizens' right to know about releases in their environment.

EPA has taken several important steps to reduce the levels of mercury, including reducing emissions from municipal waste combustors and medical waste incinerators. These combined actions, once fully implemented (December 2000 for municipal waste combustors; September 2002 for medical waste incinerators) will reduce mercury emissions caused by human activities by 50% from 1990 levels. EPA also entered into a partnership with the American Hospital Association whose goal is to virtually eliminate hospital mercury waste by the year 2005.

Further, final regulations for hazardous waste combustion facilities (incinerators, cement kilns, lightweight aggregate kilns) are expected to be promulgated in February 1999. The EPA is responding to extensive public comment including new emissions data and comments on the methodology used to estimate mercury emissions from these facilities. The final rule is expected to achieve a substantial overall reduction in mercury emissions from these hazardous waste combustion facilities.

The CHPAC highlighted their concern that EPA resources not be diverted from the evaluation of other larger sources of mercury emission. EPA assures the CHPAC that the Mercury Action Plan addresses all known important sources of mercury. For example, EPA is also developing regulations to limit emissions of hazardous air pollutants, including mercury, from five additional source categories—industrial, commercial, other nonhazardous solid waste combustors, gas turbines, and stationary internal combustion engines. Proposed regulations are due by the end of the year 2000. In addition, EPA will consider the impacts to children's health along with many other factors (e.g., controllability and costs) as part of the regulatory determination for coal-fired electric utility power plants.

EPA agrees with the CHPAC that we should revise water quality criteria that are used by states and tribes to establish enforceable water quality standards. EPA's Office of Water (OW) is accelerating development of a revised water quality human health criterion for mercury which will reflect two major departures from past approaches:

- A revised human health methodology will provide for use of bioaccumulation factors to estimate the build up of mercury in fish-tissue rather than using bioconcentration factors. This means that water quality criteria will now be based on biomagnification in the food chain. An improved means to estimate fish consumption is also included. A draft revised Water Quality Criteria Methodology for Human Health was published in August 1998. Although not regulations, these criteria do propose fish intake and body weights that more accurately reflect actual characteristics of women of childbearing age and children. OW is taking public comment on the proposal. A final human health criteria methodology is projected to be available by the end of 1999.
- An updated human health risk assessment will result from an interagency review of recent human data on methyl mercury. This review will concentrate on levels of exposure to mercury associated with subtle neurological endpoints and is aimed at achieving consensus among Federal agencies on estimates of human risk. A workshop was conducted in November 1998. In addition, Congress required, in the report that accompanied EPA's 1999 appropriation, a 18-month National Academy of Sciences study and recommendation on the reference dose for methyl mercury. This study will begin in January 1999. A peer review of application of the new methodology to methyl mercury is projected for completion by mid 2000.

Finally, the CHPAC report indicated concerns about emissions of mercury from electric (coal-burning) utility boilers. In order to support a regulatory determination (now required by December 15, 2000) and potential future regulatory action, EPA will gather high quality emissions data about coal-fired electric generating plants to address

current uncertainties about mercury emissions. To accomplish this, we are requiring all coal-fired power plants above 25 megawatts (MW) to provide the results of analysis to determine the mercury content of the coal they are burning. In addition, a sample of plants will be required to perform stack testing for quantity and species of mercury emissions. The information obtained from this effort will allow EPA to calculate the amount and species of mercury emitted by each coal-fired plant above 25 MW. This information will be available to the public.

CHPAC Recommendation: Reevaluate the (Farm) Worker Protection Standards

CHPAC Report Discussion: ''Children may be exposed to pesticides through employment in farm work, by eating fruits and vegetables directly from the fields while at work, or by drift from field applications to neighboring residential areas and schools. Pregnant and lactating women who work in farm fields or reside in neighboring areas can also expose fetuses and neonates to pesticides. The current (farm) worker protection standard has not considered these pesticide exposures to children. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA has the authority to regulate these childhood and prenatal exposures to pesticides through the worker protection standard including labeling, reentry intervals, personal protective equipment, worker education and training, and posting and signs.

The CHPAC recommends that EPA expeditiously re-evaluate the worker protection standard in order to determine whether it adequately protects children's health. In its reevaluation, EPA should, for example, consider using standardized data on size and age-specific weight and height for modeling children's exposure when more specific data on children's exposure to individual pesticides may be lacking.''

EPA's Response: EPA agrees with CHPAC that improvements are needed in its regulatory efforts to protect the health of children in agricultural areas. Because the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) gives EPA broader authority than identified by CHPAC, however, EPA intends to carry out a more comprehensive set of initiatives than recommended by CHPAC. Specifically, EPA is working, or planning work, in the following areas: consistency and effectiveness in state implementation and enforcement of the Worker Protection Standards (WPS); application of available regulatory tools; verification of national compliance; determination whether the regulation is meeting its goal; education of farmers, workers, and state regulators; reassessment of the scope, quality, and medium of safety training; and educating the medical community. In particular, we agree that we need to better address the safety needs of women and children as agricultural workers. The following discussion outlines steps that EPA is prepared to take to improve the health of farm worker children in response to the specific CHPAC recommendations.

EPA is committed to conduct an internal review of the process used to establish entry intervals for pesticides in order to affirm that the process adequately factors in the special needs of children and women employed as farm workers. The review will be conducted in 1999. However, it is not EPA's plan to repropose the Worker Protection Standard (WPS) because we believe implementation and enforcement of the standard can be improved to protect the health of children who work in agriculture without a regulatory change.

EPA's Office of Pesticide Programs is in the process of revising its exposure assessment Standard Operating Procedures. We anticipate the result will be to account for and better characterize pesticide exposure scenarios involving spray drift and other residential exposures that may occur from pesticide use in nearby agricultural areas or from agricultural workers who may carry pesticide residues into the home.

On a broader level, EPA is proposing a national assessment of implementation and enforcement of the WPS. The assessment will include the establishment of a worker protection assessment group composed of EPA, the U.S. Department of Agriculture (USDA), the Department of Labor (DOL), the Department of Health and Human Services (DHHS), state regulators, state extension service safety educators, farm worker advocacy groups, farm worker service/training associations, agricultural employer associations, farm worker clinicians' networks, and others to provide national direction to state programs. The goals of the group will be to:

- Assess the current program status;
- Generate a consortium of interests that can effect change in the programs;
- Provide a means to foster the partnerships essential to make the program work;
- And most important, to provide a continuing forum to focus and resolve worker protection issues.

The worker protection assessment group will be established and begin work in 1999. It will develop a strategic plan for the national worker protection program and issue annual reports detailing accomplishments and progress toward achieving its goals.

Discussion: EPA will also collect actual data on pesticide exposures by co-funding and providing consultation to the National Institute for Occupational Safety and Health (NIOSH) for pesticide case reporting projects (surveillance systems) in five states: California, New York, Texas, Oregon and Florida. The surveillance systems, located in the state health department, include the collection of reports on human incidents of pesticide intoxication, review of trends in disease over time and the response to outbreaks of disease. There is emphasis placed on outreach and training to involved groups within the community (industry/farmers, workers, community residents, health care providers and local government). Whenever possible, information is obtained on take-home exposures to children as well as evaluation of child or adolescent farm work. It is anticipated that preliminary data on the first year of pesticide case reports for these five states will be available in late 1999.

In April 1998, EPA held a workshop to initiate a multi agency effort to create a national plan for increasing training and awareness among health care providers of pesticide-related health conditions (''Pesticides and National Strategies for Health Care Providers''). This initiative is led by EPA in partnership with the DOL, HHS and USDA. Workshop proceedings have been distributed and working groups are developing implementation strategies. A national meeting is anticipated in late 1999 to provide a forum for public discussion of the final recommendations.

EPA will also continue its role in providing coordination and expertise to the following important activities targeted at children who work in agriculture:

- EPA initiated a study of pesticide exposure among children living along the US-Mexico border as part of the Border XXI environmental health project. Currently, the study design is being developed. EPA staff will provide medical consultation to the research team.
- In 1998, the first federally-funded research centers dedicated solely to studying children's environmental health hazards were selected. The joint EPA/HHS funding created eight ''Centers of Excellence in Children's

Environmental Health Research.'' Two of these centers involve farm worker children: The University of California at Berkeley will evaluate pesticide exposures and related growth / developmental status in the Salinas area, and the University of Washington will study the health of children living in the farm worker community in Yakima Valley.

- EPA contributed funds and had representation on the planning committee for the Pediatric Environmental Health Conference to be held in San Francisco in September 1999. The conference will focus on pediatric environmental health and will target health care providers as well as the trainers/professors of health care providers. Sections of the conference will deal with pesticides and children's health.

CHPAC Recommendation: Reevaluate the Atrazine Drinking Water Maximum Contaminant Level (MCL) and the Atrazine Pesticide Tolerance

Contaminant Level (MCL) and the Atrazine Pesticide Tolerance

CHPAC Report Discussion: ''Atrazine is a herbicide that belongs to the triazine class. Atrazine has been linked to adverse health effects including cancer and birth defects. Atrazine has been detected in drinking water throughout the Midwest and other parts of the nation. When EPA established the tolerance and 1991 drinking water standards for atrazine, children's differential exposure was not considered and children's differential susceptibility was not fully evaluated. New information has since become available to the EPA concerning the mechanism of action underlying its carcinogenic effect. Hormonal effects were further investigated and triggered the need for the reevaluation of both the carcinogenic effects of this compound as well as the developmental and reproduction studies. Reviewing the tolerances and the established drinking water standard in concert will provide EPA with an opportunity to evaluate a chemical's impact on children's health via aggregate routes of exposure. Reconsideration of the tolerances and drinking water standard for atrazine should be given top priority in EPA's implementation of the Safe Drinking Water Act and the Food Quality Protection Act.''

EPA's Response: The preliminary risk assessment for atrazine will be prepared by December 1999 and published as part of a Reregistration Eligibility Document by June 2000. The public will have 60 days to comment on the Atrazine findings following publication of this document.

The drinking water standard will be based on the new risk assessment conducted by the pesticide office. Reevaluation of the atrazine Maximum Contaminant Level (MCL) should be complete approximately 18 months after the risk assessment is completed.

Discussion: The triazine pesticides are in the first tier of pesticides that EPA is re-evaluating in order to comply with the requirements of the Food Quality Protection Act. Scientific questions regarding the health effects of the triazine pesticides should be resolved by September 2000. EPA's Science Advisory Board (SAB) and Science Advisory Panel (SAP) will be examining key issues related to the risk assessment, including cancer mechanism, in the fall of 1999. Once EPA receives comment from the SAB/SAP, the Agency will complete a comprehensive review of the risks and benefits of the use of atrazine, including the following assessments:

- Evaluate the concentrations of the pesticide in water and assess risk in drinking water for infants, children, and adults;
- Assess dietary risk from ingestion in adult and children's diet;
- Determine requirements for use of personal protective equipment, re-entry time, and application method, including an evaluation of children workers and re-entry intervals;
- Assess ecological risk; and
- Consider economic factors and alternative pesticides during the analysis of benefits.

CHPAC Recommendation: Reevaluate Pesticide Tolerances for Methyl Parathion, Dimethoate, and Chlorpyrifos

CHPAC Report Discussion: ''EPA scientific panels have found that organophosphate and carbamate insecticides disrupt the central nervous system via a cholinesterase inhibition mechanism of toxicity. Because children's central nervous systems continue to develop until puberty, they are particularly vulnerable to the effects of some neurotoxins. Children can be exposed to these insecticides through food, homes, schools, employment, and other sources.

Data indicate that children's patterns of dietary intake are distinct from adults' patterns. When EPA established the tolerances for these insecticides, children's differential exposure was not considered and children's differential susceptibility was not fully evaluated. Of the 39 pesticides registered for use on food, thirteen are detected in food according to FDA and USDA pesticide residue data. Five of these account for 90 percent of the dietary risk of neurotoxicity and three (methyl parathion, dimethoate, and chlorpyrifos) represent the bulk of that risk. Reconsideration of the tolerances for these three pesticides should be given top priority in terms of data collection and other necessary steps in EPA's implementation of the Food Quality Protection Act.''

EPA's Response: The preliminary risk assessment for dimethoate was released for a 60-day public comment period on September 9, 1998. The next steps in the process for this pesticide include analyzing the comments received; deciding whether to revise the risk assessment based on the comments; and proposing risk mitigation measures to address any concerns, including dietary, worker, and ecological, identified in the risk assessment. By the end of January 1999, EPA will issue a revised risk assessment and any proposed risk mitigation measures for 60 days of public comment.

The preliminary risk assessment for methyl parathion has been completed, reviewed by the registrant for errors, and is now available for public comment. The public will have 60 days to comment on the risk assessment. Following public review, the assessment for methyl parathion will follow the same process as dimethoate.

The preliminary draft risk assessment for chlorpyrifos is being worked on and is expected to be completed in Spring 1999. Following completion, it will proceed in the same way as dimethoate and methyl parathion.

Discussion: Organophosphates are in the first tier of pesticides that EPA is re-evaluating in order to comply with the requirements of the Food Quality Protection Act. EPA is presently working on a methodology to assess cumulative risks posed by the organophosphate pesticides as a group, and will explicitly include data on children's risk in the risk assessments. We expect to propose such a methodology in the summer of 1999 for a 60-day public comment period. Moreover, EPA is following a process recommended by the federal Tolerance Reassessment Advisory Committee to increase the transparency of EPA's risk assessments and decisions, and allow the public to participate in the process.

CHPAC Recommendation: Review the following areas as they relate to Asthma:

- Indoor Air Quality
- Ambient Air Quality Standards (Particulate Matter, Sulfur Dioxide)

CHPAC Report Discussion: ''The CHPAC recognizes the high priority in addressing childhood asthma and the need to better understand and respond to the relationship of asthma prevalence and exacerbation to indoor and ambient air quality. It also recognizes that indoor air quality, which can significantly aggravate and may contribute to the development of childhood asthma, demands timely scientific study and action. Definitive progress in these areas using a sound scientific approach will result in a significantly improved health outcome for all children. EPA's Science Advisory Board and the Presidential/ Congressional Commission on Risk Assessment and Risk Management have also identified indoor air pollution as a high human health risk warranting additional attention.

Selecting a broad area rather than a single standard was a purposeful decision by the CHPAC designed to encourage a comprehensive examination of all aspects of air quality. The CHPAC strongly desired to address asthma. The CHPAC encourages a holistic review of outdoor and indoor air quality and strongly feels that this is a more useful recommendation than the identification of a specific standard. Examples include evaluating the effectiveness of existing EPA guidance on indoor air quality relating to asthma and additional emphasis on protecting the health of children with asthma in development of PM monitoring and research programs.

By including this broad category, the CHPAC is hopeful that EPA will take a leadership role by providing impetus for action with regard to indoor air (including environmental tobacco smoke (ETS), pesticides, biological contaminants, and volatile organic chemicals) through a coordinated strategy with other federal agencies. The CHPAC recommends that EPA continue to support sound research programs on concentrations and exposure assessments of ambient air pollutants on asthma, such as PM, and to obtain timely exposure data for risk assessments in areas such as the short-term SO_2 standard.

The CHPAC recognizes that much of the value of the regulatory re-evaluation effort is identification of process improvements that can be applied to future risk assessment and rulemaking efforts. The CHPAC further recognizes that a disciplined approach in the area of air quality can have high learning value, given the breadth and diversity of the issues and the potential to promote multi-agency coordination and cooperation.''

EPA's Response: EPA strongly agrees with the CHPAC's recommendation that EPA undertake a fully integrated effort to address both indoor and outdoor pollution factors that contribute to childhood asthma. As CHPAC is aware, asthma rates in the U.S. have been increasing at an alarming rate and particularly troubling is the fact that asthma has increased 160% in children less than five years of age since 1980. Approximately 5.5 million children now suffer from asthma; 150,000 are hospitalized each year; and asthma is the leading cause of school absenteeism due to chronic illness.

Efforts to integrate and expand the Agency's commitment to addressing the multifaceted asthma issue are being addressed under the President's Task Force on Children's Environmental Health Risks and Safety Risks. The Task Force has identified asthma as one of four Priority Areas to receive special emphasis. EPA, along with the Department of Health and Human Services and other Federal Agencies, is developing a comprehensive cross-government action plan to address asthma. The action plan will identify the research and surveillance activities needed to understand the causes of childhood asthma and the scope of the problem as well as identify the public health practice and outreach needs and opportunities to begin to turn the tide on childhood asthma rates. Experts on asthma-related and environmental issues from EPA, the Department of Health and Human Services, and the Department of Housing and Urban Development are collaborating in this effort.

The action plan calls for substantially increased emphasis on asthma research, asthma surveillance activities, and increased implementation of public health programs to reduce childhood asthma by reducing environmental asthma triggers. The action plan places significant emphasis on reducing the disproportionate burden of asthma on minorities and children living in poverty, on community-based programs, effective partnerships, and evaluation of programs. The action plan will contain specific recommendations and key actions to be taken in the following areas:

- Strengthening and accelerating research on environmental factors that cause or worsen asthma;
- Expanding implementation of public health programs that use the best available scientific knowledge to reduce environmental exposures to asthma triggers, including indoor and ambient air pollution;
- Establishing a nationwide surveillance system for collecting and analyzing asthma data; and,
- Identifying and eliminating inequalities in the health burden of asthma with respect to poor and minority children.

In FY99, EPA is substantially expanding its programs to address the environmental factors that affect asthma in children:

- EPA has funded eight Centers for Children's Environmental Health and Prevention Research, five of which are specifically focused on asthma.
- EPA is also developing an integrated research strategy to address ambient air pollution sources such as ozone and particulate matter that may exacerbate asthma, as well as to better understand the relationship between asthma and indoor pollutants such as dust mite and cockroach allergen, molds, and other indoor contaminants such as pesticides and VOC's.
- We are also funding a comprehensive assessment of the role of indoor allergens in the induction and exacerbation of asthma through the National Academy of Sciences Institute of Medicine.
- EPA is expanding education of physicians and other health care providers, teachers, school administrators, children and parents about those factors that are known to contribute to childhood asthma triggers such as tobacco smoke and allergens in homes, schools and day care facilities. We will place significant emphasis on evaluating existing and developing programs for effectiveness.

Attachment A—Public Comments Responding to Federal Register Document Dated October 3, 1997 (62 FR 51854–51855), ''Review and Evaluation of EPA Standards Regarding Children's Health Protection From Environmental Risks''

In the October 3, 1997, **Federal Register** document EPA asked the public to submit comments to help the Agency determine which five existing standards merited reevaluation for the following reasons:

- New scientific information or data are available indicating adverse effects on children;
- There is a new understanding of routes of exposure to children;
- The regulated substance is persistent and bioaccumulative;
- New methodologies to evaluate human health risks are available;
- New epidemiology studies exist;
- New toxicity studies exist;
- New environmental monitoring studies exist.

Following is a list of the 18 organizations or individuals who commented on the document:

American Lung Association
American Water Works Association (AWWA) Government Affairs Office
California Communities Against Toxics
Chemical Manufacturers Association (CMA)
Chemical Specialties Manufacturers Association
Children's Environmental Health Network
Citizen-at-Large
City of Milwaukee Health Department
The Connecticut Agricultural Experiment Station
ESC Consulting
Florida International University
Missouri Department of Health
National Association of County and City Health Officials (NACCHO)
The National Center for Lead-Safe Housing (The Center)
Natural Resources Defense Council
Rhone-Poulenc
Seeger, Potter, Richardson, Luxton, Joselow & Brooks, L.L.P for the Lead Industries Association, Inc. (LIA)

State of Wisconsin

Following is a summary of comments submitted by the 18 organizations or individuals in response to the **Federal Register** document:

1. EPA should also include recently promulgated standards as part of the standard review.

2. EPA should select for review the national air quality standards for particulate matter, nitrogen dioxide and sulfur dioxide

3. The American Lung Association (ALA) filed a legal challenge to EPA's decision not to revise the national air quality standard for sulfur dioxide. Regardless of the court decision, ALA recommends that EPA include the sulfur dioxide standard for review and evaluation.

4. AWWA does not believe that at this time there is sufficient data to warrant a change in existing drinking water regulations.

5. The Safe Drinking Water Act (SDWA) typically considers children separately in risk assessment process.

6. The Safe Drinking Water Act (SDWA) requires EPA to review existing drinking water standards every six years which will ensure new data and information will be considered.

7. Concerned about the impact to children's health from persistent, bioaccumulative toxins (PBTs)—dioxins, PCBs and mercury.

8. PCBs are toxic to children during brain development.

9. Millions of lbs. of PCBs remain in use and dispersed into the environment through mismanagement and accidents.

10. The latest mercury study and ATSDR Toxicological Report on mercury cannot correctly quantify or locate mercury emissions due to inadequate monitoring and reporting.

11. EPA reports that 1.6 million women/children are at risk from mercury poisoning.

12. Perchlorate is an endocrine disrupting chemical that affects children's brain development; action level should be set to protect children not adults.

13. Despite the FQPA, we remain concerned about the exposure of children to pesticides through food and non-food exposures. There is evidence of increased rates of leukemia in homes with pesticide application.

14. A programmatic review of PBTs and their impact on children is absolutely necessary.

15. Many of the hazardous air pollutants, for which no emission limits are being set, are reproductive and developmental toxicants.

16. Standard as defined in the **Federal Register** document is too narrow.

17. EPA should:

(a) more closely coordinate efforts to protect children's health with other federal agencies to ensure that limited federal resources are focused on the biggest health risks to children;

(b) consider for review certain regulatory standards that due to their imposition, inadvertently increase risk to children; and

(c) clarify criteria for evaluating proposed changes to existing regulations.

18. EPA should work with the Chemical Specialties Manufacturers Association to reform/streamline registration of antimicrobial and pesticide products to assure these products are available to protect children and others from exposure to microorganisms and insect borne diseases.

19. EPA should review standards and compliance programs related to drinking water to assure drinking water is free from microorganisms caused by inadequate disinfection.

20. EPA should promote effective cleaning products as part of its indoor air quality program and its child health initiative.

21. We recommend that EPA review and discourage publications that recommend that consumers formulate their own household cleaning products, which could increase environmental risks to children and others.

22. The Network strongly urges the Agency to take a broader view of what is considered a ''standard'' for the purposes of this review.

23. The Agency needs to review how its risk assessments are conducted, the default assumptions used, and change them to appropriately reflect pediatric issues.

24. The Agency should evaluate the standards it is considering for review in large part based on assumptions inherent in the risk assessments (e.g., did the exposure estimates account for children's behavior; did toxicology studies include fetal and neonatal exposure; did the standard consider appropriate toxicological endpoints?)

25. The Agency needs to look at chemicals by class or by mechanism of action as ''one standard'' rather than a chemical-by-chemical approach.

26. The Agency should use this exercise as an Agency-wide education opportunity to further the goals of the child health protection initiative and to expedite the universal adoption of similar practices throughout the Agency.

27. The five standards selected should be from a variety of different program offices or across program offices.

28. The Agency should move expeditiously, set aggressive deadlines and follow them.

29. The Agency must review all standards and should publicly announce the process and schedule by which it will conduct the review.

30. Persistent toxic substances are too dangerous to the biosphere and environment, deleterious to the human condition and should not be released in the environment in any quantity.

31. Risk assessment and chemical-by-chemical regulation undermine pollution prevention efforts—elimination of persistent toxic substances should not be subject to a risk benefit calculation.

32. Although fluoride is often not considered a toxic substance, it is suspected to impact the mental development of children.

33. We propose addressing the cumulative effects of various pathways of exposure.

34. The specific recommendations are based on problems evident in our urban environments—children of these families may be especially vulnerable because of conditions associated with poverty:

(a) Persistent toxins in the drinking water supply (cadmium and compounds, chlordane, DDT/DDE, Dieldrin, Hexachlorobenzene, a-HCH, lead and compounds, Lindane, Mercury and compounds, PCBs, Polycyclic organic matter (POM), TCDD (dioxins),

TCDF (furans), Toxaphene, Nitrogen compounds);

(b) Volatile organics found in ambient air in urban areas;

(c) Lead in soil—there appear to be conflicting standards among the EPA, HUD, and U.S. Public Health Service regarding lead in soils. A universal standard would be helpful in the battle against child lead poisoning. The standards for lead do not address multiple source exposure;

(d) Aeroallergens in the household—currently no standard—EPA may want to be more proactive with the increase in childhood asthma;

(e) Fish consumption advisories—relative to mercury and PCBs current standards do not address bioaccumulation effects in children; and

(f) Common pesticides and herbicides frequently used in lawn care.

35. EPA should consider the risk of arsenic exposure to children through arsenic treated wood.

36. Children may be exposed to arsenic from treated wood products by direct hand to mouth contact with the wood or from arsenic contaminated soil under wooden decks. Soil may become contaminated by leaching, deterioration of the wood, or sawdust generated during construction.

37. Arsenic is linked to skin and bladder cancer.

38. Research links arsenic to lower IQ's.

39. 50,000,000 pounds of arsenic are imported into the U.S. every year for treating lumber.

40. Millions of treated decks and playscapes leach arsenic into the soil and children are exposed via direct contact with the wood and the soil.

41. EPA is inconsistent in the application of its policies and regulations (i.e., safety factors to protect children's health.)

42. If arsenic were evaluated today it would not stand up to the risk calculations under FQPA.

43. The arsenic MCL is 17-fold greater than the triazine MCL even though arsenic has an estimated 100-fold greater NOAEL than triazine and is a class ''A'' human carcinogen.

44. There is no explanation for a decade-old delay in acting to lower the arsenic MCL which may have caused harm to an entire generation of children exposed to imported arsenic in a variety of ways that are unique to children's active daily lives.

45. We propose that EPA review the standards for lead poisoning in the following areas: paint, soil, dust, and drinking water.

46. All public water systems shall be fluoridated to improve the dental health of children.

47. All public and private water system/supplies shall be safe for children to drink.

48. Children shall reside in adequate housing that is not dangerous, crowded or cost more than 30% of family income.

49. Children shall not be exposed to high concentrations of lead in their environment.

50. Recommends systematically reevaluating all standards.

51. Hope that standards are selected, reviewed, and adopted with respect to their impact at the local level.

52. Suggest that EPA consider standards for asthma hazards such as mites, mold, and cockroaches.

53. The National Center for Lead-Safe Housing (the Center) has worked with EPA in the development of standards for lead. The person submitting the comment also indicated that the Center is broadening its mission to include environmental hazards and hopes to work with EPA if the agency decided to work on standards related to children's respiratory diseases.

54. ''Standard'' as described in the FRN is too restrictive—all EPA standards (including existing and technology based), guidelines (risk assessment and toxicological), and unregulated threats should also be considered.

55. The following five proposals address the solicitation of the FRN but should not be seen as an endorsement of the EPA strategy, but rather an illustration of the types of threats from which children are not well protected:

(a) Review of tolerances for all pesticides which act via inhibition of acetyl cholinesterase;

(b) Review of tolerance for all triazine herbicides found in drinking water in the U.S.;

(c) Review of drinking water standards for microorganisms and disinfection byproducts;

(d) Review of all standards designed to protect children from environmental lead exposure, and issuance of the Title X lead hazard disclosure rules; and

(e) Review of the SO_2 air quality standard to protect children with asthma, issuance of standards for acid aerosols and diesel exhaust, and vigorous implementation of the new standard for ozone and fine particulates to protect the asthmatic children.

56. A variety of environmental influences are risks to children's health including intake by pregnant mothers of alcohol, cigarettes, and controlled substances. Other factors that affect children's health include diet and access to adequate medical care.

57. We encourage EPA to examine those standards which give exposure to lead, radon, and asbestos.

58. The Lead Industries Association is concerned that the mention of lead exposure in the FRN as a children's health problem gives the impression that one or more lead regulations should be tightened to adequately protect children's health. From the outset lead regulations have been developed to protect children's health.

59. Existing lead regulations are protective of children's health and should not be included in the Committee's list of regulatory standards needing reconsideration and downward revision. Children's blood lead levels are declining under the existing lead regulatory regime and there is no need or justification for costly, more stringent regulation.

60. Many serious health problems afflict our nation's children—including the need for universal immunization and prenatal care, reduction of infant mortality rates, and threats from the rising risk of HIV infection, abuse, neglect, drug use, and violence.

61. The use of water containing the action level for copper would more than double the amount of copper in an infant's diet. Infants less than two years of age have a limited ability to excrete copper.

62. Children who consume more than two servings of fish per week can develop elevated blood mercury levels.

63. Instead of a drinking water standard, EPA has a lifetime health advisory for ammonia-nitrate based on the taste/odor threshold instead of a health-based effect. Studies associate ammonia ingestion with alteration in the gastric mucosa and risk of gastric cancer neurotoxicity.

EPA Response to Federal Register Document Comments

EPA believes all the comments had merit, however, not all of them were directed at the question we asked, i.e., to identify existing standards that were worthy of reevaluation to better protect children's environmental health. Nor did they all address issues within the purview of EPA. Some of those who commented asked us to reevaluate recently promulgated standards, which we had specifically excluded from coverage in the document. In addition, standards currently in litigation were determined by EPA to be inappropriate for reevaluation at this time. However, EPA did consider all comments that recommended existing standards for reevaluation. Further, all the comments were referred to the CHPAC work group charged with submitting

recommendations to the Agency for re-evaluating existing standards.

In many instances, EPA found that there was no new information sufficient to support a decision to revise an existing standard. For example, in the case of dioxin, the Agency is revising its risk assessment, but that information is not yet available. When it is available, the Agency may re-evaluate existing standards if that is indicated by new data. Similarly, EPA is engaged in a large, multi year research and data collection effort to better define health risks, occurrence and exposure, and treatment effectiveness for microbial contaminants and disinfection byproducts in drinking water. Research areas include reproductive and developmental effects, and sensitive sub population exposures. The final Stage I Rule for Disinfectants and Disinfectant By Products was issued on December 16, 1998. A health assessment for fetuses, infants and children was conducted to support the rule.

In some cases, EPA is already engaged in re-evaluating standards identified in the public comments. Examples include the reevaluation of the organophosphate and triazine pesticides. The Agency is required by the Food Quality Protection Act (FQPA) to re-evaluate all pesticide tolerances, basing new decisions on aggregate exposures and common mechanisms of action. The FQPA requires use of an additional uncertainty factor to protect children unless reliable data demonstrate the additional factor is unnecessary. Further, the Agency issued on November 16, 1998, a Draft Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants which includes an Action Plan for Mercury. The goal of the strategy is to further reduce risks to human health and the environment from existing and future exposure to priority PBTs such as mercury, dioxins, furans, chlordane, DDT, dieldrin, toxaphene, hexachlorobenzene, alkyl-lead and PCBs. Further a draft rule for identifying lead hazards in dust, soil and paint was issued on June 3, 1998.

In summary, EPA's decisions to reevaluate the Chloralkali NESHAP (mercury); the implementation and enforcement of the (Farm) Worker Protection Standards; pesticide tolerances for the organophosphates (chlorpyrifos, dimethoate, methyl parathion); atrazine (pesticide tolerance and MCL); and to review indoor and ambient air quality as they relate to asthma are based in part and are supported by recommendations received through the **Federal Register** document and from the Children's Health Protection Advisory Committee.

Attachment B—CHPAC Screening Criteria to Select Rules for Re-Evaluation (2/24/98)

Children's health protection would be strengthened if these regulation-based standards, policies or rules were re-evaluated and subsequently changed because:

A. Children's health was not considered in the original development of the standard, such as:

- Exposure estimates did not adequately account for children's behavior;
- Toxicology studies did not include fetal, neonatal, and early childhood exposure; or
- The standard did not consider the full range of appropriate toxicological endpoints for fetal, neonatal, and early childhood exposure.

B. Children's health was considered but new information or data suggest the standard does not adequately protect children. The new information or data, based on peer-reviewed science, may include considerations such as:

- Descriptions of adverse health effects in children;
- Increased susceptibility for children to specific substances because of their unique physiology;
- New understanding of routes of exposure to children;
- Mechanisms of exposure that better reflect children's activities;
- Whether, and the extent to which the regulated substance is persistent and bioaccumulative;
- Improved methodologies for evaluating human health risks;
- Epidemiology studies; consideration of disproportionate exposures to sub-populations (e.g., geographic, racial);
- Toxicity studies;
- Environmental monitoring studies; or
- Cumulative, aggregate risks.

C. Major threats to children's health will be addressed such that a change in the regulation will result in a significant improved health outcome for children:

- Severity of health outcome of concern;
- Number of children adversely affected;
- Substances to which children are highly exposed; or
- Substances to which children are highly susceptible.

D. Revisions will have broad precedent setting impacts in terms of changing the procedures, guidelines, and overall culture of the Agency to include children's environmental health issues in all aspects of its work.

E. Children's health issues could be assigned higher priority for rules selected (e.g., how revisions to the rules fit Agency existing plans/schedules).

F. Rules will span a diverse list of hazards (e.g., variety of substances and/or media programs) and a variety of health endpoints (e.g., cancer, non-cancer).

G. Rules whose effectiveness in protecting children's health would be greatly enhanced by revisions that facilitate its implementation or improve its enforceability.

Dated: January 26, 1999.

E. Ramona Trovato,

Director, Office of Children's Health Protection.

[FR Doc. 99–2447 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51922; FRL–6060–2]

Certain Chemicals; Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical to notify EPA and comply with the statutory provisions pertaining to the manufacture or import of substances not on the TSCA Inventory. Section 5 of TSCA also requires EPA to publish receipt and status information in the **Federal Register** each month reporting premanufacture notices (PMN) and test marketing exemption (TME) application requests received, both pending and expired. The information in this document contains notices received from December 17, to December 31, 1998.

ADDRESSES: Written comments, identified by the document control number ''[OPPTS–51922]'' and the specific PMN number, if appropriate, should be sent to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Rm. ETG–099 Washington, DC 20460.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1/6.1 file format or ASCII file format. All

comments and data in electronic form must be identified by the docket number [OPPTS–51922]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found under ''SUPPLEMENTARY INFORMATION'' of this document.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–531, 401 M St., SW., Washington, DC, 20460, (202) 554–1404, TDD (202) 554–0551; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under the provisions of TSCA, EPA is required to publish notice of receipt and status reports of chemicals subject to section 5 reporting requirements. The notice requirements are provided in TSCA sections 5(d)(2) and 5(d)(3). Specifically, EPA is required to provide notice of receipt of PMNs and TME application requests received. EPA also is required to identify those chemical submissions for which data has been received, the uses or intended uses of such chemicals, and the nature of any test data which may have been developed. Lastly, EPA is required to provide periodic status reports of all chemical substances undergoing review and receipt of notices of commencement.

A record has been established for this notice under docket number ''[OPPTS–51922]'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 12 noon to 3 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center (NCIC), Rm. NEM–B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:
oppt.ncic@epamail.epa.gov

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

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

In the past, EPA has published individual notices reflecting the status of section 5 filings received, pending or expired, as well as notices reflecting receipt of notices of commencement. In an effort to become more responsive to the regulated community, the users of this information and the general public, to comply with the requirements of TSCA, to conserve EPA resources, and to streamline the process and make it more timely, EPA is consolidating these separate notices into one comprehensive notice that will be issued at regular intervals.

In this notice, EPA shall provide a consolidated report in the **Federal Register** reflecting the dates PMN requests were received, the projected notice end date, the manufacturer or importer identity, to the extent that such information is not claimed as confidential and chemical identity, either specific or generic depending on whether chemical identity has been claimed confidential. Additionally, in this same report, EPA shall provide a listing of receipt of new notices of commencement.

EPA believes the new format of the notice will be easier to understand by the interested public, and provides the information that is of greatest interest to the public users. Certain information provided in the earlier notices will not be provided under the new format. The status reports of substances under review, potential production volume, and summaries of health and safety data will not be provided in the new notices.

EPA is not providing production volume information in the consolidated notice since such information is generally claimed as confidential. For this reason, there is no substantive loss to the public in not publishing the data. Health and safety data are not summarized in the notice since it is recognized as impossible, given the format of this notice, as well as the previous style of notices, to provide meaningful information on the subject. In those submissions where health and safety data were received by the Agency, a footnote is included by the Manufacturer/Importer identity to indicate its existence. As stated below, interested persons may contact EPA directly to secure information on such studies.

For persons who are interested in data not included in this notice, access can be secured at EPA Headquarters in the NCIC at the address provided above. Additionally, interested parties may telephone the Document Control Office at (202) 260–1532, TDD (202) 554–0551, for generic use information, health and safety data not claimed as confidential or status reports on section 5 filings.

Send all comments to the address listed above. All comments received will be reviewed and appropriate amendments will be made as deemed necessary.

This notice will identify: (I) PMNs received; and (II) Notices of Commencement to manufacture/import.

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0270	12/17/98	03/17/99	CIBA Specialty Chemicals Corporation	(G) Polymer intermediate for the manufacture of optical devices	(G) Pentyl 2,5-bis[[4-[[substituted]] benzoyl]oxy]-benzoate
P–99–0271	12/17/98	03/17/99	CIBA Specialty Chemicals Corporation	(G) Polymer intermediate for the manufacture of optical devices	(G)Amidoamine
P–99–0272	12/17/98	03/17/99	CBI	(S) Curing agent for epoxy coating systems	(G) Amidoamine
P–99–0273	12/17/98	03/17/99	CBI	(S) Curing agent for epoxy coating systems	(G) Amidoamine
P–99–0274	12/17/98	03/17/99	CBI	(S) Stabilizer used in rubber compounding	(G) Alkylated phenol

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0275	12/17/98	03/17/99	Protein Technologies International, Inc.	(S) Component of coating adhesive in paper and paper board industry	(G) Silane soy protein hydrolyzed
P–99–0276	12/18/98	03/18/99	Ashland Chemical Company - Environmental, Health & Safety	(G) Laminating adhesive	(G) Modified polyurethane
P–99–0277	12/18/98	03/18/99	Dystar L. P.	(S) Dyestuff for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 5-substituted-4-hydroxy-3-substituted azo, salt
P–99–0278	12/18/98	03/18/99	Dystar L. P.	(S) Fiber reactive dye for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 4-amino-6-substituted-5-hydroxy-3-substituted, salt
P–99–0279	12/18/98	03/18/99	Dystar L.P.	(S) Fiber reactive dye for coloration of cellulose	(G) Substituted naphthalenetrisulfonic acid salt
P–99–0280	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0281	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0282	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0283	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0284	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0285	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0286	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0287	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0288	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0289	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0290	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0291	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Cationic epoxy resin
P–99–0292	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Epoxy resin
P–99–0293	12/17/98	03/17/99	CBI	(G) Component of coating with open use	(G) Epoxy resin
P–99–0294	12/21/98	03/21/99	Cytec Fiberite Inc. - Winona Division	(S) Resin matrix for advance composites	(S) Phenol, 4,4′-(1-methylethylidene)bis-, polymer with (chloromethyl) oxirane and ar, ar-diethyl-ar-methylbenzenediamine*
P–99–0295	12/21/98	03/21/99	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Acetylenic acetal
P–99–0296	12/21/98	03/21/99	3M Company - group compliance 3M Automotive and Chemical Markets group	(S) Chemical intermediate	(G) Fluoroalkyl derivative
P–99–0297	12/21/98	03/21/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(S) Chemical intermediate	(G) Fluoroalkyl derivative
P–99–0298	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0299	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0300	12/21/98	03/21/99	CBI	(G) Destructive use	(G) Organo aluminium halide
P–99–0301	12/22/98	03/22/99	CBI	(G) Processing additive used for pvc	(G) Organotin compound
P–99–0302	12/23/98	03/23/99	Cardolite Corporation	(S) Diluent for epoxy resin	(G) Substituted phenoxy alcohol
P–99–0303	12/22/98	03/22/99	CBI	(G) Additive, open, non-dispersive use	(G) *N*-butyl, 2-ethylhexyl acrylate copolymer
P–99–0304	12/23/98	03/23/99	Marubeni Specialty Chemicals Inc	(S) Elastomer for adhesive	(G) Polyurethane elastomer
P–99–0305	12/23/98	03/23/99	CBI	(G) Toner chemical (open, non-dispersive)	(G) Bisphenol a type polyester resin
P–99–0306	12/22/98	03/22/99	CBI	(G) Starting material for polymers	(G) Dicarboxylic acid ester

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0307	12/22/98	03/22/99	Dystar L. P.	(S) Fiber reactive dye for coloration of cellulose; fiber reactive dye for coloration of cellulose	(G) 2,7-naphthalenedisulfonic acid, 3-(substituted azo)-5-(substituted amino)-4-hydroxy salt
P–99–0308	12/28/98	03/28/99	CBI	(G) Component of coating formulation	(G) Modified polyester
P–99–0309	12/28/98	03/28/99	Piedmont chemical industries i, llc	(G) Dye Assist	(G) Substituted alkylphthalimide
P–99–0310	12/23/98	03/23/99	CBI	(G) Fragrance	(G) Vanillin ester
P–99–0311	12/28/98	03/28/99	CBI	(G) Commercial coating, mechanical goods	(G) Mdi polyester-prepolymer
P–99–0312	12/28/98	03/28/99	GE Silicones	(G) Coating and finishes	(G) Amino functional silicone polymer
P–99–0313	12/23/98	03/23/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(S) Intermediate	(G) Alkylethoxylate derivative
P–99–0314	12/28/98	03/28/99	GE Silicones	(G) Textile finishnig	(G) Amino functional polyether functional silicone terpolymer
P–99–0315	12/28/98	03/28/99	Union Carbide Corporation	(G) Site intermediate	(G) Partially ethoxylated secondary alcohol
P–99–0316	12/28/98	03/28/99	CBI	(G) Surface treatment of metal	(G) Aminomethylated bisphenol a-bisphenol a epichlorohydrin polymer, phosphoric acid salt
P–99–0317	12/28/98	03/28/99	CBI	(G) Petroleum additive	(G) Organometallic sulfide complex
P–99–0318	12/28/98	03/28/99	CBI	(G) Chemical intermediate	(G) Metal sulfide ammonium salt
P–99–0319	12/28/98	03/28/99	3M Company - Group Compliance 3M Automotive and Chemical Markets group	(G) Polymer additive	(G) Perfluoroalkylsulfonamide derivative
P–99–0320	12/28/98	03/28/99	L. Brueggemann, Chemical Company	(G) Polymerisation auxiliary	(S) Acetic acid, hydroxysulfino-, diisodium salt; acetic acid, hydroxysulfo-, diisodium salt*
P–99–0321	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0322	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0323	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0324	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0325	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0326	12/28/98	03/28/99	CBI	(G) Binder resin for automotive topcoat	(G) Acrylic copolymer
P–99–0327	12/21/98	03/21/99	CBI	(G) Paper additive	(G) Aliphatic acid salt
P–99–0328	12/29/98	03/29/99	CBI	(G) Open, non-dispersive (coatings)	(G) Polyester polyol
P–99–0329	12/30/98	03/30/99	CBI	(G) Component for coating in non-dispersive use	(G) Acrylate functional polyurethane resin
P–99–0330	12/30/98	03/30/99	E.I. Du Pont De Nemours & Co. Inc.	(G) Intermediate	(G) Aliphatic amine salt of aromatic polyamic acid
P–99–0331	12/30/98	03/30/99	Fabricolor, Inc.	(S) Dyeing of leather	(G) 4-amino-5-hydroxy-6-phenylazo-3-substituted phenyl azo-naphthalene disulfonic acid
P–99–0332	12/30/98	03/30/99	CBI	(G) Protective coatings	(G) Urethane modified aromatic isocyanate
P–99–0333	12/30/98	03/30/99	CBI	(G) Protective coatings	(G) Urethane modified aromatic isocyanate
P–99–0334	12/30/98	03/30/99	Hach Company	(S) Selective growth inhibitor for microbiological media	(S) 2,5-cyclohexadien-1-one, 4-[bis(4-hydroxyphenyl)methylene]*
P–99–0335	12/30/98	03/30/99	Fragrance Resources, Inc.	(S) Provided an aroma to a finished product	(S) 3-hexen-1-ol, 2-methyl-2-(3-methyl-2-butenyl)-*
P–99–0336	12/30/98	03/30/99	CBI	(G) Industrial Adhesive component for open, non-dispersive use	(G) Phenol-resorcinol-catechol resin sulfonic acid, sodium salt
P–99–0337	12/30/98	03/30/99	CBI	(G) Industrial Adhesive component for open, non-dispersive use	(G) Phenol-resin sulfonic acid, sodium salt
P–99–0338	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0339	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0340	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0341	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0342	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

I. 80 Premanufacture Notices Received From: 12/17/98 to 12/31/98—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–99–0343	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0344	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0345	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0346	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0347	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0348	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol
P–99–0349	12/30/98	03/30/99	CBI	(G) Consumer product ingredient	(G) Substituted aliphatic alcohol

II. 1 Notices of Commencement Received From: 12/17/98 to 12/31/98

Case No.	Received Date	Commence-ment/Import Date	Chemical
P–98–0644	12/17/98	12/04/98	(G) Grafted acrylate polymer ammonium salt

List of Subjects

Environmental protection, Premanufacture notices.

Dated: January 20, 1999.

Oscar Morales,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–2551 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC office of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 217–011628–001.

Title: The Kawasaki Kisen Kaisha, Ltd. and Nippon Yusen Kaisha Space Charter Agreement.

Parties: Kawasaki Kisen Kaisha, Ltd. (''KL''), Nippon Yusen Kaisha (''NYK'').

Synopsis: The proposed modification requires that any unused space allocated to NYK may be used by KL without additional compensation, that all vessel operating costs shall be for the account of KL, deletes authority for the parties to enter into agreements with marine terminal and stevedore operators, and provides for agreement on other operational and termination procedures.

Agreement No.: 224–201067.

Title: Gateway Terminals Operating Agreement.

Parties: Carolina Stevedoring Company, Inc., Cooper/T. Smith Stevedoring Co. Inc., Ceres Marine Terminals, Inc.

Synopsis: The parties are to pool labor and share expenses for providing TIR functions (inspection of carrier owned containers and chassis for damage) at the port of Savannah. The proposed agreement is to operate through the entity, Gateway Terminals, L.L.C., a company jointly owned in equal shares by the three members of the agreement. The term of the agreement is open ended and the agreement will be considered active until the parties advise the Federal Maritime Commission of the termination of the agreement.

Dated: January 28, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–2475 Filed 2–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

The Federal Maritime Commission hereby gives notice that the following freight forwarder licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, effective on the corresponding revocation dates shown below:

License Number: 4007.
Name: Bay Area Matrix, Inc.
Address: 14275 Catalina Street, San Leandro, CA 94577.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4446.
Name: Gunter Wegner d/b/a PACAT International.
Address: 510 Plaza Drive, Suite 2240–D, Atlanta, GA 30349.
Date Revoked: December 9, 1998.
Reason: Surrendered license voluntarily.

License Number: 4467.
Name: Ideal Consolidators, Inc.
Address: 2101 Rosecrans Ave., Suite 6250, El Segundo, CA 90245.
Date Revoked: December 5, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4200.
Name: International Freight Agency, Inc.
Address: 286 Wyandanch Road, Sayville, NY 11782.
Date Revoked: December 9, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4209.
Name: Jose Gregorio Diaz d/b/a International Frontier Forwarders.
Address: 1116 Oliver Street, Houston, TX 77007.
Date Revoked: November 30, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 4006.
Name: L.A. Matrix, Inc.
Address: 16518 South Main Street, Gardena, CA 90248.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4051.
Name: Matrix CT., Inc.
Address: 200 Connecticut Ave., Norwalk, CT 06854.
Date Revoked: January 1, 1999.
Reason: Surrendered license voluntarily.

License Number: 4073.
Name: Miami Shuttle Express Inc.
Address: 6016 S.W. 14th Street, P.O. Box 591821, Miami, FL 33159.
Date Revoked: December 21, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 1869.
Name: Michael Levine d/b/a Empire Shipping Company.
Address: Cargo Bldg. 80, JFK International Airport, Jamaica, NY 11430.
Date Revoked: July 6, 1998.
Reason: Surrendered license voluntarily.

License Number: 3600.
Name: Sunshine Freight Forwarders, Inc.
Address: 8201 N.W. 70th Street, Miami, FL 33166.
Date Revoked: December 31, 1998.
Reason: Failed to maintain a valid surety bond.

License Number: 2987.
Name: World Freight Forwarders Inc. and World Freight Forwarders Inc. d/b/a World Air Sea Transport.
Address: 635 Ramsey Ave., P.O. Box 77, Hillside, NY 07205.
Date Revoked: December 16, 1998.
Reason: Failed to maintain a valid surety bond.

Austin L. Schmitt,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–2476 Filed 2–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License No.	Name/Address	Date Reissued
4148	Fleura Meler d/b/a US Western Forwarders, 19528 Ventura Blvd., Ste. 380, Tarzana, CA 91356	October 27, 1998.

Austin L. Schmitt,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 99–2477 Filed 2–2–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED—EARLY TERMINATION

ET date	Transaction No.	ET requisition status	Party name
15–DEC–98	19990510	G	First Data Corporation.
		G	First Data Corporation.
		G	Unified Merchant Services.
	19990755	G	Larry A. Davis.
		G	Billing Concepts Corp.
		G	Billing Concepts Corp.
16–DEC–98	19990532	G	United Road Services, Inc.
		G	Michael A. Wysocki.
		G	MPG Transco, Ltd.
	19990561	G	Paul A. Gould.
		G	Tele-Communications Inc. (or AT&T).
		G	Tele-Communications Inc. (or AT&T).
	19990599	G	Code, Hennessy & Simmons III, L.P.
		G	May Logistics Services, Inc.
		G	May Logistics Services, Inc.
	19990629	G	Urban Brands, Inc.
		G	Petrie Retail, Inc.
		G	Petrie Retail, Inc.
		G	PSL, Inc., Bayamon-MPA Corp., Caguas Apparel Corporation.
	19990673	G	Texas Utilities Company.
		G	Newco.
		G	Newco.
	19990697	G	Blood Systems, Inc.
		G	Blood Centers of the Pacific.
		G	Blood Centers of the Pacific.
	19990698	G	Thomson S.A.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	General Electric Company.
		G	RCA Thomson Licensing Corporation.
	19990708	G	Flo-Sun Incorporated.
		G	Gerald W. Schwartz.
		G	Refined Sugars, Inc.
	19990709	G	Sugar Cane Growers Cooperative of Florida.
		G	Gerald W. Schwartz.
		G	Refined Sugars, Inc.
	19990716	G	ZF Friedrichshafen AG.
		G	ZF Lenksysteme GmbH.
		G	ZF Lenksysteme GmbH.
	19990721	G	BankAmerica Corporation.
		G	Mitsui Leasing & Development, Ltd. (a Japanese Corporation).
		G	Mitsui Vendor Leasing (U.S.A.) Inc.
	19990740	G	Parker Drilling Company.
		G	Superior Energy Services, Inc.
	19990740	G	Superior Energy Services, Inc.
	19990744	G	Charles W. Ergen.
		G	News Corporation Limited, The (an Austrailian corp.).
		G	American Sky Broadcasting LLC.
	19990745	G	Charles W. Ergen.
		G	MCI WorldCom, Inc.
		G	MCI Telecommunication Corporation.
	19990757	G	Thayer Equity Investors III, L.P.
		G	Jerome Sze.
		G	Western States Import Company, Inc.
	19990765	G	Japan Coal Development Co., Ltd.
		G	Los Angeles Export Terminal, Inc.
		G	Los Angeles Export Terminal, Inc.
	19990768	G	Northland Cranberries, Inc.
		G	Seneca Foods Corporation.
		G	Seneca Foods Corporation.
	19990775	G	Moshe Barkat.
		G	Time Warner Inc.
		G	California Video Center.
	19990776	G	Johnson & Johnson.
		G	Glaxo Wellcome plc.
		G	Glaxo Wellcome Inc.
	19990777	G	Intermet Corporation.
		G	Robert W. Carlson, Jr.
		G	Quadion Corporation.
	19990778	G	Hellman & Friedman Capital Partners III, L.P.
		G	Michael E. Bronner.
		G	Bronner Slosberg Humphrey Co.
		G	Strategic Interactive Group Co.
	19990780	G	Greenwich Street Capital Partners II, L.P.
		G	John Hancock Mutual Life Insurance Company.
		G	Unigard Security Insurance Company.
	19990784	G	Archer-Daniels-Midland Company.
		G	Diageo PLC.
		G	The Pillsbury Company.
	19990785	G	Giovanni Agnelli e C.S. a.p.az.
		G	EXOR Group S.A.
	19990785	G	EXOR Group S.A.
	19990788	G	The MONY Group, Inc.
		G	The State Teachers Retirement System of Ohio.
		G	Sagamore Financial Corporation.
	19990792	G	Citigroup Inc.
		G	John R. Porter.
		G	Niemin Porter & Co.
	19990793	G	Leo Burnett Worldwide, Inc.
		G	Leo Burnett Company, Inc.
		G	Leo Burnett Company, Inc.
	19990802	G	RSTW Partners III, L.P.
		G	Busy Body, Inc.
		G	Busy Body, Inc.
	19990805	G	Forstmann Little & Co. Equity Partnership-V, L.P.
		G	Berwick Health Care Corporation.
		G	Berwick Health Care Corporation.
17–DEC–98	19990261	G	Wm. Bolthouse Farms, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Golden Valley Produce, LLC.
		G	Golden Valley Produce, LLC.
	19990700	G	Health Care Service Corporation.
		G	Advance Paradigm, Inc.
		G	Advance Paradigm, Inc.
	19990754	G	Thomas H. Lee Equity Fund III, L.P.
		G	Robert E. Meinershagen.
		G	Columbia Diagnostics, Inc.
	19990762	G	Cooperatie Cosun U.A.
		G	BankAmerica Corporation.
		G	Custom Industries, L.P.
	19990764	G	Thayer Equity Investors IV, L.P.
		G	Tele-Communications Inc. (or AT&T).
		G	CareerTrack, Inc. and TCI CTRACK Asset Corp.
	19990786	G	The First American Financial Corporation.
		G	National Information Group.
		G	National Information Group.
18–DEC–98	19990470	G	Edison International.
		G	Energy East Corporation.
		G	New York State Electric and Gas Corporation.
		G	NCE Generation, Inc
	19990525	G	ALLTEL Corporation.
		G	BellSouth Corporation.
		G	RCTC Wholesale Corporation.
		G	Richmond Cellular Telehpone Company.
	19990534	G	Chattem, Inc.
		G	S. Daniel Abraham.
		G	Thompson Medical Company, Inc.
	19990616	G	General Electric Company.
		G	Monogram Credit Services, LLC.
		G	Monogram Credit Services, LLC.
	19990617	G	Bank One Corporation.
		G	Monogram Credit Services, LLC.
		G	Monogram Credit Services, LLC.
	19990645	G	Coca-Cola Enterprises Inc.
		G	Montgomery Coca-Cola Bottling Company, Inc.
		G	Montgomery Coca-Cola Bottling Company, Inc.
	19990653	G	The Commerce Group, Inc.
		G	The American Automobile Association, Inc.
		G	Automobile Club Insurance Company.
	19990701	G	Heywood Williams Group PLC.
		G	Estate of C.G. Mills.
		G	Pioneer International (Georgia), Inc.
	19990723	G	Fleet Financial Group, Inc.
		G	The Sanwa Bank Limited.
		G	Sanwa Business Credit Corporation.
	19990743	G	HBO & Company.
		G	Foundation Health Systems, Inc.
		G	Foundation Health Systems, Inc.
	19990774	G	Textron Inc.
		G	BankAmerica Corporation.
		G	Nations Credit Commercial Corporation.
	19990794	G	J.C. Penney Company, Inc.
		G	Genovese Drug Stores, Inc.
		G	Genovese Drug Stores, Inc.
	19990795	G	Citadel Communications Corporation.
		G	Wicks Broadcast Group Limited Partnership.
		G	Wicks Broadcast Group Limited Partnership.
	19990796	G	James R. Leininger, M.D.
		G	Don Tyson.
		G	Hudson Foods, Inc., Willow Brook Foods, Inc.
	19990799	G	Phoenix International Life Sciences Inc.
		G	Chrysalis International Corporation.
		G	Chrysalis International Corporation.
	19990806	G	Morgan Products Ltd.
		G	Adam Wholesales, Inc.
		G	Adam Wholesales, Inc.
	19990809	G	Ametek, Inc.
		G	Cortec Group Fund, L.P.
		G	NCC Holdings, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19990811	G	Hillenbrand Industries, Inc.
		G	Service Corporation International.
		G	Arkansas National Life Insurance Company.
	19990821	G	Allied Capital Corporation.
		G	Bankers Trust Corporation.
		G	MJB Acquisition Corporation d/b/a Wyoming Technical Institute.
	19990826	G	NEC Corporation.
		G	Steven C. Farrell.
		G	Enterprise Networking Systems, Inc.
	19990827	G	NEC Corporation.
		G	Richard Norum.
		G	Enterprise Networking Systems, Inc.
	19990838	G	WinsLoew Furniture, Inc.
		G	Leo Martin.
		G	Miami Metal Products, Inc.
	19990848	G	Cerner Corporation.
		G	Synetic Health Communications Corporation.
		G	Synetic Health Communications Corporation.
	19990849	G	Synetic, Inc.
		G	Synetic Health Communications Corporation.
		G	Synetic Health Communications Corporation.
	19990850	G	Daniel K. Frierson.
		G	Multitex Corporation of America.
		G	Multitex Corporation of America.
	19990853	G	TPS Holdings, Inc.
		G	Radnor Alloys, Inc.
		G	Radnor Alloys, Inc.
	19990856	G	Barry A. Ackerley.
		G	Wicks Broadcast Group Limited Partnership.
		G	Wicks Broadcast Group Limited Partnership.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2488 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED—EARLY TERMINATION

ET date	Transaction No.	ET requisition status	Party name
04–JAN–99	19990972	G	Ardent Software, Inc.
		G	Prism Solutions, Inc.
		G	Prism Solutions, Inc.
	19990975	G	Ashland, Inc.
		G	Graham T. Moore, Jr.
		G	Crowell Constructors, Inc.
	19990978	G	MotivePower Industries, Inc.
		G	Gary B. and Patricia Heydorn.
		G	G & G Locotronics, Inc.
		G	G & G Maxitrax, Inc.
		G	G & G Transit, Inc.
	19990984	G	James G. Tuthill.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Paul A. Dines.
		G	Dines Industrial Group, Inc.
	19990985	G	BHB LLC.
		G	Barneys New York, Inc.
		G	Barney's Inc.
	19990999	G	OmniCell Technologies, Inc.
		G	Baxter International Inc.
		G	Baxter International Inc.
	19991003	G	Aggregate Industries, plc.
		G	Bill Smith Sand & Gravel, Inc.
		G	Bill Smith Sand & Gravel, Inc.
	19991009	G	Robert L. Fisher.
		G	Baxter International Inc.
		G	Baxter Healthcare Corporation.
	19991010	G	Apollo Investment Fund IV, L.P.
		G	United Rentals, Inc.
		G	United Rentals, Inc.
	19991011	G	Apollo Overseas Partners IV, L.P.
		G	United Rentals, Inc.
		G	United Rentals, Inc.
	19991015	G	The Coastal Corporation.
		G	LG&E Energy Corp.
		G	LG&E Westmoreland-Rensselaer.
	19991016	G	The Coastal Corporation.
		G	Westmoreland Coal Company.
		G	LG&E Westmoreland-Rensselaer.
	19991017	G	Integrated Device Technology, Inc.
		G	Quality Semiconductor, Inc.
		G	Quality Semiconductor, Inc.
	199990899	G	Harris Corporation.
		G	Raytheon Company.
		G	Raytheon Company.
	19990967	G	Electra Investment Trust PLC.
		G	Capital Safety Group Limited.
		G	Capital Safety Group Limited.
	19990995	G	Vivendi S.A.
		G	Terre Armee Internationale.
		G	Terre Armee Internationale.
	19991008	G	Gerald W. Schwartz.
		G	LCS Industries, Inc.
		G	LCS Industries, Inc.
	19991018	G	Mannesmann AG
		G	Cellular Communications International, Inc.
		G	Cellular Communications International, Inc.
	19991019	G	Olivetti S.p.A.
		G	Cellular Communications International, Inc.
		G	Cellular Communications International, Inc.
	19991022	G	Haggar Corp.
		G	Gerald M. Frankel.
		G	Jerell, Inc.
	19991023	G	Berkshire Fund IV, Limited Partnership.
		G	The Rival Company.
		G	The Rival Company.
	19991025	G	Kotobuki Fudosan Ltd.
		G	Blair Mohn.
		G	Cloister Spring Water Co.
	19991026	G	Sybron International Corporation.
		G	Larry Scaramella.
		G	Molecular BioProducts, Inc.
	19991036	G	Columbia Energy Group.
		G	Estate of Carlos R. Leffler.
		G	Carlos R. Leffler, Inc.
		G	Leffler Transportation Co.
		G	Carlos R. Leffler Propane, Inc.
	19991041	G	Matria Healthcare, Inc.
		G	Mark J. Gainor.
		G	Gainor Medical Acquisition Company.
	19991041	G	Gainor Medical of North America, LLC.
		G	Gainor Medical International, LLC.
		G	Gainor Medical Director, LLC.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
	19991046	G	Compagnie de Saint-Gobain.
		G	ABT Building Products Company.
		G	ABTco, Inc.
	19991052	G	Warburg, Pincus Equity Partners, L.P.
		G	EEX Corporation.
		G	EEX Corporation.
	19991054	G	Gary E. Primm.
		G	Kirk Kerkorian.
		G	MGM Grand, Inc.
	19991066	G	Johnson & Johnson
		G	H.S. Johnson Distributing Trust f/b/o Samuel C. Johnson.
		G	S.C. Johnson & Son, Inc.
	19991077	G	Smorgon Steel Group Ltd.
		G	Australian National Industries Limited.
		G	ANI America, Inc.
	19990891	G	Matthew T. Mouron.
		G	William Van Houten.
		G	Decker Transport Co., Inc.
	19990919	G	CMAC Investment Corporation.
		G	Amerin Corporation.
		G	Amerin Corporation.
	19990998	G	Resource America, Inc.
		G	Japan Leasing Corporation.
		G	JLA Credit Corporation.
	19991033	G	Sun Microsystems, Inc.
		G	MAXSTRAT Corporation.
		G	MAXSTRAT Corporation.
	19991069	G	William J. Ellison.
		G	Lee B. Morris.
		G	The Robert E. Morris Company.
07–JAN–99	19990814	G	Res-Care, Inc.
		G	Timothy F. Madden.
		G	Dungarvin, Inc., et al.
	19990890	G	Associates First Capital Corporation.
		G	Motiva Enterprises LLC.
		G	Motiva Enterprises LLC.
	19990903	G	Joseph Kruger, II.
		G	Shepherd Holdings, Inc.
		G	Shepherd Tissues, Inc.
	19991028	G	Mattel, Inc.
		G	The Learning Company, Inc.
		G	The Learning Company, Inc.
08–JAN–99	19990272	G	ABBN AG.
		G	Finmeccanica S.p.A.
		G	Elsag Bailey Process Automation N.V.
	19990273	G	ABB AB.
		G	Finmeccanica S.p.A.
		G	Elsag Bailey Process Automation N.V.
	19990954	G	The Washington Water Power Company.
		G	Vitol Holding B.V.
		G	Vitol Gas and Electric, LLC.
11–JAN–99	19990771	G	Golder, Thomas, Cressey, Rauner Fund V, L.P.
		G	Edward A. Whipp.
		G	NTF, Inc.
	19990841	G	Nextel Communications, Inc.
		G	Nextel Partners, Inc..
		G	Nextel Partners, Inc.
	19990842	G	Craig O. McCaw.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990843	G	Motorola, Inc.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990844	G	DLJ Merchant Banking Partner II, L.P.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19990880	G	Madison Dearborn Capital Partners II, L.P.
		G	Nextel Partners, Inc.
		G	Nextel Partners, Inc.
	19991002	G	Iceberg Transport, S.A.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET requisition status	Party name
		G	Total Tel USA Communications, Inc.
		G	Total Tel USA Communications, Inc.
	19991037	G	Virbac S.A.
		G	Agri-Nutrition Group Limited.
		G	Agri-Nutrition Group Limited.
	19991038	G	Green Equity Investors II, L.P.
		G	Life Printing & Publishing Co., Inc.
		G	Life Printing & Publishing Co., Inc.
	19991043	G	Group Maintenance America Corp.
		G	James T. Broyles.
		G	Pacific Rim Mechanical Contractors, Inc.
	19991057	G	Churchill ESOP Capital Partners, LP.
		G	Barney Joseph Blanchard.
		G	EIU, Inc.
		G	Electrical & Instrumentation Unlimited of Louisiana, Inc.
		G	EIU Maintenance, Inc.
		G	EIU Field Services, Inc.
		G	EIU Paymaster, Inc.
		G	Electrical Instrumentation, Inc.
	19991057	G	EIU Gulf Coast, Inc.
		G	EIU International, Inc.
	19991058	G	Churchill ESOP Capital Partners, LP.
		G	Robert Steve Lyon.
		G	EIU, Inc.
		G	EIU Maintenance, Inc.
		G	EIU Field Services, Inc.
		G	EIU Paymaster, Inc.
		G	Electrical Instrumentation, Inc.
		G	EIU Gulf Coast, Inc.
		G	EIU International, Inc.
		G	Electrical & Instrumentation Unlimited of Louisiana, Inc.
	19991078	G	J.C. Penney Company, Inc.
		G	Insurance Consultants, Inc.
		G	Insurance Consultants, Inc.
	19991079	G	McKesson Corporation.
		G	KWS&P, Inc.
		G	KWS&P, Inc.
	19991082	G	Fisher Companies Inc.
		G	Retlaw Enterprises, Inc.
		G	Retlaw Enterprises/South West Oregon Television Broadcasting.
	19991084	G	John J. Rigas.
		G	Louis Pagnotti, Inc.
		G	Verto Corporation.
	19991090	G	World Color Press, Inc.
		G	Infiniti Graphics, Inc.
		G	Infiniti Graphics, Inc.
	19991091	G	Ronald N. Stern.
		G	Kamilche Company.
		G	Simpson Pasadena Paper Company.
	19991094	G	Paul G. Allen.
		G	Value America, Inc.
		G	Value America, Inc.
	19991102	G	Electro Scientific Industries, Inc.
		G	MicroVision Corp.
		G	MicroVision Corp.
	19991112	G	Media/Communications Partners III Limited Partners.
		G	Kenneth R. Thomson.
	19991112	G	The Coriolis Group, Inc.
	19991118	G	Thomas L. Gores.
		G	AMR Corporation.
		G	TeleService Resources, Inc.
12–JAN–99	19990901	G	Allied Waste Industries, Inc.
		G	James L. Watts.
		G	Watts Trucking Service Co., Inc.
	19990959	G	Sony Corporation (a Japanese company).
		G	General Instrument Corporation.
		G	General Instrument Corporation.
	19990989	G	Stephen H. Winters.
		G	Integrated Health Services, Inc.
		G	IHS Home Care, Inc.

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET req-uisition status	Party name
	19991035	G	Welsh, Carson, Anderson & Stowe VII, L.P.
		G	Select Medical Corporation.
		G	Select Medical Corporation.
	19991053	G	Pecos Student Finance Corporation.
		G	HSBC Holdings plc.
		G	Marine Midland Bank.
	19991067	G	DLJ Merchant Banking Partners II, L.P.
		G	PATS, Inc.
		G	PATS, Inc.
	19991081	G	Associates First Capital Corporation.
		G	Transport Clearings, L.L.C.
		G	Transport Clearings, L.L.C.
	19991092	G	The AES Corporation.
		G	Energy East Corporation.
		G	NGE Generation, Inc., New York State Electric.
		G	Somerset Railroad Corporation.
	19991110	G	Thomas H. Lee Equity Fund IV, L.P.
		G	David C. Pratt.
		G	United Industries Corporation.
13–JAN–99	19991096	G	Haftpflichtverband Der Deutschen Industrie V.a.G.
		G	Lion Holding, Inc.
		G	Lion Holding, Inc.
	19991103	G	ONEOK, Inc.
		G	Magnum Hunter Resources, Inc.
		G	Magnum Hunter Resources, Inc.
	19991108	G	Golder, Thoma, Cressey, Rauner Fund V, L.P.
		G	TAGTCR Acquisition, Inc.
		G	TAGTCR Acquisition, Inc.
	19991109	G	TA/Advent VIII, L.P.
		G	TAGTCR Acquisition, Inc.
		G	TAGTCR Acquisition, Inc.
	19991121	G	3Dfx Interactive, Inc.
		G	STB Systems, Inc.
		G	STB Systems, Inc.
	19991124	G	President and Fellows of Harvard College.
		G	WMF Group Ltd.
		G	WMF Group Ltd.
	19991125	G	Drug Emporium, Inc.
		G	Koninklijke Ahold NV.
		G	Koninklijke Ahold NV.
	19991132	G	James D. Thaxton.
		G	FirstPlus Financial Group, Inc.
		G	FirstPlus Consumer Finance, Inc.
	19991139	G	MST Offshore Partners, C.V.
		G	Tri-Seal International, Inc.
		G	Tri-Seal International, Inc.
14–JAN–99	19990909	G	General Mills, Inc.
		G	LFPI Main Street, LLC.
		G	Lloyd's Food Products, Inc.
	19990940	G	Spring Industries, Inc.
		G	Readicut International plc.
		G	Regal Rugs, Inc., Readicut Holdings, Inc.
	19990991	G	Fineter S.A.
		G	Marley plc.
		G	Marley plc.
	19990992	G	James Kipp.
		G	Synetic, Inc.
		G	Synetic, Inc.
	19991060	G	J.P. Morgan & Co. Incorporated.
		G	Oread, Inc.
		G	Oread, Inc.
	19991093	G	Gamma Holding N.V.
		G	Verseidag AG.
		G	Verseidag AG.
15–JAN–99	19991087	G	Health Care Service Corporation.
		G	Texas Health Resources.
		G	Harris Methodist Texas Health Plan, Inc.
		G	Harris Methodist Health Insurance Company.
	19991107	G	Alan B. Miller.
		G	Cooper Companies, Inc., (The).

TRANSACTION GRANTED—EARLY TERMINATION—Continued

ET date	Transaction No.	ET req-uisition status	Party name
		G	Hospital Group of America, Inc.
	19991113	G	Burmah Castrol plc.
		G	LubeCon Employee Stock Ownership Plan.
		G	LubeCon Systems, Inc.
	19991117	G	CPL Long Term Care Real Estate Investment Trust.
		G	HRPT Properties Trust.
		G	HRPT Properties Trust.
	19991123	G	Lonnie A. Pilgrim.
		G	Cargill, Inc.
		G	Plantation Foods, Inc.
	19991140	G	Travel Services International, Inc.
		G	Richard D. & Arlene P. Small.
		G	AHI International Corporation.
	19991141	G	CBRL Group, Inc.
		G	Logan's Roadhouse, Inc.
		G	Logan's Roadhouse Inc.
	19991145	G	San Diego Gas & Electric Company.
		G	SEMCO Energy, Inc.
		G	SEMCO Energy Services, Inc.
	19991146	G	Pon Holdings B.V.
		G	W&O Supply, Inc.
		G	W&O Supply, Inc.
	19991149	G	Renal Care Group, Inc.
		G	Dialysis Centers of America, Inc.
		G	Dialysis Centers of America, Inc.
	19991151	G	Rhone Capital LLC.
		G	Car Component Technologies, Inc.
		G	Car Component Technologies, Inc.
	19991152	G	Randy Long.
		G	Tosco Corporation.
		G	Circle K Stores Inc.
	19991153	G	Mail-Well, Inc.
		G	Daryl R. Borneman.
		G	Colorhouse.
	19991155	G	Whitehall Associates, L.P.
		G	Spurlock Industries, Inc.
		G	Spurlock Industries, Inc.
	19991156	G	Mail-Well, Inc.
		G	Jeffrey D. Borneman.
		G	Colorhouse.
	19991161	G	Anglo American.
		G	Minorco.
		G	Minorco (U.S.A.) Inc.
	19991167	G	O. Bruton Smith.
		G	Thomas P. Williams, Sr.
		G	Tom Williams Buick, Inc.
		G	Williams Cadillac, Inc.
		G	Tom Williams Motors, Inc.
		G	Tom Williams Imports, Inc.
	19991168	G	Scotsman Holdings, Inc.
		G	Roland O. Undi.
		G	Evergreen Mobile Company.
	19991173	G	RAG Aktiengesellschaft.
		G	Mannesmann A. G.
		G	FLT Holding Company, Inc.
	19991181	G	Hubert G. Phipps.
		G	JoEllen Multack.
		G	Fedco, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, contact representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2489 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 982 3005]

Apple Computer, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 5, 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 D. Gold or Linda K. Badger, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, Suite 570, San Francisco, CA 94103, (415) 356–5275 or 356–5276.

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 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 January 26, 1999), 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, 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 Apple Computer, Inc. (hereinafter ''Apple'' or ''respondent''). Apple is a major manufacturer and marketer of personal computer hardware and software 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 Apple's advertisements for its ''Apple Assurance'' program. Under Apple Assurance, which Apple offered on most of its hardware products from September 1992 to April 1996, consumers who purchased Apple products in the United States were entitled to free access to technical support personnel for as long as they owned their Apple product. In October 1997, however, Apple began charging Apple Assurance consumers $35 for such access. Accordingly, the proposed complaint alleges that the company falsely claimed that Apple Assurance customers would have access to Apple technical support personnel, at no charge, for as long as that customer owns the product.

The proposed order contains cease and desist provisions as well as complete redress for consumers harmed by Apple's conduct. Part I of the proposed order would prevent Apple from misrepresenting the terms of any technical support service offered in conjunction with any product.

Part II would require that the company reinstate its promise to Apple Assurance customers, and provide live, free technical support for as long as they own their computers. Specifically, this provision requires that the company provide access to complimentary technical support personnel, toll-free, to each ''eligible person'' who provides the valid serial number of a ''covered product'' for as long as such person owns the covered product. The order defines ''eligible person'' as any original owners, or member of the owner's immediate family, who purchased a ''covered product.'' A ''covered product'' is an Apple product sold in the United States between September 1992 and April 1996. Appendix A to the order includes a list of all models sold during this period of time. Under the terms of Part II of the order, Apple would be permitted to suggest that an eligible person seek answers to questions via less expensive means (such as through pre-recorded phone trees, the Internet, or product manuals), as long as the person always has the option of speaking to live technical support personnel.

Part III of the proposed order would require Apple to reimburse each eligible person who has wrongly paid any fee for technical support as a result of Apple's actions. Pursuant to the order, Apple must send a ''Notice of Refund'' to each such person within 20 days of service of the order. The Notice of Refund must include either a refund check or a notification of a credit to the customer's credit card account for the full amount paid for technical support services. Further, the Notice informs these customers of their continuing right to free, live, technical support for as long as these customers, or members of their immediate families, own their Apple products.

The proposed order also requires the respondent to maintain materials relied upon to substantiate claims covered by the order, to provide a copy of the consent agreement to all employees or representatives with duties affecting compliance with the terms of the order; to notify the Commission of any changes in corporate structure that might affect compliance with the order; and to file one or more reports detailing compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–2487 Filed 2–2–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Ms. Janell Bodily, B.S., M.S.W., University of Utah: Based on the report of an investigation conducted by the University of Utah and information obtained by ORI during its oversight review, ORI finds that Ms. Bodily, former interviewer, Health Education

Department, College of Health, University of Utah, engaged in scientific misconduct in research supported by a National Institute of Mental Health (NIMH), National Institutes of Health (NIH) grant.

Specifically, Ms. Bodily intentionally falsified patient signatures and responses to questions for at least 75 patient interviews for an NIMH-funded research project, ''Evaluation of the Utah Prepaid Mental Health Plan,'' which involved indigent patients. The study required annual interviews of the participating subjects. The falsified information was damaging to the research project because researchers had to expend substantial time and additional money to re-interview patients. Because the data for the previous year could not be recollected, the response rate for that year was substantially below the response rate for other years of the study and may have reduced the overall statistical reliability of the multi-year study.

None of the questioned data has been included in publications.

ORI has implemented the following administrative actions for the three (3) year period beginning January 25, 1999:

(1) Ms. Bodily is prohibited from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) Ms. Bodily is prohibited from serving in any advisory capacity to PHS, including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–2510 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Federal Case Registry Family Violence State Practices Survey.

OMB No.: New.

Description: Public Law 104–193, the ''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' requires the Office of Child Support Enforcement (OCSE) to develop a Federal Case Registry to improve the ability of State child support agencies to locate noncustodial parents and collect child support across State lines. This Federal Case Registry includes an indicator for Family Violence, meant to ensure a higher level of confidentiality on cases with the indicator. This indicator is provided by the State submitting the case information. OCSE would like to conduct a brief telephone survey to determine the methods used by States to place the indicator, so that the information may be shared with the other States.

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
States	54	1	2	108

Estimated Total Annual Burden Hours: 108.

In compliance with the requirements of Section 3506(c)(2)(A) of 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: January 29, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–2516 Filed 2–2–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0126]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of *N,N‴*-[1,2-ethanediylbis [[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]] bis[*N′,N″-dibutyl-N′,N″*-bis (1,2,2,6,6-pentamethyl-4-

piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4639) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of *N*,*N*‴-[1,2-ethanediylbis[[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]imino]-3,1-propanediyl]]bis[*N*′,*N*″-dibutyl-*N*′,*N*″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 20, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2506 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–0127]

GEO Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that GEO Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of trimethylolethane as a dispersant for pigments used as components of food-contact articles.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4635) has been filed by GEO Specialty Chemicals, C/O Keller and Heckman, 1001 G St., NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of trimethylolethane as a dispersant for pigments used as components of food-contact articles.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: January 20, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–2505 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91N–0396]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Reports of Corrections and Removals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing thata collection of information entitled ''Medical Devices; Reports of Corrections and Removals'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 25, 1998 (63 FR 65210), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–359. The approval expires on January 31, 2002. A copy of the supporting statement for this information collection is available on the Internet at ''http://www.fda.gov/ohrms/dockets''.

Dated: January 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–2563 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1232]

Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material; Draft; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled ''Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material.'' This draft guidance is neither final nor is it in effect at this time. This draft guidance is intended to provide assistance to manufacturers of in vitro diagnostic quality control materials. It complements the existing guidance on labeling of these devices entitled '' Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Diagnostic Device.''

DATES: Written comments concerning this draft guidance must be received by May 4, 1999.

ADDRESSES: Written comments concerning this draft guidance must be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies on a 3.5″ diskette of the draft guidance

document entitled ''Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material'' to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance, entitled ''Points to Consider Guidance Document on Assayed and Unassayed Quality Control Materials,'' complements the existing guidance document published in February 1996, entitled ''Points to Consider for Review of Calibration and Quality Control Labeling for In Vitro Devices.'' FDA believes information in this draft guidance concerning unassayed quality control materials may be useful to manufacturers making these products, even though such materials are currently exempt from premarket review. For assayed quality control materials, the intent is for this draft guidance document to eventually be cited as the basis for abbreviated 510(k)'s for processing of assayed controls.

II. Significance of Guidance

This draft guidance document represents the agency's current thinking on assayed and unassayed quality control materials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted Good Guidance Practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance document is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive ''Points To Consider Guidance Document on Assayed and Unassayed Quality Control Material'' via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (2231) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes ''Points to Consider for Guidance Document on Assayed and Unassayed Quality Control Material,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at ''http://www.fda.gov/cdrh''.

IV. Comments

Interested persons may, on or before May 4, 1999, submit to Docket Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in heading of this document. The draft guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 19, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–2508 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–1224]

Guidance for Industry on FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products.'' The guidance considers the quality and quantity of data that may be adequate to add a new use to the prescribing information for a product used in the treatment of cancer. The guidance is part of an agency effort to encourage the submission of supplemental applications for new uses for approved drug and biological products. This guidance is consistent with the Food and Drug Administration Modernization Act of 1997 (the Modernization Act), which specifies that the agency will continue its efforts to encourage sponsors to submit supplemental applications for new uses for their products.

DATES: Written comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at ''http://www.fda.gov/cder/guidance/index.htm'' or ''http://www.fda.gov/cber/guidelines.htm''. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Robert L. Justice, Center for Drug

Evaluation and Research (HFD–150), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2473.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of March 21, 1997 (62 FR 13650), FDA published a draft guidance for industry entitled ''Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products'' as part of efforts to encourage the submission of supplemental applications for drug and biological products. The intent of that draft guidance was to clarify what clinical evidence of effectiveness should be provided in new drug applications and supplemental applications. On that same date, the agency published a draft guidance for industry entitled ''FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products,'' which considered the quality and quantity of data that may be adequate to add a new use to the prescribing information for a product used in the treatment of cancer. These guidances were published as part of agency efforts to expedite the development of new and supplemental uses for drug and biological products.

In November 1997, the Modernization Act (Pub. L. 105–111) was signed into law by the President. Section 403 of the Modernization Act specifies that FDA will continue its efforts to encourage sponsors to submit supplemental applications for new uses for their products. Consistent with section 403 of the Modernization Act, the agency has finalized the draft guidances it issued in March 1997. After considering comments submitted by the public, FDA announced the availability, in final form, of the guidance entitled ''Providing Clinical Evidence of Effectiveness for Human Drug and Biological Products'' in the **Federal Register** of May 15, 1998 (63 FR 27093).

This notice announces the availability of the final version of the guidance entitled ''FDA Approval of New Cancer Treatment Uses for Marketed Drug and Biological Products.'' This guidance focuses on the particular information to be provided when submitting an application for the approval of a supplemental new cancer treatment use for a marketed drug or therapeutic biological product. Cancer research often reveals potential new uses for already marketed drugs, and it is important to have new uses approved for inclusion in the product labeling as soon as adequate evidence of product safety and effectiveness for the new use becomes available.

Consistent with section 403(c) of the Modernization Act, CDER and CBER have designated key persons who will: (1) Encourage the prompt review of supplemental applications for approved products, and (2) work with sponsors to facilitate the development and submission of data to support supplemental applications.

Within CDER, the Associate Director for Medical Policy is fulfilling the requirements of section 403(c) of the Modernization Act by working with sponsors to facilitate the development of supplemental applications. Within the Division of Oncology Drug Products, the Special Assistant to the Division Director is working with sponsors to facilitate the development and submission of data to support supplemental applications for drug products used in cancer treatment. Efforts include: (1) Managing initiatives to seek the views of major groups and of individuals in the cancer research and treatment community, (2) managing and monitoring actions regarding possible labeling revisions, and (3) preparing regular progress reports.

Within CBER, supplemental applications are being facilitated by the Deputy Director, Medical, in accordance with section 403(c) of the Modernization Act. Review activities for most oncologic product applications are managed by the Office of Therapeutics Research and Review. The Oncology Branch of the Division of Clinical Trials Design and Analysis will work with sponsors to facilitate the development and submission of data to support supplemental applications for biologics used in cancer treatment.

This guidance represents the agency's current thinking on new cancer treatment uses for marketed drug and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public in any way. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Dated: January 27, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

[FR Doc. 99–2562 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0375]

Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA).'' Under the Sectoral Annex on Medical Devices (Annex), FDA has agreed to designate conformity assessment bodies (CAB's) as third parties (i.e., organizations outside of FDA) authorized to perform premarket and quality system evaluations consistent with the Annex. This guidance will assist those who are interested in participating in this program as CAB's or as applicants pursuing premarket and quality system evaluations consistent with the Annex.

DATES: Written comments may be submitted at any time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. If you do not have access to the World Wide Web, submit written requests for single copies of the guidance entitled ''Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA)'' on 3.5″ diskette to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Written comments concerning this guidance may be submitted at any time to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: John F. Stigi, Division of Small Manufacturers Assistance (HFZ–220),

Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597 or FAX 301–443–8818.

SUPPLEMENTARY INFORMATION:

I. Background

The United States and the European Community (EC) exchanged letters on October 30, 1998, which brought the MRA into force on December 7, 1998. FDA published a final rule on the MRA on November 6, 1998 (63 FR 60122).

In the MRA negotiations, FDA led the negotiations on the Annex to the MRA between the United States and the EC. These negotiations resulted in the drafting of the MRA, which includes a special section pertaining to medical devices that is referred to as the Annex. The Annex provides for a 3-year transition period. After the transition period FDA and the EC may normally endorse premarket and quality system evaluation reports provided by equivalent third parties, the CAB's.

In order to establish confidence in the conformity assessment process, CAB's will be required to participate in rigorous joint exercises to demonstrate their proficiency to conduct evaluations. Upon implementation of this program, CAB evaluations will be exchanged and normally endorsed by both FDA and the EC for the marketing of medical devices.

FDA is using the National Voluntary Conformity Assessment System Evaluation (NVCASE) administered by the National Institute of Standards and Technology (NIST) of the U.S. Department of Commerce to recognize one or more accreditation bodies that, in turn, will accredit potential U.S. CAB's seeking to be designated under the Annex to evaluate medical devices produced for the EC market. FDA has considered the recommendations made by the NIST under NVCASE and has designated the U.S. CAB's that meet criteria for technical competence established in the Annex, for possible participation in transition activities.

In the **Federal Register** of July 2, 1998 (63 FR 36247), FDA published information regarding the process for CAB's to become eligible for designation under the Annex. On the same date, the agency announced the availability of a draft guidance on the third party program (63 FR 3621). The agency received three comments on the draft guidance. FDA has reviewed these comments and has made no significant revisions in the guidance in response to these comments. The agency has, however, included additional information regarding conflicts of interest, including additional examples of situations that would indicate a potential conflict of interest.

II. Significance of Guidance

This guidance represents the agency's current thinking on ''Guidance for Staff, Industry, and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community.'' It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so using the World Wide Web. CDRH maintains an entry on the World Wide Web for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH Home Page includes the ''Guidance for Staff, Industry and Third Parties: Third Party Programs Under the Sectoral Annex on Medical Devices to the Agreement on Mutual Recognition Between the United States of America and the European Community (MRA),'' device safety alerts, access to **Federal Register** reprints, information on premarket submissions including lists of approved applications and manufacturers' addresses, small manufacturers assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH Home Page may be accessed at ''http://www.fda.gov/cdrh''.

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance to the contact person listed above. Such comments will be considered when determining whether to amend the current guidance.

Dated: January 19, 1999.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 99–2509 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: February 3, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 2055 Harbor Boulevard, Ventura, CA 93001, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology and Reproductive Sciences Initial Review Group Reproductive Biology Study Section.

Date: February 8–9, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Dennis Leszczynski, PHD, Scientific Review Administrator, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 6170, MSC 7892, Bethesda, MD 20892, (301) 435–1044.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1–SSS–W(17).

Date: February 8–10, 1999.

Time: 6:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Sheraton Hotel, 36th & Chestnut, Philadelphia, PA 19104.

Contact Person: Dharam S. Dhindsa, DVM, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr,nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal and Dental Sciences Initial Review Group, Oral Biology and Medicine Subcommittee 1.

Date: February 9–10, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Old Town Alexandria, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncological Sciences Initial Review Group Pathology B Study Section.

Date: February 10–12, 1999.

Time: 8:00 AM to 6:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Initial Review Group Visual Sciences C Study Section.

Date: February 10–11, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person: Carole L. Jelsema, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2564 Filed 2–2–99; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Evaluation Study of Congestive Heart Failure and Pulmonary Artery Catheterization Effectiveness in CHF Patients (Escape).

Date: February 9, 1999.

Time: 9:00 AM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Stem Cell Transplantation to Establish Allochimerism.

Date: February 24, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David T. George, PhD, Scientific Review Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Building II, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2570 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Discovery of Novel Drugs for Alzheimer's Disease.

Date: February 11, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: University of Florida, Gainesville, FL 32610.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: February 28–March 1, 1999.

Time: 7:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William A. Kachadorian, PhD, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Pepper Center Applications.

Date: March 2–4, 1999.

Time: 6:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur D. Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Longitudinal Analysis of Age Related Memory Decline.
Date: March 8, 1999.
Time: 2:30 PM to 4:30 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.
Date: March 8–10, 1999.
Time: 7:00 PM to 10:00 AM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, A Pilot Research Grant Program.
Date: March 9–10, 1999.
Time: 1:00 PM to 10:00 AM.
Agenda: To review and evaluate grant applications.
Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Epidemiology of Dementia in an Urban Community.
Date: March 9, 1999.
Time: 1:30 PM to 3:30 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Multicenter Vitamin E Trial in Persons with Down Syndrome.
Date: March 11, 1999.
Time: 1:00 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: January 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2517 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Aging, February 3, 1999, 10:30 a.m. to February 4, 1999, 12:45 p.m., National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892 which was published in the **Federal Register** on January 15, 1999, Vol. 64, No. 10.

The mtg. will be open to the public on Wed., 2/3 from 10:30 a.m. until 2 p.m., from 3–4 p.m. & again on 2/4 from 8 a.m. to adjournment. The mtg. will be closed to the public on 2/3 from 2–3 p.m. & again from 4 p.m. until recess. The meeting is partially closed to the public.

Dated: January 27, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2518 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.
Date: February 18, 1999.
Open: 8:30 AM to 12:00 PM.
Agenda: The meeting will be open to the public to discuss administrative details relating to Council Business and special reports.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Closed: 1:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Contact Person: Steven J. Hausman, PhD; Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: January 27, 1999.

LaVerne J. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2519 Filed 2–2–99; 8:45am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIEHS.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individual who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Environmental Health Sciences, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIEHS.

Date: March 7–9, 1999.

Closed: March 7, 1999, 8:00 PM to approximately 10:30 PM.

Agenda: To review and evaluate the Intramural Laboratory of Structural Biology—prereview.

Place: Nat. Institute of Environmental Health Sciences, Siena Hotel, 1505 E. Franklin Street, Chapel Hill, NC 27514.

Open: March 8, 1999, 8:00 AM to 4:30 PM.

Agenda: Presentation of the organization and conduct of research in the Laboratory of Structural Biology.

Place: Nat. Institute of Environmental Health Sciences Building 101, Main Conference Room, South Campus, Research Triangle Park, NC 27709.

Closed: March 9, 1999, 8:30 AM to adjournment.

Agenda: To review and evaluate the programs of the laboratory listed above.

Place: Nat. Institute of Environmental Health, Sciences, Building 101, Main Conference Room, South Campus Research Triangle Park, NC 27709.

Contact Person: J. Carl Barrett, PHD, Scientific Director/Executive Secretary, Nat. Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle Park, NC 27709, ((19) 541–3205.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115 Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: January 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2520 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Treatment.

Date: March 5, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Susan L. Coyle, PhD., Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5600 Fishers Lane, Room 10–42, Rockville, MD 20857, (301) 443–2620.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel Medication Development Centers.

Date: March 10–11, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Khursheed Asghar, PhD., Chief, Basic Sciences Review Branch, Office of Extraumural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, Rockville, MD 20857, (301) 443–2620.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2565 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–29, Review of P01.

Date: February 1–2, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–07, Review of P01.

Date: February 2–3, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–09, Review of RFA.

Date: February 23–24, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, Gaithersburg, MD 20873

Contact Person: H. George Hausch, PHD, Chief, Scientific Review Section, 4500 Center

Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2566 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee B.

Date: March 11–12, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, 100 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Irene B. Glowinski, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20815, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2567 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: February 19, 1999.

Time: 12:00 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2568 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The portions of the meeting devoted to the review and evaluation of journals for potential indexing by the National Library of Medicine will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended. Premature disclosure of the titles of the journals as potential titles to be indexed by the National Library of Medicine, the discussions, and the presence of individuals associated with these publications could significantly frustrate the review and evaluation of individual journals.

Name of Committee: Literature Selection Technical Review Committee.

Date: February 4–5, 1999.

Open: February 4, 1999, 9:00 a.m. to 10:30 a.m.

Agenda: Administrative reports and program developments.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: February 4, 1999, 10:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: February 5, 1999, 10:15 a.m. to 10:45 a.m..

Agenda: Administrative reports and program developments.

Closed: February 5, 1999, 10:45 a.m. to 12:00 p.m.

Agenda: To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Sheldon Kotzin, BA, Chief, Bibliographic Services Division/Library Operations NLM, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419, Bethesda, MD 20894, (301) 496–6217.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93,879, Medical Library of Assistance, National Institutes of Health, HHS)

Dated: January 29, 1999.

Laverne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–2569 Filed 2–2–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 2903–2904, dated January 19, 1999) is amended to reflect organizational changes within the National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The restructuring will (1) abolish the Office of Surveillance and Analysis within the Office of the Director, NCCDPHP; (2) retitle the Division of Chronic Disease Control and Community Intervention as the Division of Adult and Community Health and restructure the functions of the Division; and (3) retitle the Division of Nutrition as the Division of Nutrition and Physical Activity and restructure the functions of the Division.

Section C–B, Organization and Functions, is hereby amended as follows:

After the functional statement for the *Office of the Director (CL1), National Center for Chronic Disease Prevention and Health Promotion (CL),* delete in their entirety the title and functional statement for the *Office of Surveillance and Analysis (CL11).*

After the functional statement for the *Office of the Director (CL21), Division of Adolescent and School Health (CL2),* delete the title and functional statement for the *Division of Chronic Disease Control and Community Intervention (CL3)* and insert the following:

Division of Adult and Community Health (CL3). (1) Develops and manages nationwide and State-based surveillance systems for chronic disease risk factors and health promotion activities; (2) develops and promotes community-based interventions and programs; (3) provides national and international leadership in health education and health promotion; (4) conducts studies to enhance public health activities in health services and managed care; (5) manages public health research, training, cooperative, and intervention activities and diverse settlings such as cities, universities, State health departments, and other countries; (6) promotes the understanding and improvements of the determinants and issues related to cardiovascular health, aging, and epilepsy; (7) in cooperation with other components of NCCDPHP, coordinates activities with other Federal, State, and local governmental agencies, academia, and nongovernmental organizations.

Delete the functional statement for *Office of the Director (CL31)* and insert the following:

(1) Manages, coordinates, and evaluates the activities and programs of the Division; (2) ensures that Division activities are coordinated with other components of CDC both within and outside the Center, with Federal, State, and local health agencies, and with voluntary and professional health agencies; (3) provides leadership and coordinates Division responses to requests for research, consultation, training, collaboration and technical assistance or information on managed care, health promotion, behavioral surveys, cardiovascular health, aging, epilepsy, and arthritis; (4) provides administrative, logistical, and management support for Division field staff; (5) ensures the coordination of NCCDPHP internal activities related to Prevention Health and Health Services Block Grant (PHHSBG) programs and develops and administers, guidelines, uniform reporting procedures, and evaluation criteria for programs supported by PHHSBG; (6) provides administrative and management support for the Division including guidance on the organization of personnel and the use of financial resources, and oversight of grants, cooperative agreements, contracts, and reimbursement agreements.

Behavioral Surveillance Branch (CL32). (1) Manages a nationwide program for State-specific surveillance of behavioral risk factors and other antecedents of health conditions, particularly chronic diseases; (2) provides support to build State capacity for telephone survey operations and data management, and for the analysis, dissemination, and use of the data by State agencies, and universities to set public health priorities and monitor public health programs; (3) develops guidelines and criteria for the assessment of behavioral risk factors in State and local populations; (4) analyzes and disseminates the results of analyses to policy and decision makers, public health professionals, and other relevant audiences through communication channels and formats appropriate to these constituencies; (5) coordinates analyses and use of survey methods to enhance behavioral risk factor data; (6) develops guidelines and criteria for monitoring public health policies directed at affecting behavioral and other risk factors leading to chronic diseases and other conditions; (7) promotes the broad use and application of Behavioral Risk Factors Surveillance Survey (BRFSS) results and findings through current information systems; (8) works closely with other Divisions in NCCDPHP and other CDC Centers/Institute/Offices (CIO's) to formulate a cross-cutting surveillance system for the States and CDC; (9) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete the title and functional statement for the *Cardiovascular Health Studies Branch (CL33)* and insert the following:

Cardiovascular Health Branch (CL33). (1) Develops and evaluates effective interventions to be used by State and local health agencies and health care organizations to mitigate risk factors for cardiovascular disease; (2) conducts evaluation studies to document the efficacy and effectiveness of disease prevention and health promotion interventions; (3) provides leadership in the development of components and guidelines for effective chronic disease prevention and health promotion strategies related to cardiovascular disease; (4) provides consultation to State and local health agencies and health care delivery organizations in planning, establishing, and evaluating cardiovascular health activities; (5) carries out epidemiologic research related to the prevention of cardiovascular disease and improvement of cardiovascular health; (6) disseminates findings from research and program evaluations to policy and decision makers, public health professionals and other relevant audiences through communication channels and formats appropriate to these constituencies; (7) provides administrative and management support for the branch, including oversight of

grants, cooperative agreements, contracts, and reimbursable agreements.

Delete the title and functional statement for the *Community Health Promotion Branch (CL35)* and insert the following:

Community Health and Program Services Branch (CL35). (1) Provides technical assistance to State health agencies and other Federal, national, and international organizations to plan, implement, and evaluate community-based chronic disease prevention and health promotion programs; (2) develops, implements, and evaluates training in the area of chronic disease intervention and community health promotion for State health departments and other agencies; (3) supports health promotion and disease prevention research conducted at university-based prevention centers; (4) develops chronic disease epidemiology capacity in State health departments through training and support of chronic disease field epidemiologists and other capacity building efforts; (5) provides statistical and programming support to the Division, including assistance in design of data collection instruments, computer programming, and statistical analysis; (6) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete in their entirety the title and functional statement for the *Statistics Branch (CL37).*

Delete the title and functional statement for the *Aging Studies Branch (CL38)* and insert the following:

Health Care and Aging Studies Branch (CL38). (1) Coordinates and fosters research and programs in managed care settings for the Center; (2) reviews and develops policy for using health care settings as a focus for public health activities related to disease prevention and health promotion; (3) examines issues related to cost effectiveness in the management and care of chronic diseases; (4) assists in setting health care standards for prevention of chronic diseases; (5) studies potentially modifiable causes of chronic disease and conditions of older adults; (6) develops and evaluates measures of public health impact concerned with such issues as quality of life and disability adjusted life years; (7) assesses the health and economic burden of chronic diseases and conditions in older adults through activities such as demographic, economic, and behavioral studies; (8) disseminates findings from research and program evaluations to policy and decision makers, public health professionals, and other relevant audiences through communication channels and formats appropriate to these constituencies; (9) provides administrative and management support for the branch, including oversight of grants, cooperative agreements, contracts, and reimbursable agreements.

Delete in their entirety the title and functional statement for the *Health Interventions and Translation Branch (CL39).*

After the functional statement for the *Office of the Director (CL41), Division of Diabetes Translation (CL4),* delete the title and functional statement for the *Division of Nutrition (CL5)* and insert the following:

Division of Nutrition and Physical Activity (CL5). (1) Provides national leadership to chronic disease prevention and maternal and child health in the areas of nutrition and physical activity; (2) implements systems to track and analyze nutrition problems, physical inactivity, and related risk factors; builds State capacity to collect and utilize surveillance data; (3) builds international, national, State, and local expertise and capacity in nutrition and physical activity through consultation and training; (4) provides technical assistance and other support to enable State and local health agencies to plan, implement, and evaluate nutrition and physical activity programs; (5) contributes to the science base by conducting epidemiologic and intervention studies related to nutrition and physical activity; (6) ensures that both scientific and programmatic efforts span the arenas of policy, environment, communications, social and behavioral interventions; (7) develops and disseminates new methods, guidelines, and criteria for effective nutrition and physical activity programs; (8) collaborates with appropriate Federal and State agencies, international/national/community organizations, and other CDC partners; (9) provides national leadership in health communications to promote nutrition and physical activity and integrate health communications efforts with overall program efforts; (10) facilitates the translation of nutrition and physical activity research findings into public health practice.

Delete the functional statement for the *Office of the Director (CL51)* and insert the following:

Office of the Director (CL51). (1) Provides direction in establishing Division priorities, strategies, programs, and policies; (2) mobilizes and coordinates partnerships and constituencies to build a national infrastructure for nutrition and physical activity promotion; (3) educates the public and key decision makers about the importance of nutrition and physical activity to public health; (4) ensures that Division activities are coordinated within NCCDPHP and with other CIOs, constituencies, and Federal agencies; (5) monitors progress toward achieving Division objectives and assesses the impact of programs; (6) provides special training and capacity building activities in support of Division programs; (7) provides administrative and management support for Division activities including guidance on the organization of personnel and the use of financial resources; (8) provides leadership to the Division and field staff on health communication efforts to promote nutrition and physical activity.

Physical Activity and Health Branch (CL52). (1) Conducts epidemiologic research related to physical activity, health, and the prevention of chronic disease; (2) develops and evaluates disease prevention and health promotion interventions involving physical activity; (3) develops monitoring and tracking systems for physical activity behaviors; (4) provides leadership in the development of guidelines for effective chronic disease prevention and health promotion strategies through physical activity; (5) develops and produces communication tools and public affairs strategies related to physical activity and health in collaboration with the Division's communications team; (6) provides technical assistance to State and local health agencies in planning, establishing, and evaluating physical activity promotion strategies; (7) translates physical activity and exercise research findings into public health practice; (8) disseminates findings from epidemiologic research and program evaluations through publications in the scientific literature; (9) collaborates with appropriate groups internal and external to CDC.

Delete the title and functional statement for the *Chronic Disease Prevention Branch (CL56)* and insert the following:

Chronic Disease Nutrition Branch (CL56). (1) Designs, implements, and evaluates surveillance activities, epidemiologic studies, and intervention projects related to chronic disease nutrition problems and risk factors; (2) develops and coordinates State-based dietary surveillance relating to chronic disease nutrition problems and risk factors, and builds State capacity to collect and utilize surveillance data; (3) provides assistance, consultation, and training to State, local, and international agencies to prevent and control chronic

disease and relevant risk factors; (4) analyzes, interprets, and disseminates data from surveys, surveillance activities, and epidemiologic studies related to chronic disease nutrition problems and related risk factors; (5) develops and disseminates guidelines for chronic disease nutrition assessment, intervention, and surveillance; (6) coordinates and/or collaborates with appropriate Federal agencies and national organizations to strengthen and extend chronic disease nutrition surveillance, epidemiology, and intervention activities; (7) develops new methods, techniques, and criteria for the assessment of chronic disease nutrition problems and related risk factors in the United States and other countries; (8) coordinates and/or collaborates with other divisions in NCCDPHP to develop and strengthen the chronic disease nutrition components of their programs, as appropriate.

Delete the title and functional statement for the *Maternal and Child Health Branch (CL57)* and insert the following:

Maternal and Child Nutrition Branch (CL57). (1) Designs, implements, and evaluates epidemiological studies and intervention projects related to nutritional and behavioral risks in maternal and child populations; (2) designs, implements, and evaluates epidemiologic studies and intervention projects related to micronutrient nutrition, especially iron; (3) develops and coordinates State-based maternal and child nutrition surveillance and surveys, and builds State capacity to carry out surveillance activities; (4) provides assistance, consultation, and training to local, State, and international agencies to prevent and control adverse maternal and child health outcomes related to nutritional and behavioral risk factors; (5) analyzes, interprets, and disseminates data from surveys, surveillance activities, and epidemiologic studies related to health and nutrition in domestic and international maternal and child populations; (6) develops and disseminates new methods, techniques, guidelines, and criteria for nutrition assessment, surveillance, and intervention in domestic and international maternal and child populations; (7) coordinates and/or collaborates with appropriate Federal agencies and national/international organizations to develop and strengthen maternal and child nutrition programs; (8) coordinates and collaborates with other divisions in NCCDPHP and other CDC CIOs to develop and strengthen the maternal and child nutrition components of their programs, as appropriate.

Dated: January 22, 1999.

Jeffrey P. Koplan,

Director.

[FR Doc. 99–2473 Filed 2–2–99; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention, Drug Testing Advisory Board; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Drug Testing Advisory Board of the Center for Substance Abuse Prevention in March 1999.

The first day (March 8) of the Drug Testing Advisory Board meeting will be closed from 8:30 a.m. until 1:00 p.m. and involves the review of sensitive National Laboratory Certification Program (NLCP) internal operating procedures and program development issues. Therefore, this portion of the meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with 5 U.S.C. 552b(c)(2), (4), and (6) and 5 U.S.C. App.2, § 10(d).

The Drug Testing Advisory Board meeting will be open from 1:00 p.m. until 5:00 p.m. on March 8 and open from 8:00 a.m. until 3:30 p.m. on March 9. The open session will include a roll call, general announcements, and a discussion of the information submitted by industry representatives regarding the use of alternative matrices (hair, sweat, oral fluids) and on-site tests to test for drugs of abuse. A public comment period will be scheduled during the open session. If anyone needs special accommodations for persons with disabilities please notify the Contact listed below.

An agenda for this meeting and a roster of board members may be obtained from: Ms. Giselle Hersh, Division of Workplace Programs, 5600 Fishers Lane, Rockwall II, Suite 815, Rockville, MD 20857, Telephone: (301) 443–6014.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Drug Testing Advisory Board

Meeting Date: March 8–9, 1999

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Closed: March 8, 1999; 8:00 a.m.–1:00 p.m.

Open: March 8, 1999; 1:00 p.m.–5:00 p.m.

Open: March 9, 1999; 8:00 a.m.–3:30 p.m.

Contact: Donna M. Bush, Ph.D., Executive Secretary, Telephone: (301) 443–6014 and FAX: (301) 443–3031

Dated: January 28, 1999.

Sandi Stephens,

Extramural Activities Team Leader, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–2511 Filed 2–2–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–006180

Applicant: PE AgGen, Davis, CA,

The applicant requests a permit to import blood samples taken from captive-held and captive-hatched Komodo dragon (*Varanus komodoensis*) worldwide for the purpose of scientific research.

PRT–007309

Applicant: The Lubee Foundation, Inc., Gainesville, FL

The applicant requests a permit to export biological samples taken from captive-held and captive born specimens of Rodrigues fruit bat (*Pteropus rodricensis*) to the University of Aberdeen, Scotland, UK, for the purpose of scientific research.

PRT–007372

Applicant: San Diego Wild Animal Park, Escondido, CA

The applicant requests a permit to export two male and four female captive-held and captive born Arabian oryx (*Oryx leucoryx*) to Municipalite de Tunis, Tunisia, to enhance the survival of the species through propagation.

PRT–005794

Applicant: The Detroit Zoological Institute, Detroit, MI

The applicant requests a permit to import three male and three female captive hatched Japanese giant salamanders from the Asa Zoological Park, Hiroshima, Japan, for the purpose of enhancement of the survival of the species through conservation education, propagation, and scientific research.

PRT–004520

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce one female captive-held Asian elephant (*Elephas maximus*) from the Clyde Beatty-Cole Bros. Circus in Deland, Florida, for the purpose of enhancement of the survival of the species through conservation education and propagation.

PRT–004521

Applicant: Hawthorn Corporation, Grayslake, IL

The applicant requests a permit to purchase in interstate commerce one female captive-held Asian elephant (*Elephas maximus*) from the American Circus Corporation in Deland, Florida, for the purpose of enhancement of the survival of the species through conservation education and propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–007280

Applicant: Michael Carpinito, Kent, WA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 29, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–2541 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1430–00]

Notice of Availability of Approved Plan Amendment and Decision Record; Nevada

January 25, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability, Decision Record for the Approved Paradise-Denio and Sonoma-Gerlach Management Framework Plans Lands Amendment.

DATES: The Approved Paradise-Denio and Sonoma-Gerlach Management Framework Plans Lands Amendment and Decision Record will be distributed and made available to the public on or around February 16, 1999.

ADDRESS: A copy of the Approved Plan Amendment and Decision Record can be obtained from: Bureau of Land Management, Winnemucca Field Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada 89445.

FOR FURTHER INFORMATION CONTACT: Mary Figarelle, Realty Specialist, Winnemucca Field Office, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445, (775) 623–1500.

SUPPLEMENTARY INFORMATION: The Approved Lands Amendment and Decision Record complete the land use planning process, and document the changes to various decisions as they pertain to the retention, acquisition, and disposal of public lands managed by the Winnemucca Field Office of the Bureau of Land Management.

Terry A. Reed,

Field Manager.

[FR Doc. 99–2479 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 88993]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, has filed an application to withdraw 429,000 acres of National Forest System lands to preserve the area for traditional cultural purposes by Native Americans, protection of threatened and endangered species, and preservation of outstanding scenic values and roadless character. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all activities consistent with applicable Forest plans and those related to exercise of valid existing rights.

DATES: Comments and requests for a public meeting must be received by May 4, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, Montana 59403.

FOR FURTHER INFORMATION CONTACT: Forest Supervisor, Lewis and Clark National Forest, 1101 15th Street North, Box 869, Great Falls, Montana 59403.

SUPPLEMENTARY INFORMATION: The Forest Service has filed an application to withdraw the following-described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

All National Forest System lands in the Rocky Mountain Division of the Lewis and Clark National Forest outside of existing wilderness east of the Rocky Mountain Continental Divide. This includes Federal lands in part or all of the following townships:

Principal Meridian, Montana

Tps. 16 N., Rs. 7 and 8 W.
Tps. 17 N., Rs. 7 and 8 W.
Tps. 18 N., Rs. 8 and 9 W.
Tps. 19 N., Rs. 9 and 10 W.
Tps. 20 N., Rs. 9, 10, and 11 W.
Tps. 21 N., Rs. 9 and 10 W.
Tps. 22 N., Rs. 9 and 10 W.
T. 23 N., R. 9 W.
Tps. 24 N., Rs. 9 and 10 W.
Tps. 25 N., Rs. 9 and 10 W.
Tps. 26 N., Rs. 9 and 10 W.
Tps. 27 N., Rs. 9 and 11 W.
Tps. 28 N., Rs. 10 to 13 W.

Tps. 29 N., Rs. 10 to 13 W.
Tps. 30 N., Rs. 11, 12, and 13 W.
Tps. 31 N., Rs. 12 and 13 W.

In addition, National Forest System lands on the Lincoln Ranger District of the Helena National Forest east and outside of the Scapegoat Wilderness in part or all of the following townships:

T. 15 N., R. 7 W.
Tps. 16 N., Rs. 6, 7, and 8 W.

The areas described aggregate approximately 429,000 acres in Lewis and Clark, Teton, Flathead, Pondera, and Glacier Counties.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor, Lewis and Clark National Forest.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Forest Supervisor, Lewis and Clark National Forest, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: January 29, 1999.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 99–2636 Filed 2–2–99; 8:45 am]

BILLING CODE 4310–DN–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–404]

Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic Industry

Effective Date: January 27, 1999.

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

SUMMARY: Following receipt of a request on December 23, 1998, from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–404, Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic 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 Ms. Elizabeth R. Nesbitt, the Project Leader (202–205–3355) or Mr. Christopher Robinson, the Deputy Project Leader (202–205–2334), 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 USTR requested that the Commission conduct an investigation and provide a report concerning conditions affecting the U.S. methyl tertiary butyl ether (MTBE) industry. The Commission is requested to provide the study within 9 months of receipt of the letter, or by September 23, 1999.

As requested by the USTR, the Commission will provide the following information in its report, to the extent that such information is available:

(1) an overview of the global market for MTBE, including consumption, production, capacity, and trade trends during 1994–98, emphasizing the United States and Saudi Arabia;

(2) a description of the domestic MTBE market, and the major factors affecting it, including imports of MTBE, especially from Saudi Arabia;

(3) an overview of the current MTBE production processes, with information on costs of production, including those of its major raw material components, and the principal sources of these feedstocks in the United States, as well as in Saudi Arabia; and

(4) profiles of the U.S. and Saudi Arabian MTBE industries and importers, including information on their patterns of ownership and investment, as well as government policies affecting production, investment, and trade of MTBE. Examples of such policies identified by the USTR include industrial policies, trade policies, and other governmental measures that may affect the cost of raw materials, transportation, and other relevant competitive factors.

In the request letter, the USTR notes that the United States is a significant producer and consumer of MTBE, a chemical used primarily as an oxygenate for gasoline. The USTR stated that U.S. producers of MTBE have expressed concerns about competitive conditions affecting their industry, including increased MTBE imports from Saudi Arabia, and that the producers believe that these increased imports are the indirect result of the Saudi Arabian government's provision of butane feedstock to domestic MTBE producers at a substantial discount to world market prices.

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 April 1, 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., March 17, 1999. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., March 19, 1999; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 14, 1999. In the event that, as of the close of business on March 17, 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 (202–205–1806) after March 17, 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 April 14, 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 do not authorize filing 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)**.

List of Subjects

Methyl tertiary butyl ether, MTBE, oxygenates, ethanol, reformulated gasoline, butane, and Saudi Arabia.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2548 Filed 2–2–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–411]

Certain Organic Photo-Conductor Drums and Products Containing the Same; Notice of Decision To Extend the Deadline for Determining Whether To Review an Initial Determination Terminating the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by three weeks, or until February 17, 1999, the deadline for determining whether to review an initial determination (ID) (Order No. 12) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3104. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 4, 1998, based on a complaint filed by Mitsubishi Chemical Corporation of Japan and Mitsubishi Chemical Corporation America of White Plains, New York (collectively, Mitsubishi). 58 FR 30513. Twelve firms were named as respondents. Only respondents Dainippon Ink & Chemicals, Inc. and DIC Trading (USA) Inc. remain active in the investigation. The other respondents have either been terminated from the investigation or have sought termination based on consent orders or withdrawal of the complaint as to them. On December 7, 1998, the ALJ issued an ID terminating the investigation based on withdrawal of Mitsubishi's complaint. The deadline for determining whether to review this ID was previously extended on December 23, 1998. 63 FR 72327 (December 31, 1998).

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and section 210.42(h)(3) of the Commission Rules of Practice and Procedure, 19 CFR § 210.42(h)(3).

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: January 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–2549 Filed 2–2–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Wendell Leondrus Chestnut, M.D. Revocation of Registration

On July 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Wendell Leondrus Chestnut, M.D., of Philadelphia, Pennsylvania, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC2513972 under 21 U.S.C. 824(a)(3), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. The order also notified Dr. Chestnut that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

Dr. Chestnut was ultimately served with the Order to Show Cause on January 23, 1998. No request for a hearing or any other reply was received by the DEA from Dr. Chestnut or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Chestnut is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43 (d) and (e) and 1301.46

The Deputy Administrator finds that effective October 22, 1996, the Commonwealth of Pennsylvania, State Board of Medicine indefinitely suspended Dr. Chestnut's license to practice medicine and surgery in Pennsylvania based upon his failure to purchase professional liability insurance and to pay annual surcharges since January 1992. Dr. Chestnut did not present any evidence to indicate that he is licensed to practice medicine in Pennsylvania.

The Deputy Administrator finds that Dr. Chestnut is not currently licensed to practice medicine in the Commonwealth of Pennsylvania and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Chestnut is not currently authorized to handle controlled substances in the Commonwealth of Pennsylvania. As a result, Dr. Chestnut is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement

Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AC2513972, previously issued to Wendell Leondrus Chestnut, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective March 5, 1999.

Dated: January 5, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–2467 Filed 2–2–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–38]

Daniel Family Pharmacy; Continuation of Registration With Restrictions

On June 24, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Daniel Family Pharmacy (Respondent) of Galesburg, Illinois, notifying the pharmacy of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration, AD2002626, pursuant to 21 U.S.C. 824(a)(2) and (a)(4), and deny any pending applications for registration pursuant to 21 U.S.C. 823(f).

By letter dated July 23, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Chicago, Illinois on March 11 through 14, 1997, before Administrative Law Judge Mary Ellen Bittner. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, counsel for both sides submitted proposed findings of fact, conclusions of law and argument. On July 7, 1998, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be continued subject to certain conditions. On July 27, 1998, the Government filed Exceptions to Judge Bittner's Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision. Thereafter, Judge Bittner transmitted the record of these proceedings to the then-Acting Deputy Administrator on August 11, 1998.

On September 30, 1998, Judge Bittner transmitted to the then-Acting Deputy Administrator Respondent's Motion for Leave to File its Response to Government's Objection which was filed on September 29, 1998. In its motion, Respondent's counsel represented that the Government did not object to Respondent's request for additional time to file its response to the Government's exceptions and that no party would be prejudiced by allowing Respondent the opportunity to respond.

By letter dated October 2, 1998, Government counsel indicated that it did in fact object to Respondent being given additional time to respond to the Government's exceptions. Government counsel stated that the Government attorney who agreed to Respondent's request was not an attorney of record in these proceedings and was not authorized to agree to Respondent's request. Government counsel noted that 21 CFR 1316.66 provides the parties with the opportunity to file exceptions to the Administrative Law Judge's recommended decision within 20 days of the date of the decision and that the Administrative Law Judge can grant additional time past the 20 days for the filing of a response to any exceptions. Government counsel argued that Respondent did not file any response or request for additional time to file a response within 20 days of Judge Bittner's decision. In addition, the Government argued that no good cause was given by Respondent to file a response at such a late date; that its request is tantamount to a motion to reopen the record; and that allowing Respondent to respond to the Government's exceptions at such a late date would delay the publication of a final order in this matter.

Respondent replied to the Government's letter on October 5, 1998, and forwarded its Response to the Government's Exceptions to the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge. Respondent pointed out that it could not have filed anything regarding the Government's exceptions within 20 days of Judge Bittner's recommendation since the Government did not file its exceptions until the twentieth day, and that the delay in filing its response was due to the unavailability of Respondent's owner and the work schedules of Respondent's counsel. Respondent then noted that 21 CFR 1316.66 allows for extensions ''for the filing of a response to the exceptions filed by another party if . . . no party will be prejudiced and . . . the ends of justice will be served thereby.'' Respondent argued given the delay that had already occurred in this proceeding, ''it is difficult to imagine how the government will be prejudiced if Daniel Pharmacy is allowed to file its Response 41 days after the filing for the Government's Exceptions.''

The Deputy Administrator recognizes that the regulations permit the granting of additional time to file a response to exceptions, however Respondent has not given any reason why it did not even request an opportunity to file a response until two months after the Government's exceptions were filed. Nevertheless, the Deputy Administrator concludes that no party will be prejudiced by consideration of Respondent's response given the length of time that it has taken to complete these proceedings.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts in full the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge and includes an additional restriction. The Deputy Administrator's adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent is a pharmacy that has been in existence since 1988 and is owned by a corporation, Daniel Pharmacy, Inc. with George Daniel and his wife holding 51 and 49 percent of the shares respectively, George Daniel is also the managing pharmacist of Respondent.

In January 1993, an individual who was cooperating with law enforcement after being arrested on a burglary charge went to Respondent on two occasions and obtained Vicodin, a Schedule III controlled substance, from Mr. Daniel without a prescription. On January 5, 1993, the cooperating individual was monitored by law enforcement personnel. He indicated to Mr. Daniel that he was getting ready to move out of state and said, ''Hey, I thought you might give me some Vicodin or something just for the road * * *.'' Mr. Daniel gave the cooperating individual some Vicodin. During this meeting, the cooperating individual gave Mr. Daniel $1,100.00 apparently to repay a personal loan. There is no evidence that the cooperating individual paid Mr. Daniel for the Vicodin.

The cooperating individual returned to Respondent on January 6, 1993. Again he was monitored by law enforcement

personnel. He indicated to Mr. Daniel that he was leaving town that day and stated that ''I kind of thought you might give me a few more of that.'' Mr. Daniel gave the cooperating individual some Vicodin. On this occasion, the cooperating individual paid off his ex-wife's bill at the pharmacy, but did not pay for the Vicodin.

The cooperating individual was interviewed by law enforcement personnel on January 6, 1993, following his visit to Respondent. The individual stated that he had known Mr. Daniel since about 1987 and worked for Respondent delivering prescriptions. In 1989, he injured his back in an accident and was prescribed Vicodin. After his physician stopped prescribing him Vicodin in 1991, Mr. Daniel gave him Vicodin without a prescription. The cooperating individual stated that Mr. Daniel gave him Vicodin regularly and also provided him with morphine and Dilaudid, Schedule II controlled substances, and Tussionex, a Schedule III controlled substance, without prescriptions.

On January 7, 1993, a search warrant was executed at Respondent to obtain records. Mr. Daniel cooperated with law enforcement personnel during the search and consented to a search of his residence and another house next door to Respondent. During execution of the warrant, DEA investigators, assisted by one of Respondent's pharmacists, conducted a physical count of certain controlled substances for later use in an accountability audit. DEA conducted several audits of Respondent's handling of controlled substances. One audit was of selected Schedule II controlled substances for the period September 1, 1990 to January 7, 1993. The investigators used Respondent's written inventory dated September 1, 1990 for the initial inventory figure. This audit revealed that Respondent could not account for almost 2,500 dosage units of various strengths of Dilaudid and for 693 dosage units of Percodan. A separate audit was conducted for morphine sulfate covering the period August 13, 1992 to January 7, 1993 and revealed that Respondent could not account for 2.45 grams. In conducting this audit, the investigators used a zero beginning balance whereby Respondent was not held accountable for any morphine sulfate that it may have had on hand at the beginning of the audit period.

The investigators conducted a separate audit of various Schedule III and IV controlled substances. This audit covered the period February 6, 1992 to January 7, 1993, and used a zero beginning balance. The audit revealed that Respondent could not account for 15,733 dosage units of Valium 10 mg. and 2,057 dosage units of Vicodin 5 mg. Again, by using a zero beginning balance Respondent was not held accountable for any of the substances that it may have had on hand at the beginning of the audit period. Therefore, these shortages would have been greater if in fact Respondent had any of the substances in stock on February 6, 1992. The audit revealed overages for the other audited Schedule III and IV substances which most likely was the result of using a zero beginning balance.

The Illinois Department of Professional Regulation (IDPR) conducted its own audit of Respondent's controlled substances using the records that DEA had obtained during the search warrant. The results of the IDPR audit were the same as those of DEA with respect to the controlled substances that both audited. The IDPR also audited Desoxyn, a Schedule II controlled substance, for the period September 1, 1990 to December 18, 1992. The audit revealed that Respondent could not account for approximately 4,750 dosage units.

On January 21, 1993, Mr. Daniel was indicted in the United States District Court for the Central District of Illinois and charged with two felony counts of distributing hydrocodone on January 5 and 6, 1993 in violation of 21 U.S.C. 841(a)(1). According to a DEA agent who was present during Mr. Daniel's proffer in the criminal matter on November 3, 1993, Mr. Daniel stated that he and the cooperating individual were friends; in 1990 the individual injured his back and as a result he was prescribed prescription painkillers; at some point the cooperating individual's physician stopped prescribing Vicodin to the individual, yet Mr. Daniel continued to deliver approximately 500 dosage units of Vicodin to the individual without prescriptions; and he also provided the individual with Tussionex, Dilaudid and morphine without prescriptions. The agent further testified that Mr. Daniel also indicated during his proffer that sometime before January 5, 1993, he realized that the individual had a drug problem after observing him take approximately 18 times the normal dosage of Tussionex. In addition, Mr. Daniel stated that on November 2 and 7, 1992, he obtained Dilaudid from other pharmacies in order to provide it to the individual without a prescription. According to the agent, Mr. Daniel stated that the individual signed over his trailer home to him in exchange for the Dilaudid. However, at the hearing in this matter, Mr. Daniel denied that he traded Dilaudid for the individual's trailer home and that he ever indicated that this occurred during his proffer. Because of conflicting evidence regarding this issue, the Deputy Administrator does not find that Mr. Daniel gave the individual Dilaudid in exchange for the title to the individual's trailer home. Mr. Daniel further stated in his proffer that in December 1992, he gave the individual some morphine without a prescription because the individual had threatened to tell the authorities that Mr. Daniel had been giving him drugs without prescriptions. Finally during the proffer, investigators advised Mr. Daniel of the audit results. According to the agent, Mr. Daniel thought that he had given the individual approximately 500 Vicodin, and was surprised that the audit revealed a shortage of at least 2,000 dosage units.

Following his guilty plea, Mr. Daniel was convicted on October 18, 1994, regarding the unlawful distribution of Vicodin to the cooperating individual on January 5, 1993. He was sentenced to two years' probation and ordered to spend 60 days in a work release facility, to perform community service and to pay a fine.

On February 23, 1996, the IDPR and Respondent and Mr. Daniel entered into a consent order providing, among other things, that (1) Mr. Daniel's pharmacist license would be suspended for six months and then placed on probation for four years and six months; (2) during the suspension, Mr. Daniel would successfully complete 15 hours of a Board-approved pharmacy law course in addition to his continuing education requirements; (3) Mr. Daniel would pay a fine; (4) Respondent's pharmacy license would be placed on probation for 5 years; and (5) during the pharmacy's probation, Mr. Daniel would be required to maintain a perpetual inventory of Schedule II drugs, allow only authorized licensees access to the pharmacy and cause the pharmacy to submit to random IDPR inspections. It is undisputed that Respondent and Mr. Daniel have thus far complied with the terms of the consent order.

On January 17, 1997, IDPR conducted a controlled substance inspection and a pharmacy inspection at Respondent. The only violation discovered during the controlled substance inspection involved Respondent's failure to timely submit several duplicate prescription blanks to the appropriate state agency. Regarding the pharmacy inspection, Respondent failed to maintain an updated copy of a specific reference book and violated the requirements that the pharmacy technician initial hard copies of prescriptions and that

pharmacists date computer printouts. The IDPR investigator also noted that Mr. Daniel did not start the perpetual inventory of Schedule II controlled substances until January 1, 1997. Mr. Daniel testified at the hearing in this matter that no one explained exactly how a perpetual inventory should be taken, but that he is now properly maintaining a perpetual inventory after discussing the methodology with the IDPR investigator.

At the hearing in this matter, Mr. Daniel testified that he first gave the cooperating individual Vicodin without a prescription in 1991 believing that the individual's physician would authorize the dispensation. Mr. Daniel testified that ''[I] made my big mistake of letting him have [Vicodin], thinking that I could call the doctor Monday morning and get it okayed.'' According to Mr. Daniel, he felt ''very sick'' after being told by the individual's physician not to give the individual any more Vicodin. Mr. Daniel further testified that the individual returned about a month later and persuaded Mr. Daniel to give him some Vicodin without a prescription. Mr. Daniel acknowledged that he gave the individual the Vicodin knowing that his physician would no longer prescribe it and that he was not threatened by the individual on this occasion. However, Mr. Daniel also testified that ''[a]fter the first couple of times he started to threaten that he would go to the authorities . . .,'' and that ''I became scared enough to the point where it seemed that my only way out was to give it to him. And I tried to resist for awhile each time, but each time he would coax me or talk me into doing it.''

Mr. Daniel testified that after being told that Respondent did not have any Dilaudid, the individual threatened to ''really cause big problems for you because you've got shortages more than you'd even believe.'' According to Mr. Daniel, the individual also threatened to ''get physical,'' made threatening phone calls to Mr. Daniel's wife, and passed two threatening letters to him. However, Mr. Daniel testified that initially he did not believe the individual's threats and one of Respondent's pharmacists testified that he never observed Mr. Daniel acting nervous or upset when he was with the individual. Mr. Daniel testified that he gave the individual Vicodin seven or eight times, Tussionex and morphine once and Dilaudid two times, all without prescriptions.

According to one of Respondent's pharmacists who testified in this proceeding, sometime in December 1992 Mr. Daniel instructed all of Respondent's employees not to allow the cooperating individual in the pharmacy and to call the police if necessary because the individual was blackmailing him. Yet, Mr. Daniel allowed the individual in the pharmacy on January 5 and 6, 1993, and gave him Vicodin without a prescription. Mr. Daniel stated that he did so because he believed that the individual was moving out of state and ''[b]ecause I was so sick and tired of what he had put myself and my family through and what I had stupidly done to start the whole thing, I just wanted him out of my life forever.* * *''

Regarding the shortages discovered during the accountability audits, Mr. Daniel testified that the controlled substances that he provided to the cooperating individual would not account for the discrepancies, noting that he did not give the individual some of the drugs that had shortages, such as Valium. Mr. Daniel testified that following his arrest, he received information that the cooperating individual as well as one of Respondent's pharmacy technicians were stealing controlled substances from Respondent. Respondent introduced into evidence an affidavit from a woman who indicated that between 1987 and 1993 the cooperating individual frequently contacted her then-husband and offered to sell him drugs, including Valium, Vicodin and Dilaudid that the individual admitted stealing from Respondent. According to the woman, some of the bottles the individual brought to her home ''were the bottles that pharmacists keep behind their counters and from which they fill prescriptions.'' She further stated that according to the individual he usually stole drugs from Respondent on Thursdays when the pharmacy received its drug shipments. According to Mr. and Mrs. Daniel, controlled substance orders were usually delivered on Thursdays and Mr. Daniel usually took Thursdays off.

At the hearing, Mr. Daniel conceded that although the cooperating individual told him that there were shortages at Respondent, he did not conduct any audit to verify whether the individual's assertions were accurate. He also testified that had he performed an audit he would have known that Respondent could not account for 15,000 dosage units of Valium. However, Mr. Daniel also acknowledged that he conducted a biennial inventory of controlled substances on December 18, 1992, and it does not appear that he noticed that such a large quantity of Valium was missing. One of Respondent's pharmacists testified at the hearing that he considered the shortages revealed by the audit to be of serious concern.

According to Mr. Daniel and another of Respondent's pharmacists there are new security measures in place to prevent unauthorized access to controlled substances. After Mr. Daniel was arrested, the cabinet containing Schedule II controlled substances was sealed with a headlock and the key was put in an area where the registered pharmacist could get it, and that only staff personnel were allowed in the prescription filling area. Yet, Mr. Daniel conceded that all of the employees knew where the key to the Schedule II cabinet is kept, but that the pharmacy is so small that ''it would be about impossible for someone to get into the cabinet without the pharmacist knowing.'' However, Mr. Daniel also conceded that Respondent is the same size as it was when controlled substances were allegedly stolen and no one saw either the pharmacy technician nor the cooperating individual taking any controlled substances.

According to Respondent's pharmacist who testified at the hearing, he conducted a physical inventory of Respondent's controlled substances on March 2, 1997 and found no discrepancies with respect to Schedule II controlled substances and only minor shortages with respect to Schedules III, IV and V controlled substances. The pharmacist indicated that these shortages could be the result of miscounting, outdated items in process for return, and/or broken tablets. He also testified that Respondent is now doing more frequent inventories and audits.

Both Mr. Daniel and Respondent's other pharmacist who testified at the hearing indicated that unlike chain pharmacies in the area, Respondent offers its customers drive-up window service, prescription compounding, nutritional co-therapy, free local and out-of-town delivery, monthly charge accounts and after hours service. Mr. Daniel testified that other independent pharmacises may offer similar services, however no other pharmacy within 50 miles offers prescription compounding which is a service that is especially needed by senior citizens.

A former director of the Illinois Pharmacists Association (IPA), and a member of the Illinois Board of Pharmacy (Board), who is also a former president of the IPA, testified that in evaluating this case they would defer to the action taken by the Board, which did not take any action against Respondent's Illinois controlled substances license. The former IPA director also testified that if Respondent's DEA registration is revoked, the pharmacy will close because controlled substances are such

a substantial part of a pharmacy's business. He further expressed his concern with the impact on small towns when independent pharmacies go out of business, but conceded that he would also be concerned if a pharmacy maintains sloppy records and has significant shortages and thefts.

Both Mr. Daniel and Respondent's other pharmacist testified Respondent would go out of business if it loses its DEA registration. Controlled substances account for approximately 30 percent of Respondent's business and in their opinion customers will not patronize a pharmacy unless they can have all of their prescriptions filled there. Mrs. Daniel testified that they have received offers to buy Respondent however the offers have been substantially less than what was paid for the pharmacy.

Mr. Daniel testified that if permitted to keep Respondent's DEA registration, he would be willing to conduct regular physical inventories of controlled substances, to submit records of such inventories and computer records to DEA or the IDPR, to have DEA perform random inspections, to pay for a third party to perform physical counts and submit records to DEA, and to hire a pharmacist other than himself to be Respondent's pharmacist in charge. Mr. Daniel further testified that he would never again engage in the same type of misconduct that he did with the cooperating individual, and that ''I will never put myself and my family and my business and everybody in that kind of position, no.''

Finally, Respondent introduced into evidence letters that were submitted on Mr. Daniel's behalf during the criminal proceedings to the United States District Court for the Central District of Illinois. These letters essentially state that Mr. Daniel was active and well-regarded in the community, concerned for his family, and responsible in practicing his profession.

Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant ''has been convicted of a felony * * * relating to any substance defined * * * as a controlled substance. * * *'' In addition, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any application for such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate state licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health or safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

First, the Deputy Administrator must determine whether 21 U.S.C. 824(a)(2) is a basis for revocation in these proceedings. While the Order to Show Cause raised both 21 U.S.C. 824(a)(2) and (a)(4) as grounds for the proposed revocation, the issue as proposed in the Government's Prehearing Statement and framed in the Prehearing Ruling issued by Judge Bittner referred only to whether Respondent's continued registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4).

Throughout the prehearing proceedings, Respondent argued in various filings that there is no basis for the revocation of Respondent's DEA registration since the statute refers to acts and convictions of the registrant to support such action, and the registrant in this case is the pharmacy, not Mr. Daniel. Respondent argued that the acts and conviction of Mr. Daniel should not be imputed to Respondent. The Government argued that DEA has consistently held that the actions and/or conviction of a natural person who is an owner, officer or key employee, or has some responsibility for the operation of the registrant's controlled substances business are considered in determining whether a pharmacy's registration should be revoked. The Government cited, among others, Maxicare Pharmacy, 61 FR 27,368 (1996) and Farmacia Ortiz, 61 FR 726 (1996) for this proposition.

Subsequent to the issuance of the Prehearing Ruling, on February 25, 1997, Judge Bittner issued a Memorandum to Counsel finding that Mr. Daniel's conduct is relevant to the issue of whether Respondent's continued registration is inconsistent with the public interest.

Thereafter, on March 5, 1997, Respondent moved to strike the Order to Show Cause to the extent that it referred to 21 U.S.C. 824(a)(2) as a basis for revocation and again argued that the section refers to a registrant's felony conviction and since Mr. Daniel is not the registrant, this provision does not apply. In a Memorandum to Counsel and Rulings dated March 7, 1997, Judge Bittner noted that the parameters of a proceeding are established by the Prehearing Ruling and since the issue framed in the Prehearing Ruling referred only to 21 U.S.C. 824(a)(4) as a basis for revocation, 21 U.S.C. 824(a)(2) is not at issue in this proceeding.

However, the Deputy Administrator agrees with Judge Bittner that had the Government not waived reliance on 21 U.S.C. 824(a)(2) in its Prehearing Statement, Mr. Daniel's conviction would constitute grounds for revoking Respondent's registration pursuant to that section. DEA has consistently held that a corporate registrant's registration may be revoked based upon the controlled substance-related felony conviction of an officer, agent or employee. As Judge Bittner noted, the then-Administrator found in Lynnfield Drug, Inc., 42 FR 8435 (1977), ''[t]o hold otherwise would result in the revocation of the registration of a feloniously violative sole proprietor while denying the same sanction to an equally violative registrant, merely because the latter had adopted a corporate or partnership form. Such a result would not only be not equitable, but would be contrary to the legislative intent behind the enactment of sections 303 and 304 of the Controlled Substances Act.''

Notwithstanding that 21 U.S.C. 824(a)(2) cannot be relied upon as a basis for revocation in this proceeding, the Deputy Administrator concurs with Judge Bittner that Mr. Daniel's conduct and his conviction may be considered under 21 U.S.C. 823(f) and 824(a)(4). DEA has consistently held since 1984, when 21 U.S.C. 824(a)(4) was added as a ground for revocation, that the conduct of owners, agents and/or key employees constitute a basis for revoking the registrations of corporate registrants upon a finding that the continued registration would be inconsistent with the public interest. *See, Dobson Drug Co., Inc.* 56 FR 46,445 (1991).

In evaluating the factors listed in 21 U.S.C. 823(f), the Deputy Administrator finds that while no action has been taken by the State of Illinois against Respondent's controlled substance license, the Board has required Respondent to maintain a perpetual inventory of its Schedule II controlled

substances. Therefore, Respondent's handling of controlled substances has been affected by the Board's action. But, Respondent is currently authorized to handle controlled substances in Illinois. As Judge Bittner noted, ''[i]nasmuch as state authorization to handle controlled substances is a necessary but not sufficient condition for DEA registration * * * this factor is not dispositive.''

As to factors two and four, it is undisputed that Mr. Daniel dispensed Vicodin and other controlled substances without a prescription in violation of 21 U.S.C. 841(a)(1). The Deputy Administrator finds that Mr. Daniel's explanation that he was being threatened by the cooperating individual does not justify or excuse his behavior. First, Mr. Daniel himself admitted that initially he did not take the cooperating individual's threats seriously. Second, the other pharmacist at Respondent testified that Mr. Daniel did not appear nervous or upset when he observed Mr. Daniel with the cooperating individual. Finally, if in fact Mr. Daniel felt threatened by the cooperating individual he should have reported it to the proper authorities rather than continuing to unlawfully dispense controlled substances to him for over a year.

In addition, the significant shortages revealed by the audits indicate that Respondent did not maintain complete and accurate records of its handling of controlled substances as required by 21 U.S.C. 827. While there is some evidence that controlled substances were being stolen from Respondent, this does not minimize Respondent's responsibility for the shortages. It is quite disturbing that Mr. Daniel did not detect that over 17,000 dosage units were missing from Respondent in less than a one year period. As a DEA registrant, Respondent must ensure that controlled substances are properly dispensed. Respondent clearly abrogated this responsibility.

The Deputy Administrator notes that according to Respondent's pharmacists, more frequent inventories are now being conducted at Respondent and access to the controlled substances has been limited.

Regarding factor three, it is undisputed that Mr. Daniel was convicted of a felony relating to controlled substances, and as discussed above, Mr. Daniel's conviction is properly considered in determining what action to take against Respondent's registration.

The Deputy Administer agrees with Judge Bittner that there was no evidence presented of other conduct by Mr. Daniel or Respondent that would threaten the public health and safety.

Judge Bittner concluded that the Government made a prima facie case for revoking Respondent's DEA Certificate of Registration. However, she recommended that Respondent should nonetheless be permitted to remain registered. While expressing extreme concern regarding Mr. Daniel's ''egregious abuse of his responsibilities as a pharmacist and as a DEA registrant,'' Judge Bittner also found that ''Mr. Daniel seemed genuinely remorseful and that * * * he now understands the enormity of his misconduct.'' Judge Bittner recommended that Respondent's continued registration be subject to the conditions that:

(1) Respondent maintain a perpetual inventory of all controlled substances for at least three years following issuance of a final order in this proceeding;

(2) Respondent verify the perpetual inventory by a physical count, reduced to writing, of all controlled substances for each calendar quarter of that three year period;

(3) Respondent submit the perpetual inventory and quarterly verification to the Special Agent in Charge of the DEA field office having jurisdiction over Respondent; and

(4) Respondent consent to undergo unannounced inspections by DEA diversion investigators, without an administrative inspection warrant.

The Government filed exceptions to Judge Bittner's recommended decision objecting to the continuation of Respondent's registration on the sole basis that George Daniel appears remorseful. The Government argued that Mr. Daniel was remorseful to the extent that he got caught and that his DEA registration is now threatened with revocation; that Mr. Daniel refused to take any responsibility for the shortages; and that Mr. Daniel's contention that he was threatened into unlawfully dispensing controlled substances is hard to believe. In its response to the Government's exceptions, Respondent argued that Judge Bittner's assessment of George Daniel's credibility should control and that there is substantial evidence in the record to support her finding that Mr. Daniel is remorseful. In addition, Respondent again indicated that it is agreeable to even stricter conditions being imposed on its registration than those recommended by Judge Bittner.

The Deputy Administrator is deeply concerned by the egregious conduct of Respondent and Mr. Daniel. Mr. Daniel actively diverted controlled substances by dispensing them without a prescription and allowed additional significant diversion to occur as evidenced by the shortages revealed during the audits. However, the Deputy Administrator notes that this conduct occurred in January 1993. Had this case been adjudicated at that time, or even right after his criminal conviction in October 1994, the Deputy Administrator would have revoked Respondent's DEA Certificate of Registration. But, in the subsequent six years, Respondent has maintained its DEA registration and available evidence indicates that it has acted in a responsible manner as demonstrated by the January 1997 state inspection which revealed only minor violations. In addition, the Deputy Administrator concurs with Judge Bittner's conclusion that Mr. Daniel has exhibited remorse for his actions, and finds it significant that Respondent is the only pharmacy in the area that performs prescription compounding. Therefore, the Deputy Administrator concludes that it would not be in the public interest to revoke Respondent's registration at this time. This decision however, should in no way be interpreted as an endorsement of the past illegal behavior of Mr. Daniel and Respondent. Mr. Daniel's remorse and the fact that available evidence indicates that the pharmacy has acted responsibly in the past six years provide adequate assurance that the prior illegal activity at Respondent will not be repeated.

However, the Deputy Administrator agrees with Judge Bittner that some restrictions must be placed on Respondent's registration to adequately monitor Respondent's handling of controlled substances and to protect the public health and safety. Therefore, Respondent's registration shall be continued subject to the following restrictions for three years:

(1) Respondent shall maintain a perpetual inventory of all controlled substances.

(2) Respondent shall verify the perpetual inventory by a physical count, reduced to writing, of all controlled substances for each calendar quarter of the three year period.

(3) Respondent shall submit the perpetual inventory and quarterly verification to the Special Agent in Charge of the DEA Chicago Field Division or his designee.

(4) Respondent shall arrange for audits to be conducted two times per year by an independent auditor at Respondent's expense with the results submitted to the Special Agent in Charge of the DEA Chicago Field Division or his designee.

(5) Respondent shall consent to unannounced inspections by DEA personnel without requiring an administrative inspection warrant.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AD2002626, previously issued to Daniel Family Pharmacy, be and it hereby is continued, subject to the above described restrictions. This order is effective March 5, 1999.

Dated: January 28, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–2561 Filed 2–2–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 22, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2. nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail:records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force (N1–AFU–99–5, 5 items, 2 temporary items). Architectural and engineering drawings pertaining to Air Force facilities and structures in Panama that were not long-lasting or historically significant. Records relating to structures of historical or architectural significance are proposed for permanent retention.

2. Department of the Army, Army Reserve (N1–AU–98–3, 2 items, 2 temporary items). Records pertaining to the Individual Mobilization Augmentation Program under which selected individuals may be mobilized to support the President. Included are administrative reference files relating to such matters as exceptions to policy, budget and annual training and supervisors' files on individual designees.

3. Department of the Army (N1–AU–98–13, 46 items, 46 temporary items). Short-term, temporary records accumulated by U.S. Army South (USARSO). The records were previously approved for disposal and consist of such files as pharmacy stock inventory reports, household shipment bills of lading, prisoner personal property reports, and military police reports. Records are proposed for immediate disposal upon USARSO's relocation from Panama to Puerto Rico. Electronic copies of documents created using electronic mail and word processing are also proposed for disposal.

4. Department of Health and Human Services, National Institutes of Health (N1–443–98–3, 3 items, 2 temporary items). Files relating to procedures governing budget generation, including electronic copies created using electronic mail, word processing, spreadsheet applications and database management applications. Recordkeeping copies of budget

estimates and justification files are proposed for permanent retention; electronic copies of these records created using electronic mail, word processing, spreadsheet applications and database management applications are proposed for disposal.

5. Central Intelligence Agency (N1–263–99–1, 13 items, 5 temporary items). Security name check records, accounting and administrative files, commercially available phonograph records, reading file of reports prepared by other agencies, and unintelligible audio recordings relating to Guatemala, 1952–1954. Records relating to overall development, coordination, and implementation of policies and plans are proposed for permanent retention.

6. Environmental Protection Agency, Office of Pesticide Programs (N1–412–98–3, 6 items, 4 temporary items). Copies of records that document the review processes relating to the registration of pesticides, including electronic copies of documents created using electronic mail, word processing, and a document management system. Paper records created after June 1996 and microform copies created from 1963 to 1996 are proposed for permanent retention.

7. Environmental Protection Agency (N1–412–98–5, 2 items, 2 temporary items). Permit Appeals Files including electronic copies of documents created using electronic mail and word processing. These records document appeals to EPA regional administrators concerning permit decisions. Landmark or precedent-setting appeals and all decisions of the Administrative Law Judge were previously approved for permanent retention.

8. General Accounting Office (N1–217–99–1, 24 items, 14 temporary items). Older records of the Accounting Officers of the Department of Treasury dating approximately from 1815–1948, which were transferred to the General Accounting Office upon its establishment in 1921. Records proposed for disposal consist of indexes, ledgers, registers, bound volumes, claim files, contract records, and account abstracts relating to such matters as claims by Spanish-American War veterans, taxes on national banks, U.S. loans to foreign nations during World War I, purchases of bonds by Navy personnel during World War I, payments made to Civil War and Spanish-American War officers, and Soldiers' Home expense accounts. In most instances, records proposed for disposal are duplicates of records which have previously been accessioned into the National Archives of the United States. Records proposed for permanent retention include registers of Black Hawk War Claims, 1833–1835; records of fishing vessel allowances, 1837–1857; state and Indian claims, 1861–1926; Indian settlements, 1875–1880; water rights applications, 1907–1922; selected ledgers and fiscal records, 1861–1922; selected ordnance and construction contracts, 1886–1918; and contracts for mail service, 1913–1921.

9. General Accounting Office (N1–411–99–1, 12 items, 4 temporary items). Older records of the General Accounting Office, dating primarily from 1887–1947. Records proposed for disposal include National Guard pay cards, 1929–1936; a general account journal for the years, 1926–1932; miscellaneous ledgers, 1887–1944; and copies of General Court-Martial Orders, 1922–1927. Indian Claim Warrants, 1924–1925; World War I Unsettled Loan Files and Indexes, 1914–1930; selected ledgers, journals, and fiscal records, 1887–1944; Ledgers for Indian Warrants and Settlements, 1924–1935; Pay Warrants Issued, 1923–1925; World War II Contract Hardship Claims, 1946–1947; and Indian Claims Settlement Files, 1922–1924, are proposed for permanent retention.

10. Tennessee Valley Authority, Office of Communications (N1–142–97–10, 1 item, 1 temporary item). Correspondence relating to requests for information or action from outside TVA that are handled by lower level managers. Correspondence signed by the vice president, chief operating officer or Board members was previously approved for permanent retention.

11. U.S. Nuclear Regulatory Commission (N1–431–96–2, 1 item, 1 temporary item). Files relating to cases heard by the agency panel which reviews allegations made by individuals against specific utilities or other organizations which are regulated by the NRC. The case files include allegations, minutes and summaries of allegation review panel meetings, correspondence with allegers and licensees, referral memoranda to the Office of Investigations, inspection reports, staff safety evaluations, automated system printouts, documents showing staff resolution, and closure documents sent to allegers.

Dated: January 26, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–2471 Filed 2–2–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–29]

Yankee Atomic Electric Company; Yankee Nuclear Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (Commission) is considering issuance of an amendment to Possession Only License (POL) No. DPR–3 issued to the Yankee Atomic Electric Company (YAEC or licensee) for the Yankee Nuclear Power Station (YNPS or plant). The plant is located in Rowe Township, Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the POL through the following three changes to the Technical Specifications (TS) by (1) deletion of the definition of SITE BOUNDARY, (2) moving the Site Boundary and Plant Exclusion Area map from the TS to the Final Safety Analysis Report (FSAR) and (3) Deletion of TS 5.1.1—EXCLUSION AREA.

The proposed action is in accordance with the licensee's application for amendment dated August 20, 1998.

The Need for the Proposed Action

The proposed action would, for item (1) above, remove an obsolete and unneeded definition from the TS. For Item (2), the TS that is being relocated to a licensee controlled document, the FSAR, is not required to be in the TS under 10 CFR 50.36 requirements. The licensee may revise the FSAR under the provisions of 10 CFR 50.59, which provides appropriate procedural means to control such revisions. Furthermore, this change is consistent with the NRC guidance in NUREG–1625, Proposed Standard Technical Specifications for Permanently Defueled Westinghouse Plants. Item (3) would delete an unneeded section of the TS as its only function was to reference the map being moved to the FSAR.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not have any impact on the environment as the proposed changes are administrative in nature. The licensee does not propose any disposal nor relocation of fuel by this action. This action is considered administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

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 evaluated in previous environmental reviews for the YNPS.

Agencies and Persons Consulted

In accordance with its stated policy, on December 15, 1998, the staff consulted with the Commonwealth of Massachusetts State liaison officer, Jim Muckerheide of the Massachusetts Civil Defense Agency, regarding the environmental impact of the proposed action. The Commonwealth official had no comments.

Finding of No Significant Impact

On the basis of 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 YAEC's letter of August 20, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, D.C., and at the Local Public Document Room located in the Library of the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 28th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2514 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene two sub-committee meetings of the Advisory Committee on the Medical Uses of Isotopes as follows: The Diagnostic Sub-Committee Meeting will be held on February 23 and 24, 1999; the Therapeutic Sub-Committee meeting will be held on February 25 and 26, 1999. Both meetings, which are open to the public, will take place at the address provided below. The discussions will be focused on resolution of comments received on the proposed revision to 10 CFR part 35 (Medical Use of Byproduct Material) that was published in the **Federal Register** for comment on August 13, 1998 (63 FR 43580). The Diagnostic Sub-Committee will focus on comments pertaining to uses of unsealed byproduct material in medicine (§§ 35.100, 35.200, and 35.300). The Therapeutic Sub-Committee will focus on comments pertaining to therapeutic uses of sealed sources (§§ 35.400 and 35.600).

DATES: The Diagnostic Sub-Committee meeting will be held on February 23, 1999, from 8:00 a.m. to 5:00 p.m. and on February 24, 1999, from 8:00 a.m. to 12:00 p.m. The Therapeutic Sub-Committee meeting will be held on February 25, 1999, from 8:00 a.m. to 5:00 p.m. and on February 26, 1999, from 8:00 a.m. to 12:00 p.m.

ADDRESSES: U.S Nuclear Regulatory Commission, One White Flint North Building, 11555 Rockville Pike, Room 04B6, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Mary Louise Roe, U.S. Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, MS T9F31, Washington, DC, 20555, Telephone (301) 415–7809.

Conduct of the Meetings

The Diagnostic Sub-Committee meeting will be chaired by Mr. Dennis Swanson. Dr. Judith Stitt will chair the Therapeutic Sub-Committee meeting. Each sub-committee meeting will be conducted in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meetings:

1. Persons who wish to provide a written statement should submit a reproducible copy to Mary Louise Roe (address listed previously), by February 19, 1999. Statements must pertain to the topics on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meetings at the discretion of the Chairmen.

3. The meeting summaries and written comments will be available for inspection, and copying, for a fee, at the NRC Public Document Room, 2120 L Street, N.W., Lower Level, Washington, DC 20555, telephone (202) 634–3273, on or about April 1, 1999.

4. Seating for the public will be on a first-come, first-served basis.

These meetings will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* Part 7.

Dated: January 28, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–2512 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NUREG–1620]

Draft Standard Review Plan; Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act; Draft Standard Review Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability; Opportunity for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting comments on a Draft Standard Review Plan for Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act (NUREG–1620) from interested parties. An NRC source and byproduct material license is required

under the provisions of Title 10 of the Code of Federal Regulations, Part 40 (10 CFR Part 40), Domestic Licensing of Source Material, in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling. An applicant for a new reclamation plan, or for the renewal or amendment of an existing license, is required to provide detailed information on the facilities, and procedures to be used, and if appropriate, an environmental report that discusses the effect of proposed operations on public health and safety and on the environment. This information is used by Nuclear Regulatory Commission staff to determine whether the proposed activities will be protective of public health and safety and be environmentally acceptable. The purpose of this standard review plan is to provide NRC staff with specific guidance on the review of this information and will be used to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR Chapter I. The review plan is also intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The draft was developed using input from staff review precedents; staff inspection experiences; and public meetings with the industry.

Review plan for Surface Water Hydrology and Erosion Protection for Long-Term Stabilization, as presented in NUREG–1620, references NUREG–1623, ''Design of Erosion Protection for Long-Term Stabilization,'' for details on the design methodology acceptable to the NRC staff. The draft of NUREG–1623 will be available for public comments in approximately 2 weeks.

Opportunity to Comment: Interested parties are invited to comment on the review plan. These areas include radon attenuation and long-term stability of the reclaimed site, soil cleanup, and groundwater restoration reviews. A final review plan will be prepared after the NRC staff has evaluated public comments received on the draft review plan.

DATES: Written comments must be received prior to May 4, 1999.

ADDRESSES: Comments on the draft review plan should be sent to the Chief, Rules and Directives Branch, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. A copy of the Draft Standard Review Plan (NUREG–1620) may be obtained by writing to the Printing and Graphics Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001.

FOR FURTHER INFORMATION CONTACT: Banad Jagannath at 301–415–6653.

Dated at Rockville, Maryland, this 28th day of January, 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Chief, Uranium Recovery Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–2515 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–206]

Southern California Edison Company et al., San Onofre Nuclear Generating Station, Unit 1; Notice of Public Meeting

The NRC will conduct a public meeting to discuss plans developed by Southern California Edison Company (SCE, the licensee) to decommission the San Onofre Nuclear Generating Station, Unit 1, near San Clemente, California. The meeting is scheduled for 7:00 p.m.–9:00 p.m., on February 25, 1999, at the San Clemente Community Center, Ole Hanson Room, 100 N. Calle Seville, San Clemente, and will be chaired by Ms. Lois Berg, Mayor, City of San Clemente. The meeting will include a short presentation by the NRC staff on the decommissioning process and NRC programs for monitoring decommissioning activities, with attention being given to the licensee's updated Post-Shutdown Decommissioning Activities Report (PSDAR) dated December 15, 1998. There will be a presentation by SCE on their planned decommissioning activities, and there will be an opportunity for members of the public to make comments and question the NRC staff and SCE representatives. The meeting will be transcribed.

The licensee's update to the PSDAR provides a short discussion of the plant history, and a description and schedule of planned decommissioning activities. The PSDAR update also comments briefly on anticipated decommissioning costs and environmental impacts.

The PSDAR update is available for public inspection at the local public document room, located at the Main Library, University of California, P.O. Box 19557, Irvine, California 92713, and the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20037. The NRC document accession number is 9812170038.

For more information, contact Mr. Ronald A. Burrows, Project Manager, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone number (301) 415–2497.

Dated at Rockville, Maryland, this 28th day of January 1999.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–2513 Filed 2–2–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23669; 813–196]

NationsBanc Coinvest Fund 1999, L.P. and BankAmerica Corporation; Notice of Application

January 27, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the ''Act'') granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

Summary of Application: Applicants request an order to exempt certain limited partnerships and limited liability companies (''Partnerships'') formed for the benefit of key employees of BankAmerica Corporation (''BankAmerica'') and certain of its affiliates from certain provisions of the Act. Each Partnership will be an ''employees' securities company'' as defined in section 2(a)(13) of the Act.

Applicants: NationsBanc Coinvest Fund 1999, L.P. (the ''Initial Partnership''), and BankAmerica, on behalf of other Partnerships which have been or may in the future be formed.

Filing Dates: The application was filed on August 12, 1998, and amended on October 14, 1998.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 22, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicants, 100 North Tyson Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Edward P. Macdonald, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicants' Representations

1. BankAmerica, the largest bank in the United States, was created by the merger of NationsBank Corporation and BankAmerica Corporation on September 30, 1998. BankAmerica and its affiliates, as defined in rule 12b–2 under the Securities Exchange Act of 1934 (the ''Exchange Act''), (''Affiliates'') are referred to in this notice collectively as ''BankAmerica Group'' and individually as a ''BankAmerica entity.''

2. BankAmerica Group offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an ''employees' securities company'' within the meaning of section 2(a)(13) of the Act, and will operate as a closed-end, non-diversified, management investment company. The Partnerships will be established primarily for the benefit of highly compensated employees of BankAmerica Group as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary. The Initial Partnership will invest exclusively in one or more limited partnerships formed by BankAmerica to make private entity investments (the ''BankAmerica Funds'').

3. NB Coinvest GP, Inc., a North Carolina corporation, will act as the general partner of the Initial Partnership (together with any Affiliate of BankAmerica that acts as a Partnership's general partner, the ''General Partner''). The General Partner of the Initial Partnership will not be registered under the Investment Advisers Act of 1940 (''Advisers Act'') pursuant to section 203(b)(3) of the Advisers Act and rule 203(b)(3)–1 thereunder. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate to another BankAmerica Group affiliate or to a committee of BankAmerica Group employees such management responsibility (including, without limitation, the managers of the other Partnerships which have been or may in the future be formed).

4. Limited partner interests in the Partnerships (''Interests'') will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the ''Securities Act'') or similar exemption and will be sold only to ''Eligible Employees'' and ''Qualified Participants'' (collectively, ''Participants''). Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (i) an individual who is a current or former employee, officer, director, or ''Consultant'' of BankAmerica Group and, except for certain individuals who manage the day-to-day affairs of the Partnership in question (''Managing Employees''), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D under the Securities Act, or (ii) an entity that is a current or former ''Consultant'' of BankAmerica Group and meets the standards of an accredited investor under rule 501(a) of Regulation D.[1] Eligible Employees will be experienced professionals in the banking, investment banking and securities, investment management or financial services businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions. Each Managing Employee will: (a) be closely involved with, and knowledgeable with respect to, the affairs and the status of the Partnership, (b) be an officer or employee of BankAmerica Group and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the Employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the Employee invests in a Partnership.

6. A Qualified Participant (i) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and, (ii) if the individual or entity is purchasing on Interest from a Partner or directly from the Partnership, comes within one of the categories of an ''accredited investor'' under rule 501(a) of Regulation D. An ''Eligible Family Member'' is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A ''Qualified Entity'' is (i) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (ii) a partnership, corporation, or other entity controlled by an Eligible Employee;[2] or (iii) a trust or other entity

[1] A *Consultant* is a person or entity whom BankAmerica Group has engaged in retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with BankAmerica Group and BankAmerica Group employees.

[2] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of ''Qualified Entities'' is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between BankAmerica Group

Continued

established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year. In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner. No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or a BankAmerica entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if: (i) the Eligible Employee's relationship with BankAmerica Group is terminated for cause; (ii) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of BankAmerica Group; or (iii) the Eligible Employee voluntarily resigns from employment with BankAmerica Group. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (i) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), and (ii) the fair market value of the Interest as determined at the time of repurchase by the General Partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable Limited Partnership Agreement, a Partnership will be permitted to enter into transactions involving (i) a BankAmerica entity, (ii) a portfolio company, (iii) any Partner or any person or entity affiliated with a Partner, (iv) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with and over which a BankAmerica entity will exercise investment discretion (a ''Third Party Fund''), or (v) any partner or other investor of a Third Party Fund that is not affiliated with BankAmerica Group (a ''Third Party Investor''). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any BankAmerica entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. A BankAmerica entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership in connection with a Partnership's purchase or sale of securities, provided the placement fees, advisory fees, or other compensation are ''reasonable and customary.'' Fees or other compensation will be deemed ''reasonable and customary'' only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. A BankAmerica entity (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the SEC will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' security company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the SEC, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g) and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to (i) permit a BankAmerica entity (including, without limitation, a BankAmerica Fund) or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (ii) permit any Partnership to invest in or engage in any transaction with any BankAmerica entity (including without limitation, acting as principal), (a) in which the Partnership, any company controlled by the Partnership, or any BankAmerica entity (including, without limitation, a BankAmerica Fund) or Third Party Fund has invested or will invest, or (b) with which the Partnership, any company controlled by

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and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an ''accredited investor'' under rule 501(a)(6) of Regulation D and who will have access to the General Partner or BankAmerica Group.

the Partnership, or any BankAmerica entity (including, without limitation, a BankAmerica Fund) or Third Party Fund is or will become otherwise affiliated; and (iii) permit any Third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with BankAmerica Group. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and BankAmerica Group will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the SEC. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in, or effect any transaction in connection with, any joint enterprise or other joint arrangement or profit-sharing plan in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with BankAmerica Group, BankAmerica Group's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participate in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of employee participants as an incentive for them to remain with BankAmerica Group and for the generation and maintenance of goodwill. Applicants believe that, if co-investments with BankAmerica Group are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of BankAmerica Group enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate, (b) investments made by BankAmerica Group will not be generally available to investors even of the financial status of the Eligible Employees, and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by BankAmerica Group and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the fact that BankAmerica Group will be acutely concerned with its relationship with the personnel who invest in such partnership and the fact that senior officers and directors of BankAmerica Group entities will be investing in such Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, a BankAmerica entity.

8. Co-investments with Third Party Funds, or by a BankAmerica entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that BankAmerica Group invest its own capital in Third Party Fund investments, and that the BankAmerica Group investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnership's relationship to BankAmerica Group. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by BankAmerica Group in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships vis-a-vis a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit a BankAmerica entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed ''usual and customary.'' Applicants state that for the purposes of the application, fees or other compensation that is charged or received by a BankAmerica entity will be deemed ''usual and customary'' only if (i) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds, (ii) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds, and (iii) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because BankAmerica Group does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to a BankAmerica entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors of the General Partner who are not ''interested

persons'' (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the General Partner take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for the transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit a BankAmerica entity to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between BankAmerica Group and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requires that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will company with rule 17g–1 by having a majority of the Partnership's directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful for certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b) and 30(e), and the rules under those sections, that registered investment companies prepare and file with the SEC and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the ''Section 17 Transaction'') will be effected only if the General Partner determines that: (i) the terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned; and (ii) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the SEC and its staff.[3]

2. In connection with the Section 17 Transactions, the General Partner of each Partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of the affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a ''Co-Investor'' (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (i) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (ii) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term ''Co-Investor'' with respect to any Partnership means any person who is: (i) an ''affiliated person'' (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party

[3] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

Fund); (ii) BankAmerica Group; (iii) an officer or director of BankAmerica Group; or (iv) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition, however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (i) to its direct or indirect wholly-owned subsidiary, to any company (a ''Parent'') of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (ii) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (iii) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (iv) when the investment if comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (v) when the investment is comprised of securities that are listed on or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of the jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, for the life of the Partnership and at least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the SEC and its staff.[4]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a Participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by a BankAmerica director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2481 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[4] Each Partnership will preserve the accounts, books and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40985; File No. SR–AMEX–98–45]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Margin Treatment of Grand Exchange-Traded Fund Share Options Contracts

January 27, 1999.

I. Introduction

On November 25, 1998, The American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit each ''Grand'' Exchange-Traded Fund Share (Fund Share)[3] option contract to be recognized to the same extent that 10 ordinary Fund Share option contracts would be recognized under Amex Rule 462—Minimum Margins.

The proposed rule change was published for comment in the **Federal Register** on December 24, 1998.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The rule proposal clarifies that the margin requirements set forth in Amex Rule 462—Minimum Margins[5] apply to an option contract overlying 1000 Exchange-Traded Fund Shares (the ''Grand option contract'').[6] The Amex represents that the Grand option contract is the economic equivalent of holding 10 ordinary Fund Share option contracts, each of which overlies 100 shares of an underlying Fund Share. The Exchange notes that, specifically, the provisions of Amex Rule 462(d)(2)(D)(ii) have applicability to an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term Exchange-Traded Fund Share includes securities representing interests in unit investment trusts or open-end management investment companies that hold securities based on an index or portfolio of securities. Currently, the Exchange trades unit investment trust securities known as Portfolio Depositary Receipts℠ (''PDRs'') based on the Standard & Poor's 500® Composite Stock Price Index, the Standard & Poor's MidCap 400 Index, and the Dow Jones Industrial Average. In addition, the Exchange trades Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark Shares℠ (WEBs) based on seventeen foreign equity market indexes. The Exchange also trades nine Fund Shares known as Select Sector SPDRs℠, each of which is offered by the Select Sector SPDR℠ Trust, an open-end management investment company. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, *et seq.* and Rule 1000A *et seq.*, respectively, and trade like shares of common stock.

[4] Securities Exchange Act Release No. 40803 (December 17, 1998), 63 FR 71310 (File No. SR–AMEX–98–45).

[5] Amex Rule 462 states: ''In the case of a put or call dealt in on a registered national securities exchange or a registered securities association and issued by The Options Clearing Corporation, and representing options on equity securities, 100% of the option premium plus 20% of the market value of the equivalent number of shares of the underlying security, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put, (except that in the case of such options on Exchange-Traded Fund Shares or other securities that represent an interest in a registered investment company that satisfies the criteria set forth in Rule 915; Commentary .06, margin must equal at least 100% of the current market value of the contract plus (1) 15% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or (2) 20% of the market value of equivalent units of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio).'' Amex Rule 462(d)(2)(D)(ii); Securities Exchange Act Release No. 40157 (July 1, 1998), 63 FR 37426 (July 10, 1998) (''July 1998 Release'').

[6] On July 1, 1998, the Exchange received approval to trade both options overlying Exchange-Traded Fund Share and Grand option contract. *See* July 1998 Release, supra note 5.

account holding a ''straddle'' or a ''spread'' position, as discussed below.

Amex Rules 462(d)(2)(F) and (G) recognize the reduced risk associated with an account holding a ''straddle'' or a ''spread'' position by providing for margin requirements specific to the particular strategy (straddle or spread). For example, in the case of a spread strategy (*i.e.*, where an account holding a short call also holds a long call, or where an account holding a short put also holds a long put (provided the long positions expire on or after the expiration of the short positions)), Amex Rule 462(d)(2)(G) requires margin for a call spread equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the ''long'' call exceeds the exercise price of the ''short'' call. In the case of a put spread, Amex Rule 462(d)(2)(G) requires margin equal to the lesser of (1) 100% of the option premium plus 15% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a broad-based index or portfolio; or 20% of the market value of the equivalent number of shares of the underlying security value if the Exchange-Traded Fund Share holds securities based upon a narrow-based index or portfolio, reduced by any excess of the exercise price over the current market price of the underlying security in the case of a call, or any excess of the current market price of the underlying security over the exercise price in the case of a put or (2) the amount, if any, by which the exercise price of the ''short'' put exceeds the exercise price of the ''long'' put. In these contexts, the Exchange proposes that the required margin under Amex Rule 462(d)(2)(G) be applicable for each short Grand Fund Share call (put) option contract offset by 10 long ordinary Fund Share call (put) option contracts.

In the case of a straddle (*i.e.*, where an account holding both a put and a call for the same number of shares of the same equity security), guaranteed or carried ''short'' for a customer, the amount of margin required under Amex Rule 462(d)(2)(F) is the margin on the put or the call whichever is greater (under Amex Rule 462(d)(2)(D)), plus 100% of the premium on the other option. In this context, the Exchange proposes that the reduced margin under Amex Rule 462(d)(2)(D) be applicable for each Grand Fund Share call (put) option contract offset by 10 ordinary Fund Share put (call) option contracts. The Exchange believes the proposed margin offsets are appropriate given that the Grand contract is the economic equivalent of 10 ordinary Fund Share option contracts. In addition, the Exchange believes that by providing the same margin treatment for Grand Fund Share option contracts and 10 ordinary Fund Share option contracts, any potential investor confusion concerning the margin treatment of Grand contracts will be eliminated.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the Section 6(b)(5)[7] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[8]

The Commission believes that it is reasonable and appropriate for the Exchange to apply the margin requirements of Amex Rule 462 to a Grand option contract.[9] Specifically, the Commission believes it is appropriate to require minimum margin of 100% of the current market value of the option plus 15% of the market value of the underlying security value (''broad-based margin'') for Grand option contracts based on a broad-based index or portfolio. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to broad-based index options.[10]

Further, the Commission believes that requiring minimum margin of 100% of the current market value of the option plus 20% of the market value of the underlying security value (''narrow-based margin'') for Grand option contracts based on a narrow-based index or portfolio is also appropriate. In this respect, the margin requirements for Grand option contracts are comparable to those that currently apply to narrow-based index options. In addition, this requirement should help to ensure that purchasers of Grand option contracts based on a narrow-based index or portfolio post sufficient margin to address any concerns associated with the potentially increased volatility inherent in a narrow-based index product.

For the foregoing reasons, the Commission finds that the Exchange's proposal to apply Amex Rule 462 regarding margin treatment to Grand Fund Share option contracts is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–AMEX–98–45) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2537 Filed 2–2–99; 8:45 am]

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[7] 15 U.S.C. 78f(b)(5).

[8] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] The Commission notes that the Exchange currently applies the margin requirements of Amex Rule 462 to the economic equivalent of a Grand option contract (*i.e.*, 10 ordinary Fund Share option contracts). *See* July 1998 release, supra note 5.

[10] The Commission notes that the portfolios or indexes comprising WEBS Have not been designated as broad-based by the Commission. In this order, the Commission is only determining that board-based margin treatment for these WEBS is appropriate, without addressing the issue of whether such WEBS are based. *See* July 1998 Release, supra note 5.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40989; File No. SR–EMCC–99–1]

Self-Regulatory Organizations; the Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Fees and Charges for Pairing-Off

January 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on January 6, 1999, Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission''), the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change expands the fees charged by EMCC for pairing-off services provided.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Addendum H to EMCC's Rules allows EMCC to pair-off fail receive and deliver obligations relating to EMCC eligible instruments.[3] When EMCC conducted its first pairing-off of fail receive and deliver obligations of EMCC eligible instruments, it only charged for the pairing-off of obligations related to warrants. EMCC charges a fee of $2.00 per warrant fail receive or deliver obligation eliminated as a result of any pairing-off. The proposed rule change expands the $2.00 fee to cover the pairing-off of all fail receive and deliver obligations regardless of the type of EMCC eligible instruments to which they relate.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated thereunder because the proposal establishes or changes a due, fee, or other charge imposed by EMCC. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of EMCC. All submissions should refer to File No. SR–EMCC–99–1 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2532 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] Prior to the approval of Addendum H, EMCC only had the authority to pair-off fail receive and deliver obligations relating to warrants.

[4] The complete text of the proposed amendments to EMCC's rules and procedures is attached to EMCC's filing as Exhibit A, which is available for inspection and copying at the Commission's Public Reference Room and through EMCC.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(e)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40983; File No. SR–NASD–98–99]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Establishment of a Fee to Provide Proprietary Regulatory and Trading Data to NASD Members via NasdaqTrader.com

January 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 31, 1998,[3] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as describe in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the NASD under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed Amendment No. 1 with the Commission on January 21, 1999. The amendment corrects an inaccurate reference to the Act. *See* Letter from Thomas P. Moran, Senior Attorney, The Nasdaq Stock Market, Inc., to Mignon McLemore, Division of Market Regulation, SEC, dated January 21, 1999.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

upon filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to amend Rule 7010 of the NASD Rules, to establish a fee for a compliance and trading data report distribution facility accessible to NASD members through its ''NasdaqTrader.com'' website. Below is the text of the proposed rule change. Proposed new language is italicized.

Rule 7010 System Services

(a)–(n) No Changes

(o) NasdaqTrader.com Trading and Compliance Data Package Fee

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is $75 per month (monthly maximum of 25 Historical Research Reports) or $100 per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only)

(2) Monthly Compliance Report Cards (Member Firm's information only)

(3) Monthly Summaries

(4) Historical Research Reports

(i) Market Maker Price Movement Report

(ii) Equity Trade Journal (Member Firm's information only)

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq is proposing to establish a fee for a trading and compliance data distribution facility accessible to NASD members through its ''NasdaqTrader.com'' website. Under the proposal, NASD member firms will be able to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Use of this service will be voluntary, and fees from NASD members who subscribe will be used to offset the costs associated with the maintenance of the secured content as well as the product's portion of the ongoing maintenance and administration of the Nasdaq web-security infrastructure.

Specifically, NASD member firms who elect to receive Nasdaq's Trading and Compliance Data Package (''Data Package'') will be able to obtain the following: (1) Daily Share Volume Reports displaying the firm's own T+1 daily trading volume for each issue in which the firm reports volume; (2) Monthly Compliance Report Cards outlining the firm's own compliance status in the areas of trade reporting, firm quote compliance and best execution obligations; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security, or type of trading (*e.g.*, block or total); and (4) Historical Research Reports consisting of Market Maker Price Movement Reports (''MMPMR''), which show all of a Market Maker's quote updates (*i.e.*, price, size and inside quote at time of update) for a security on a specified date, and Equity Trade Journals (''ETJs'') detailing all trades reported through the Automated Confirmation Transaction Service by the NASD member firm for a selected security and date. Due to capacity restrictions, Data Package users seeking Historical Research Reports will be limited to either 25 or 100 monthly reports depending on the subscription fee paid.

Recognizing the proprietary and confidential nature of the data contained in the Data Package, Nasdaq has established a secure information display and retrieval environment through the combined use of user IDs, passwords and digital certificates. To further protect NASD member firms' proprietary data, the service is designed so that firm-specific reports regarding compliance and trading activity will only be made available to the member firm itself. Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5)[5] of the Act in that the Data Package fee provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective immediately pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (e) of Rule 19b–4 thereunder[8] in that it establishes or changes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[5] 15 U.S.C. 78o–3(b)(5).

[6] Initially, the proposal inaccurately referenced another Section of the Act. Amendment No. 1 corrected this mistake. *See supra* note 3.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19(b–4(e).

available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by February 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2484 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40988; File No. SR–NASD–98–79]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change Relating to Issuer Responsibilities When Using the Internet; Updating MarketWatch Contact Information and Other Matters

January 28, 1999.

On October 21, 1998, the National Association of Securities Dealers, Inc. (''NASD''), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. (''Nasdaq'') submitted to the Securities Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule IM–4120–1 with respect to the use of the Internet for dissemination of issuer disclosures.

The proposed rule change appeared in the **Federal Register** on December 17, 1998.[3] The Commission received no comments concerning the proposed rule change. This Order approves the proposed rule change for the reasons discussed below.

I. Description of Proposal

Increased use of the Internet to provide access to corporate information for shareholders has resulted in questions regarding the timing of news releases over the Internet and the use of issuers' Internet sites as replacements for traditional dissemination of news. While Nasdaq believes that it is generally in the public interest to encourage widespread dissemination of information to investors through the Internet, it also believes that it must maintain a level playing field for all investors, including those who do not have Internet access or who may not generally rely on the Internet as their primary source of material corporate news. Consequently, Nasdaq proposes permitting issuers to publicize news over the Internet, but only as a supplement to its ongoing requirement that news be disseminated through traditional news services. These include Dow Jones News Service, Reuters, Bloomberg Business News, Business Wire, PR Newswire, The Wall Street Journal, and *The New York Times*.[4]

Accordingly, Nasdaq is proposing to amend NASD Interpretation IM–4120–1 to state that it fully supports companies' use of Internet home pages to disseminate information to shareholders, but that the Internet must be a substitute for the dissemination of news through traditional news services. In the interests of maintaining a level playing field for all investors and to avoid situations of potential selective disclosure, the Nasdaq policy will be amended to indicate that dissemination of news over the Internet is appropriate as long as it is *not* made available over the Internet before the same information is transmitted to, and received by, the traditional news services. Furthermore, the amended policy will reiterate that issuers must still notify Nasdaq at least ten minutes prior to any release of material information to traditional news services or over the Internet, consistent with the existing policy.[5]

II. Discussion

Upon review, the Commission finds that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder applicable to a registered securities association. In particular, the Commission believes the proposal is consistent with Sections 15A(b)(6)[6] and 11A(a)(1)(B)[7] of the Act.[8] Section 15A(b)(6) requires that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, to protect investors and the public interest.[9] Section 11A(a)(1)(B) recognizes that new data processing and communications techniques create the opportunity for more efficient and effective market operations. Increasing the available outlets through which material information is circulated, as proposed, increases market transparency and furthers the goals of this section.

A free and open national market system requires the timely and thorough dissemination of information to market participants. Since its advent, the Internet's popularity has grown rapidly. The Commission believes that the Internet is a viable method to disseminate information to market participants. With its relatively low cost of operation, easy accessibility, and potential for rapid dissemination, it represents an effective and timely method for issuers to disseminate information to investors and the general public. The Commission agrees with Nasdaq that the Internet is an acceptable method for issuers to communicate with investors; its use to publicize material information should promote rapid and wide-spread dissemination of Company information, specifically enhancing the openness and fairness of the national market system generally.

The Commission further notes that the proposed rule change should adequately protect investors who rely on traditional news services to obtain information on issuers. As proposed, issuers who are required to disseminate information under NASD rules must use Nasdaq-approved traditional news services regardless of whether the issuers post the information on the Internet. This should protect investors who do not have Internet access or who still rely on traditional news services for their corporate news. In addition, the proposal provides that material news may not be released on the Internet prior to its receipt by traditional news services thereby helping to ensure that material news is not selectively disseminated.

III. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Rel. No. 40771 (December 10, 1998), 63 FR 56055.

[4] A complete list of appropriate news services is available from Nasdaq's Market Watch Department by telephone 1–800–537–3929 or (301) 590–6411. Between 6 p.m. and 8 a.m. Eastern Time, voice mail messages may be left on either number.

[5] In addition, this Order also approves several technical corrections to cross references contained in NASD Rule 4120 and IM–4120–1, as well as eliminating several footnote references to an outdated phone number used to contact MarketWatch, which are contained in NASD Rules 4120, 4310, and 4320.

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78k–1.

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(2).

proposed rule change (SR–NASD–98–79) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2536 Filed 2–2–99; 8:45am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40979; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Instituting a Pilot Program Relating to the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 1999, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the portion of the proposal instituting a pilot program relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a pilot program (''Pilot'') amending Section 1 of its *Listed Company Manual* (''Manual'') to codify the specific eligibility listing criteria as applied to certain investment companies registered under the Investment Company Act of 1940. The proposed three-month Pilot would expire on April 29, 1999, or such earlier time as the Commission approves the Exchange's request for permanent approval of the program.[3] The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposed to codify a policy regarding the listing of newly organized closed-end management investment companies (''Funds''). The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the Fund does not have a three-year operating history and is thus considered newly formed.

If the Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. In this regard, the Exchange notes that this requirement is the minimum net asset requirement for listing. The Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

In applying this test, the Exchange recognizes that in most cases the applicant Fund is not a traditional operating entity. Thus, it would not be possible to apply the earnings standards specified in the *Listed Company Manual* at the time of listing. Of course, Funds are subject to continued financial listing criteria, as are all NYSE-listed companies. In this regard, an exception report is generated monthly to identify companies below the Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[4] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested that the Commission find good cause, pursuant to Section 19(b)(2)[5] of the Act, for approving the establishment of the Pilot for a three-month period ending on April 29, 1999 (or until such earlier time as the Commission grants the Exchange's request for permanent approval of the program), prior to the thirtieth day after publication in the **Federal Register**.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Telephone conversation between N. Amy Bilbija, Counsel, NYSE, and Richard Strasser, Assistant Director, Division of Market Regulation, SEC, on January 26, 1999.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(2).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–02 and should be submitted by February 24, 1999.

V. Commission's Findings and Order Granting Partial Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change relating to the establishment of the Pilot is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public.[7]

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission believes that the Exchange's listing standard serves as a means for a marketplace to screen Funds and to provide listed status only to bona fide Funds with sufficient net assets. The Commission further believes that the proposed Pilot strikes a reasonable balance between the Exchange's obligation to protect investors and their confidence in the market and the Exchange's obligation to perfect the mechanism of a free and open market by listing Funds on the Exchange. In addition, the Commission believes that accelerated approval of the Pilot will enable the Exchange to minimize the interruption in its listing of these securities while allowing the Commission adequate time to consider the Exchange's proposal seeking permanent approval of the Pilot.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the Pilot program proposed by the Exchange (File No. SR–NYSE–99–02) is approved until April 29, 1999, or until the Commission approves the proposal permanently.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2534 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] Approval of the three-month Pilot should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40976; File No. SR–OCC–98–11]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Regarding the Calculation of the Short Option Adjustment

January 27, 1999.

On September 10, 1998, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–98–11) pursuant to Section 19(b)(1) of the Securities and Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on December 23, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends Rules 601 and 602 to enable OCC to use a ''sliding scale'' to calculate the short option adjustment contained in OCC's Theoretical Intermarket Margin System (''TIMS'').[3] The short option adjustment is a component of the additional margin calculation in TIMS that imposes a minimum margin amount on deep out of the money short options.

A. Additional Margin Calculation

OCC requires its clearing members to adjust their margin deposits with OCC in the morning of every business day based on OCC's overnight calculations. OCC imposes a margin requirement on short positions in each clearing member account and gives margin credit for unsegregated long positions.[4] Under TIMS, margin for positions in a class group is based on premium levels at the close of trading on the preceding day and is increased or decreased by the additional margin amount for that class group.[5]

TIMS calculates additional margin amounts using options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group by assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable margin interval. The margin interval is the maximum one day price movement that OCC wants to protect against in the price of the underlying asset.[6] Margin intervals are determined separately for each underlying interest to reflect the volatility in the price of the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40800 (December 16, 1998), 63 FR 71179.

[3] OCC Rule 601 describes TIMS as it applies to equity options (''equity TIMS'') and OCC Rule 602 describes TIMS as it applies to non-equity options (''non-equity TIMS'').

[4] A long position is unsegregated for OCC's purposes if OCC has a lien on the position (*i.e.*, has recourse to the value of the position in the event that the clearing member does not perform an obligation to OCC). Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' account are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[5] For purposes of equity TIMS, a class group consists of all put and call options, all BOUNDS, and all stock loan and borrow positions relating to the same underlying security. For purposes of non-equity TIMS, a class group consists of all put and call options, certain market baskets, and commodity options and futures (that are subject to margin at OCC because of a cross-margining program with a commodity clearing organization) that relate to the same underlying asset. A non-equity TIMS class group may also contain stock loan baskets and stock borrow baskets.

[6] Some combinations of positions can present a greater net theoretical liquidating value at an intermediate value that at either of the endpoint values. As a result, TIMS also calculates the theoretical liquidating value for the positions in each class group assuming intermediate market values of the underlying asset.

liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and the actual liquidating value is the additional margin amount for that class group unless the class group is subject to the short option adjustment.

B. Short Option Adjustment

For net short positions [7] in deep out of the money options, little or no change in value would be predicted given a change in value of the underlying interest equal to the applicable margin interval. As a result, TIMS normally would calculate additional margin amounts of zero or close to zero for deep out of the money short options. However, volatile markets could cause such positions to become near to or in the money and thereby could create increased risk to OCC. OCC protects against this risk with an adjustment to the additional margin calculation known as the short option adjustment.[8]

Currently, the short option adjustment requires a minimum additional margin amount equal to twenty-five percent of the applicable margin interval for all unpaired [9] net short positions in options series for which the ordinary calculation of the additional margin requirement would be less than twenty-five percent of the applicable margin interval. As a result, clearing members are required to deposit margin in excess of the risk presented by some unpaired net short positions in out of the money options.

To address these situations, the rule change establishes a sliding scale short option adjustment methodology. Using the sliding scale, the short option adjustment percentage will be applied to a particular series according to the extent to which the series is out of the money. In addition, OCC will use different sliding scales for put options and for call options.

The proposed rule change modifies Rules 601 and 602 to provide that the short option adjustment to be applied to any unpaired short position will be determined using a percentage that OCC deems to be appropriate.[10]

II. Discussion

Section 17A(b)(3)(F) of the Act [11] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the rule change is consistent with OCC's obligations under Section 17A(b)(3)(F) because it should reduce overcollateralization of OCC's clearing members' positions without impairing OCC's overall protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act [12] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2482 Filed 2–2–99; 8:45 am]

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[7] A net position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position or a net long position for each series of options held in the account.

[8] The short option adjustment is described in Rule 601(c)(1)(C)(1) for equity options and Rule 602(c)(1)(ii)(C)(1) for non-equity options. OCC recently amended Interpretation .06 to Rule 602 so that net short non-equity option positions can be paired off against net long non-equity positions whose underlying interests exhibit price correlation of at least seventy percent. Securities Exchange Act Release No. 40515 (September 30, 1998), 63 FR 53970.

[9] The term unpaired is defined in Interpretation .04 to Rule 601 for equity options and Interpretation .06 to Rule 602 for non-equity options.

[10] A schedule of the sliding scales that OCC intends to use is attached as Exhibit A to its filing, which is available for inspection at the Commission's Public Reference Room and through OCC. OCC will always specify a minimum short option adjustment percentage. OCC will inform its members of the initial schedule of the sliding scales through an Important Notice and will notify its members of any changes to the schedule.

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] 15 U.S.C. 78q–1.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40981; File No. SR–OCC 98–15]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Definition of Stock Fund Shares

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 16, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change modifies the definition of ''stock fund shares.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the definition of ''stock fund shares'' as currently defined in Section 1 of Article 1 of OCC's By-laws [3] by replacing the term ''common

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] This definition was introduced in a recently approved rule change. Securities Exchange Act Release No. 40595 (October 23, 1998), 63 FR 58438 [File No. SR–OCC–98–08] (order approving rule change relating to OCC's rules and by-laws which govern options on publicly traded interests in unit investment trusts, investment companies, or similar entities holding portfolios or baskets of common stock).

stocks'' with the phrase ''equity securities'' in the definition. When the definition was originally drafted, the term ''common stock'' was intended to be interpreted broadly enough to include other equity securities such as ADRs.[4] The substitution of the term ''equity securities'' will make it clear that stock fund shares includes interests in entities holding portfolios or buckets of equity securities other than common stocks.

OCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of transactions in stock fund options by eliminating any potential ambiguity as to the definition of ''stock fund shares.''

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i)[6] of the Act and pursuant to Rule 19b–4(e)(1)[7] promulgated thereunder because the proposal constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–98–15 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2483 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40980; File No. SR–PCX–98–55]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Relating to Crossed Market Adjustments

January 26, 1999.

I. Introduction

On November 5, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to clarify its rules on the automatic execution of options orders. Amendment No. 1 was submitted to the Commission on November 30, 1998.[3] The proposed rule change was published for comment in the **Federal Register** on December 9, 1998.[4] The Commission did not receive any comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to clarify its rules on the automatic execution of orders when the PCX market and the market of a competition exchange are crossed or locked (*i.e.*, the bid disseminated through the facilities of one exchange is higher than or equal to the offer disseminated through the facilities of another exchange. The Exchange believes the proposal will make consistent the handling of electronic orders in such circumstances.

On September 8, 1998, the Commission approved a PCX proposal to amend PCX Rule 6.87(d) regarding the automatic execution of options orders.[5] The rule change provided that the Exchange's Options Floor Trading Committee (''OFTC'') may designate electronic orders in an option issue to receive automatic executions at prices reflecting the National Best Bid or Offer (''NBBO''). The rule change further provided that the OFTC may designate a customer order to exit the automatic execution system and receive floor broker representation in the trading crowd if the NBBO is crossed (*e.g.* 6⅛ bid, 6 asked) or locked (*e.g.* 6 bid, 6 asked).

After the Commission approved the amendment to PCX Rule 6.87(d), the Exchange became aware that the rule implied that the OFTC could designate an option issue for floor broker representation in crossed or locked markets only if the issue was eligible to receive automatic execution at the NBBO. The Exchange's intention was to allow OFTC the discretion to designate orders in an option issue for floor broker representation if the NBBO is crossed or

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[4] The intention to cover ADRs was apparent in the original filing which approved a rule change permitting OCC to issue, clear, and settle options on unit investment trust interests and investment company shares that hold portfolios or baskets of common stock. The filing noted that underlying stock fund shares would include World Equity Benchmark Shares (''WEBs''). WEBs represent interests in funds whose holdings consist of or include ADRs. Securities Exchange Act Release No. 40132 (June 25, 1998), 63 FR 36467 [File No. SR–OCC–97–02].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 CFR 240.19b–4(e)(1).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change was originally filed pursuant to Section 19(b)(3)(A)(ii) of the Act. The amendment converted the proposed rule change to a filing pursuant to Section 19(b)(2) of the Act. Letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PCX to Kelly McCormick, Attorney, Division of Market Regulation, SEC, dated November 27, 1998 (''Amendment No. 1'').

[4] Securities Exchange Act Release No. 40734 (December 1, 1998), 63 FR 67971 (December 9, 1998).

[5] Securities Exchange Act Release No. 40412 (September 8, 1998), 63 FR 49626 (September 16, 1998) (File No. SR–PCX–98–27).

locked, regardless of whether the orders are eligible for automatic execution at the NBBO. Accordingly, the Exchange is now proposing to amend PCX Rule 6.87 to clarify that the OFTC may designate customer orders, for any option issue, to default to floor broker representation in the trading crowd if the NBBO is crossed or locked, regardless of whether the Exchange's Auto-Ex system is set to execute orders at prices reflecting the NBBO.

The Exchange stated that the proposal should prevent customer orders from being executed at inferior prices. The Exchange illustrated this potential problem as follows. If the PCX market is 5 bid, 5¼ asked, and exchange B's market is 4 bid, 4¼ asked, the NBBO would be 5 bid, 4¼ asked. If the 5 bid is based on a public order for 10 contracts, and the order is automatically executed, the customer would be deprived of an opportunity to cancel the order at 5 and buy 10 contracts at exchange B at 4¼. This result would occur regardless of whether the PCX Auto-Ex system is using the NBBO or PCX quotes.

The Exchange also explained that in many cases crossed or locked markets occur because of communications or systems problems, or due to keystroke errors, or quotation dissemination delays. The Exchange stated that it believes that the proposal allow floor brokers to determine if the locked or crossed market is actually a true market. The Exchange stated that it plans to implement a systems change to accommodate the potential for floor broker representation of options orders during crossed or locked markets after this proposal is approved.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.[7]

Section 6(b)(5) of the Act[8] requires, among other things, that the rules of an exchange be designed to facilitate transactions in securities and, in general, to protect investors and the public interest. The proposed rule change should protect customer orders from being executed at inferior prices. Currently if the NBBO is crossed or locked, a customer's order could potentially be executed at an inferior price. If an order is placed for an option issue that is not eligible for automatic execution at the NBBO, the order would be automatically executed at a price that may be inferior to a price listed on another market. The proposed amendment to PCX Rule 6.87 would prevent this situation from occurring. The customer order would default to the PCX floor brokers who would then handle that order consistent with their best execution obligations.

The proposed rule change provides floor brokers with the opportunity to determine if the crossed or locked markets are true markets. As explained by the Exchange, a locked or crossed market may be caused by external factors unrelated to the option issue. The default provision will allow floor brokers to ascertain whether the crossed or locked market is in fact a true market, before assessing what the best execution would be for a particular customer's order.

Accordingly, the Commission believes the proposed rule change will facilitate transactions when markets are crossed or locked and will protect investors and the public interest consistent with the requirements of Section 6(b)(5) of the Act.[9]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–PCX–98–55) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2533 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[6] In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] *Id.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40959; File No. SR–PCX–98–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Rescission of Fee Assessment for New Facilities

January 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 15, 1999, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by PCX.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX is proposing to rescind the special assessment that was approved in January 1998. The assessment, which applied to each of the 552 PCX memberships, was intended to provide an equity base to fund new facilities to house the Exchange's new trading floor, technology facilities, associated office space and equipment.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PCX included statements concerning the purpose of, and basis for, the fee change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The filing was submitted January 4, 1999, however, the PCX amended the filing after it was submitted. Therefore the effective date of the filing is January 15, 1999. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Mike Walinskas, Deputy Associate Director, SEC, dated January 14, 1999.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background: The Exchange received approval by the Commission to assess the 552 PCX memberships $36,000, to be paid by each membership in monthly installments of $1,000 per month.[4] In the original proposal, the Exchange stated that ''the purpose of the assessment is to provide an equity base to finance land and facilities to house the Exchange's new trading floors, technology facilities, associated office space and equipment.'' In addition, the Exchange proposed that the amount raised would serve as an equity base to aid in the process of obtaining additional financing.

Proposed Fees: The Exchange proposes to rescind its $36,000 special assessment of each of its 552 memberships. The Exchange proposes this rescission for several reasons including: significant and rapid changes in the industry, the entry of new, well-capitalized competitors, the introduction of electronic trading, and other technological enhancements. The Exchange believes that it must use its technological, staff, and financial resources to aggressively respond to competitive pressures, but it has been able to alter its facility requirements. Although the Exchange still needs to expand and renovate its trading facilities, technological enhancements will allow it to do so in a less costly manner than the facilities proposed in the original filing.[5] In conjunction with rescinding the assessment, the Exchange intends to refund all payments collected as part of the assessment from the owners of its 552 memberships.

2. Statutory Basis

The fee change is consistent with Section 6(b)[6] of the Act in general and furthers the objectives of Section 6(b)(4)[7] in particular because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PCX has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, which establishes or changes a due, fee, or other charge applicable to members of the Exchange, has become effective pursuant to Section 19(b)(3)(A) of the Act,[8] and subparagraph (e)(2) of Rule 19b–4 thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the rule change that are filed with the Commission, and all written communications relating to the rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–65 and should be submitted by February 24, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–2535 Filed 2–2–99; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Securities Exchange Act Release No. 39945 (May 1, 1998), 63 FR 25891 (May 11, 1998).

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(e)(2).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 2964]

Shipping Coordinating Committee International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 1:00 p.m., on Friday, February 12, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to prepare for a Diplomatic Conference on the International Maritime Organization's Draft Convention on Arrest of Ships, which will be held March 01–12, 1999, in Geneva. This meeting will be a further opportunity for interested members of the public to express their views on the Draft Convention.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room.

For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Respires, U.S. Coast Guard (G–LMI), 2100 Second Street, SW, Washington, D.C. 20593; telephone (202) 267–1527; fax (202) 267–4496.

Dated: January 28, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–2643 Filed 2–1–99; 1:34 pm]

BILLING CODE 4710–7–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Stand-Alone Airborne Navigation Equipment Using the Global Positioning System Augmented by the Wide Area Augmentation System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed Technical Standard Order (TSO) pertaining to stand-alone airborne navigation equipment using the Global Positioning System (GPS) Augmented by the Wide Area Augmentation System (WAAS). The proposed TSO prescribes the minimum operational performance standards that stand-alone airborne navigation equipment must meet to be identified with the marking ''TSO–C146.''

DATES: Comments must be received on or before April 16, 1999.

ADDRESSES: Send all comments on the proposed technical standard order to: Avionics Systems Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration (FAA), Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Comments must identify the TSO file number.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle Swearingen, Avionics Systems Branch, AIR–130, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, (202) 267–3817, FAX No. (202) 493–5173.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, D.C. 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director, Aircraft Certification Service before issuing the final TSO.

Background

The Wide Area Augmentation System (WAAS) is an augmentation to GPS that calculates GPS integrity and correction data on the ground and uses geostationary satellites to broadcast GPS integrity and correction data to GPS/WAAS users and to provide ranging signals. It is a safety critical system consisting of a ground network of reference and integrity monitor data processing sites to assess current GPS performance, as well as a space segment which broadcasts that assessment to Global Navigation Satellite System users to support enroute through precision approach navigation. Users of the system include all aircraft applying the WAAS data and ranging signal.

Wide area reference stations and integrity monitors are widely dispersed data collection sites that contain GPS/WAAS ranging receivers which monitor all signals from the GPS, as well as the WAAS geostationary satellites. The reference stations collect measurements from the GPS and WAAS satellites so that differential corrections, ionospheric delay information, GPS/WAAS accuracy, WAAS network time, GPS time, and UTC can be determined. The standards of this TSO apply to equipment designed to accept a desired flight path and provide deviation commands referenced to that path. These deviations will be used by the pilot or autopilot to guide the aircraft.

How To Obtain Copies

A copy of the proposed TSO–C146 may be obtained via Internet (http://www.faa.gov/avr/air/100home.htm) or on request from the office listed under **FOR FURTHER INFORMATION CONTACT**. RTCA Document No. 229A, ''Minimum Operational Performance Standards for Global Positioning System/Wide Area Augmentation System Equipment,'' dated June 8, 1998, RTCA Document No. DO–160D, ''Environmental Conditions and Test Procedures for Airborne Equipment,'' dated July 29, 1997; and RTCA Document No. DO–178B, ''Software Considerations in Airborne Systems and Equipment Certification,'' dated December 1, 1992, RTCA Documents No. DO–200A, ''Standards for Processing Aeronautical Data,'' may be purchased from the RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 22036.

Copies of the RTCA documents may be inspected at the FAA at the location listed under **ADDRESSES**. However, RTCA documents are copyrighted and may not be copied without the written consent of RTCA, Inc.

Issued in Washington, DC, on January 28, 1999.

James C. Jones,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 99–2503 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Thursday, March 18, 1999, beginning at 9:45 a.m. and ending at approximately 12:30 p.m., at the Clarion Hotel, Romulus, MI. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Thursday, February 22, 1999, to the address shown below or by e-mail. If sufficient time is available, questions received after February 22 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by February 22, 1999, and the issuers to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, March 15, 1999, and will be available at the meeting. The next NHTSA vehicle regulatory program meeting will take place on Wednesday, June 16, 1999 at the Clarion Hotel, Romulus, MI.

ADDRESSES: Questions for the March 18, NHTSA Rulemaking Status Meeting relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW., Washington, DC 20590, FAX Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Clarion Hotel 9191 Wickham Road, Romulus, MI.

FOR FURTHER INFORMATION CONTACT: Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh

Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking
A. Crash avoidance
B. Crashworthiness
C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of ''auxiliary aids'' (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB February 22, 1999.

Issued: January 26, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–2530 Filed 2–2–99; 8:45am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 30186 (Sub-No. 3)]

Tongue River Railroad Company, Construction and Operation of the Western Alignment in Rosebud and Big Horn Counties, Montana

AGENCY: Surface Transportation Board, DOT.

ACTION: Final scope of the Supplement.

SUMMARY: On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the ''Western Alignment.'' The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the ''Four Mile Creek Alternative.''

On July 10, 1998, the Board's Section of Environmental Analysis (SEA) served as Notice of Intent to prepare a Supplement to the Final Environmental Impact Statement in Finance Docket No. 30186 (Sub-No. 2) (Supplement) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the Supplement. SEA reviewed and considered all of the comments in preparing the final scope of the Supplement, which is discussed below.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired: (202) 565–1695).

SUPPLEMENTARY INFORMATION:

Proposed Action and Background

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana (MT), known as the Western Alignment and subsequently referred to as *Tongue River III.* The line that is the subject of this application is an alternative routing for the southernmost portion of the 41-mile Ashland to Decker, MT rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), via the Four Mile Creek Alternative and subsequently referred to as *Tognue River II.*[1]

The TRRC rail line project has been considered by the Board in two separate proceedings. In its original application filed in 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, MT and two termini located near Ashland, MT in Finance Docket No. 30186 (Sub-No. 1), and subsequently referred to as *Tognue River I.* In a decision served May 9, 1986, the ICC approved *Tongue River I.* TRRC then sought in *Tongue River II,* approval to extend the line another 41 miles from Ashland to Decker, MT. As discussed above, the Board approved *Tongue River II,* via the Four Mile Creek Alternative, in November 1996.

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared environmental impact statements (EIS) for both *Tongue River I* and *Tongue River II.*[2] TRRC has reported to the Board that it has conducted various preconstruction activities on both segments but actual construction has not yet begun.

In *Tongue River I* and *Tongue River II,* the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the merits of the authority granted in these proceedings. The action proposed to be taken here is predicated on TRRC's proposed change to its previously approved construction authorizations, which necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of current 49 U.S.C. 10901.

Environmental Review Process

On July 10, 1998, the Board served a Notice of Intent (NOI) to prepare a Supplement to the Final EIS (Supplement) in *Tongue River III* to consider the potential environmental impacts of the proposed Western Alignment. The NOI also sought comments on the scope of the Supplement from TRRC and all interested persons, and specifically requested comments on whether the analysis of the Supplement should be limited to the Western Alignment. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA has prepared this scope for the Supplement based on a careful review of all the comments to the NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in *Tongue River I* and *Tongue River II.* Assisting in the preparation of the Supplement is SEA's independent third-party contractor, Public Affairs Management of San Francisco, CA.

The scope of this Supplement in *Tongue River III* has been developed in consultation with three agencies that have requested cooperating agency status: (1) the U.S. Army Corps of Engineers (Corps); (2) U.S. Department

[1] Petitions for review of *Tongue River II* are pending in the Ninth Circuit. These cases are being held in abeyance until this case is decided.

[2] In *Tongue River I, Tongue River Railroad Company—Rail Construction And Operation—In Custer, Powder River, And Rosebud Counties, Montana,* Finance Docket No. 30186 (Miles City to Ashland), the Draft Environmental Impact Statement was served July 15, 1983; the Supplement to the Draft Environmnetal Impact Statement was served January 19, 1984; and the Final Environmental Impact Statement was served August 23, 1985. In *Tongue River II, Tongue River Railroad Company—Rail Construction and Operation Of An Additional Rail line From Ashland To Decker, Montana,* Finance Docket No 30186 (Sub No. 2), the Draft Environmental Impact Statement was served July 17, 1992; the Supplement to the Draft Environmental Impact Statement was served March 17, 1994; and the Final Environmental Impact Statement was served April 11, 1996.

of the Interior, Bureau of Land Management (BLM); and (3) the Montana Department of Natural Resources and Conservation (MT DNRC), acting as lead agency for other Montana state agencies. These three agencies also have decision making authority independent of the Board and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will include in this Supplement environmental review of certain issues specifically requested by the cooperating agencies and outlined below. SEA met with these agencies and sought their comments on the scope of this Supplement. A detailed description of the Supplement, which the three cooperating agencies have generally agreed upon and which includes the scope of the analysis for the Western Alignment and those portions of *Tongue River I* and *Tongue River II* that will be analyzed, is set forth below.

SEA will serve a Draft Supplement on all the names on its service list and on appropriate Federal, state, and local agencies, and will publish notice of this document in the **Federal Register**. The public will be invited to comment. SEA will carefully consider all the comments received on the Draft Supplement, conduct any further environmental review that may be necessary, and will then prepare a Final Supplement that will also be served on the parties to the proceeding. A notice of the Final Supplement will also be published in the **Federal Register**. The Board will then take into account the Draft Supplement, the Final Supplement, and all comments received in issuing its final written decision in *Tongue River III.*

Proposed Scope for the Supplement

Tongue River III

The scope of the Supplement for the Western Alignment in *Tongue River III* will involve a detailed environmental review of the proposed 17.3 miles of new rail line. The Supplement will assess environmental impacts associated with construction and operation of the proposed Western Alignment and will recommend environmental mitigation where feasible and appropriate. The Supplement will discuss alternatives to the proposal and will compare the effects of the Western Alignment to the approved Four Mile Creek Alternative, and the No-Build Alternative. The analysis will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will be addressed.

Tongue River I and Tongue River II

The scope of the Supplement will also include a limited review of certain portions of the environmental documents prepared in *Tongue River I* and *Tongue River II.* Based on careful review of all the comments to the NOI and consultation will the three cooperating agencies, SEA and the cooperating agencies believe additional analysis beyond the Western Alignment is justified in these areas: (1) where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for *Tongue River I* or *Tongue River II*; (2) where there have been refinements to the alignment previously considered in the *Tongue River I* and *Tongue River II* EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and (3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

Although the comments in response to the NOI referred to possible changes to the alignment previously considered, they did not identify significant changed physical circumstances within the project area that would warrant a complete environmental re-analysis of either *Tongue River I* or *Tongue River II.* However, TRRC submitted information in response to the NOI indicating that the alignment of the railroad has been refined somewhat from that analyzed in *Tongue River I* and *Tongue River II.* In addition, the Montana state agencies have raised the issue of whether or not a particular corridor was analyzed and approved as part of the previous Board approvals. In response to this information, SEA and the cooperating agencies have determined that the scope of the Supplement should be broadened to include a comparative analysis to determine if any of the changes from the previously considered alignments in *Tongue River I* and *Tongue River II* would result in significant environmental effects not previously considered.

Cooperating Agencies' Jurisdiction

The proposed TRRC rail construction and operation project in *Tongue River I* and *Tongue River II* has spanned a number of years and has been considered by the Board in separate proceedings. TRRC has sought various separate easements and/or permits that are required by other Federal and state agencies before it can begin to construct and operate its proposed rail line, some of which have been granted but have now expired. As stated earlier, principal among these other permitting agencies are the three agencies that have asked for cooperating agency status in the preparation of this Supplement. In processing their easements and/or permits, the three cooperating agencies will utilize the Supplement to reach their own conclusions regarding the environmental effects of the proposed rail line and have advised SEA that they will now view TRRC's proposed project as a single line from Miles City to Decker, MT for these permitting purposes. After consulting with these agencies, SEA has agreed to provide specific additional analysis in the Supplement regarding environmental issues related to *Tongue River I* and *Tongue River II* to assist them in their permitting processes. The agencies may require an independent assessment to validate any data in question.

The Board has already taken actions approving the construction of a rail line pursuant to the applications of *Tongue River I* and *Tongue River II.* However, the cooperating agencies have not completed their separate review processes. Each of the cooperating agencies will issue their own Record of Decision, and any necessary easements and permits [3] that would be required by their separate processes as a condition to the construction of the rail line in

[3] Permits to be issued by cooperating agencies.

Army Corps of Engineers: Section 404 permit for the placement of fill in wetlands and waters of the U.S.

Bureau of Land Management: Granting of easements across BLM owned and/or managed lands.

State of Montana: Temporary Water Use (Form 600), Floodplain Development Permit, Navigable Rivers LUL/Easement (Form DS–432), LUL for Access to State Lands (Form DS–401), Right-of-Way Easement for Crossing State Land, Notice of Settlement of Damages Form (DS–457), MDT Encroachment Permits, Storm Water Discharge (MPDES)—General Permit MTR 100000, MPDES (construction related discharge)—Project specific permit, 310 Permit (county permit), Short Term Exemption from Surface Water Quality Standards (3A), 401 Certification to the Army Corps of Engineers, Easement for Crossing Fish Hatchery, Approval for private easements across existing DFWP conservation easements.

Tongue River I, Tongue River II, and *Tongue River III.*

BLM and the MT DNRC will hold public scoping meetings on TRRC's application for construction and operation TRRC's proposed rail line from Miles City to Decker, MT. Both agencies stated that these public scoping meetings are necessary in order to fulfill their separate permitting requirements. To the extent possible, SEA will address any new environmental issues raised at these scoping meetings that are relevant to the scope outlined here, and incorporate these issues in the Supplement.

Cumulative Effects

SEA will include in the Supplement a discussion of cumulative environmental impacts for the entire line from Ashland to Decker, MT for both the Four Mile Creek Alternative and the Western Alignment. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future development of the coal mines in the Ashland, MT area and air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

Format of the Supplement

The Supplement will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in *Tongue River III.* The second section will provide, as appropriate, updated analysis relating to *Tongue River I* and *Tongue River II.* A third section will discuss cumulative effects that would be associated with the construction and operation of the entire line from Miles City to Decker, MT from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues for the individual cooperating agencies. The information outlined in this scope will be found either in the body of the Supplement or in an appendix provided for each cooperating agency.

Assumptions

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses prepared for *Tongue River I* and *Tongue River II,* if appropriate.
- The Supplement will evaluate the impacts of the proposed Western Alignment in *Tongue River III,* and will compare those impacts to the impacts related to the Four Mile Creek Alternative, the No-Build Alternative.

Section I

Tongue River III

Potential Environmental Impacts Associated With the Construction and Operation of the Western Alignment

1. Land Use

The Supplement will:

A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.

B. Evaluate the impact to parcels with a future potential for mechanical irrigation.

C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossing.

D. Evaluate the impact of sidings as well as the rail line itself.

E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

2. Biological and Aquatic Resources

The Supplement will:

A. Establish a baseline for water quality and diversity of species for the Tongue River Region. The Supplement will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley including vegetative communities, wildlife and wildlife movement (especially pronghorn and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species.

B. Include a biological assessment of species, updating information from *Tongue River II* as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list provided for this project.

C. Include a delineation of all prairie dog colonies to assist in determining the presence of Black-Footed Ferret.

D. Include a survey of sensitive plant species including the Woolly Twinpod, and Barr's Milkvetch.

E. Include wetland analysis for all wetlands and waters of the U.S. including creek and river crossings.

F. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.

G. Develop an appropriate mitigation plan for all wetlands and waters of the United States.

H. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

3. Soils and Geology

The Supplement will:

A. Evaluate the potential for soil erosion during construction and long-term operation.

B. Evaluate soil composition and the need for blasting.

C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.

D. Evaluate the effect of topography changes on runoff and flooding.

E. Evaluate proposed engineering of bridges and culverts.

F. Develop any appropriate mitigation.

4. Water Quality

The Supplement will:

A. Include a hydrological analysis of the Tongue River and the potential impact of the construction and operation of *Tongue River III* upon it.

B. Evaluate the specific potential of erosion from cut/fill slopes to degrade the current water quality of the Tongue River and tributary streams.

C. Develop any appropriate mitigation.

5. Cultural Resources

The Supplement will:

A. Evaluate potential impacts to cultural and paleontological resources.

B. Include the final terms of the Programmatic Agreement currently under review by the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.

C. Discuss the results of consultation with Native American tribes, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (amended 1992); The American Indian Religious Freedom Act (amended 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

D. Provide the results of consultation with representatives from the Northern

Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to *Tongue River III.*

E. Discuss the eligibility of the Spring Creek Archaeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of *Tongue River III.*

6. Transportation and Safety

The Supplement will:

A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved *Tongue River II* route at the north end (proposed as an at-grade crossing).

B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the prior EIS for *Tongue River II.*

C. Assess the potential for train derailments and grade crossing accidents.

D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment when compared to the Four Mile Creek Alternative including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.

E. Assess the opportunities for access by local property owners.

F. Evaluate concerns regarding fire prevention and suppression.

G. Discuss the terms of the Memorandum of Agreement between the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.

H. Develop any appropriate mitigation.

7. Energy

The Supplement will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

8. Air Quality

The Supplement will:

A. Evaluate construction-permit dust emissions from project construction.

B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.

C. Evaluate particulate emission from locomotive operation.

D. Develop any appropriate mitigation.

9. Noise and Vibration Effects

The Supplement will:

A. Evaluate the project's effect on local property owners, residences, and ranch operations.

B. Evaluate the project's effect on local recreational activities.

C. Evaluate the project's effect on livestock and wildlife.

D. Evaluate the effect of blasting and vibration for the project on the Tongue River Reservoir dam if blasting is necessary for construction.

E. Develop any appropriate mitigation.

10. Socioeconomics

The Supplement will:

A. Evaluate potential impacts of *Tongue River III* on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.

B. Develop any appropriate mitigation.

11. Recreation

The Supplement will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

12. Aesthetics

The Supplement will:

A. Evaluate the visibility of the project from the Tongue River State Recreation Area.

B. Evaluate the visibility of the project from county roads in the area.

C. Evaluate the visibility of the project to local residents, Native Americans, hunters, recreational users, sightseers, etc.

D. Develop any appropriate mitigation.

13. Environmental Justice

The Supplement will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation.

Section II

Tongue River I and Tongue River II

Additional Environmental Review

As discussed earlier, the following section outlines additional analysis of certain limited portions of the environmental analysis in *Tongue River I* and *Tongue River II* that will be undertaken in the Supplement. Based on careful review of all the comments to the NOI and consultation with the three cooperating agencies, SEA and the cooperating agencies believe that additional analysis beyond *Tongue River III* is justified in three areas: (1) Where environmental circumstances or requirements have changed in a manner warranting the updating and augmenting of analysis for *Tongue River I* or *Tongue River II*; (2) where there have been refinements to the alignment previously considered in the *Tongue River I* and *Tongue River II* EISs requiring additional environmental analysis because they might result in significant environmental impacts not addressed in those previous EISs; and (3) where further environmental analysis is appropriate to assist the cooperating agencies in their environmental review and permitting processes, as specifically requested by these agencies.

The information required to address these three areas will be included either in the body of the Supplement, or in an appendix provided for each cooperating agency. The additional analysis will include appropriate mitigation.

Again, the applicable assumptions are:

- To avoid duplication, the Supplement will refer to and utilize the environmental analyses contained in the prior environmental documents for *Tongue River I* and *Tongue River II,* where possible.
- The Supplement will evaluate refinements to the alignment previously considered in *Tongue River I* and *Tongue River II* to determine if environmental impacts would occur that were not identified in the prior EISs for *Tongue River I* and *Tongue River II.*

Tongue River I

Tongue River I is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, MT, and two termini in Ashland, MT, which was approved by the Board's predecessor in 1986.

The Supplement will:

A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings

because there was no requirement that one be done when the EIS in *Tongue River I* was prepared.

B. Update biological assessment information based on consultation with the U.S. Fish and Wildlife Service.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.

D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

F. Include an analysis of potential impacts to the Sturgeon Chub, and the Sicklefin Chub, and include mitigation to avoid construction during spawning/incubation periods.

G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery.

Tongue River II

TRRC sought in *Tongue River II* to extend the rail line approved in *Tongue River I* another 41 miles from Ashland to Decker, MT. In 1996, the Board approved *Tongue River II* via the Four Mile Creek Alternative.

The Supplement will:

A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.

B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, MT.

D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality to include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Include additional analysis as required of potential environmental justice effects from construction and operation of *Tongue River II* on *Tongue River III* and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

Section III

Cumulative Effects

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2557 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–246 (Sub–No. 2X)] [1]

Yreka Western Railroad Company—Abandonment Exemption—in Siskiyou County, CA

On January 14, 1999, Yreka Western Railroad Company (YW) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire 8.9-mile line of railroad extending between milepost 0.0 in Montague and milepost 8.9 near Yreka, in Siskiyou County, CA. The line traverses U.S. Postal Service Zip Codes 96064 and 96097 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in YW's possession will be made available promptly to those requesting it.

In this proceeding, YW is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784, 785–86 (1978) *(Northampton).* Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by May 4, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than February 23, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–246 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, and (2) Fritz R. Kahn, Suite 750 West, 1100 New York Avenue, NW, Washington, DC 20005–3934. Replies to the YW petition are due on or before February 23, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis

[1] This petition for exemption was originally docketed as AB–246 (Sub-No. 1X) and has been redocketed to AB–246 (Sub-No. 2X), same title. A previous YW abandonment application was denied in *Yreka Western Railroad Company—Abandonment—In Siskiyou County, CA*, Docket No. AB–246 (Sub-No. 1) (ICC served Nov. 6, 1987).

(SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 27, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–2427 Filed 2–2–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Assignment for U.S. Registered Definitive Securities.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0059.

Form Number: PD F 1832.

Abstract: The information is requested to complete transaction involving the assignment of U.S. Registered Definitive Securities.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2459 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Disclaimer and Consent with Respect to United States Savings Bonds/Notes.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Special Form of Assignment for U.S. Registered Securities.

OMB Number: 1535–0113.

Form Number: PD F 1849.

Abstract: The information is requested when the requested savings bonds/notes transaction would appear to affect the right, title or interest of some other person.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 700.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2460 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Release.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Release.

OMB Number: 1535–0114.

Form Number: PD F 2001.

Abstract: The information is requested to ratify payment of savings bonds/notes and release the United States of America from any liability.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 20.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2461 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Stop Payment/Replacement Check Request.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Stop Payment/Replacement Check Request.

OMB Number: 1535–0070.

Form Number: PD F 5192.

Abstract: The information is requested to place a stop payment on a Treasury Direct check and request a replacement check.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2462 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the

Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Payroll Savings Report.

DATES: Written comments should be received on or before April 7, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Payroll Savings Report.

OMB Number: 1535–0001.

Form Number: SB–60 and SB–60A.

Abstract: The information is requested as a measure of the effectiveness of the payroll savings program.

Current Actions: None.

Type of Review: Extension.

Affected Public: Businesses.

Estimated Number of Respondents: 25,910.

Estimated Time Per Respondent: 41 minutes.

Estimated Total Annual Burden Hours: 17,871.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: January 27, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–2463 Filed 2–2–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Monet and Bazille: A Collaboration''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit ''Monet and Bazille: A Collaboration'', imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the High Museum of Art, Atlanta, Georgia, from on or about February 27, 1999, to on or about May 16, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Lorie Nierenberg, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6084, or USIA, 301 4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: January 29, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–2527 Filed 2–2–99; 8:45 am]

BILLING CODE 8230–01–M

Federal Register

Wednesday
February 3, 1999

Part II

Department of Commerce

Economic Development Administration

13 CFR Chapter III

Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998; Interim Rule

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Chapter III

[Docket No. 990106003–9003–01]

RIN 0610–AA56

Economic Development Administration Regulations; Revision To Implement the Economic Development Reform Act of 1998

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Interim rule with request for comments.

SUMMARY: The purpose of this interim-final rule is to revise regulations of the Economic Development Administration (EDA) to implement the comprehensive amendment to the Public Works and Economic Development Act of 1965, as amended, by the Economic Development Administration Reform Act of 1998 (Pub. L.105–393).

DATES: Effective date: February 11, 1999.

Comment date: Comments are due on or before April 5, 1999.

ADDRESSES: Send comments to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230

FOR FURTHER INFORMATION CONTACT: Edward M. Levin, Chief Counsel, Telephone Number 202–482–4687, fax 202–482–5671, and e-mail ELevin@doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Economic Development Administration (EDA) was reauthorized for a five-year period by legislation enacted on November 13, 1998. Congress had not authorized the agency since 1982. This legislative accomplishment will create stability and opportunities for EDA to better serve economically distressed communities across the country.

EDA continues to take steps toward improving its program delivery, policies and procedures, and to be more responsive to those whom it serves. In step with the National Performance Review and Paperwork Reduction Act, EDA had completely revised its regulations, thereby creating fewer burdens on and making them more accessible to the public. This interim-final rule continues EDA's efforts in this regard.

Description of Major Changes

This interim-final rule removes, adds, redesignates and revises parts and sections of EDA's regulations at 13 CFR Chapter III to implement Pub. L. 105–393 and to continue the streamlining and plain language initiatives of this administration. Significant changes are described below.

Removals of Parts and Sections

Certain parts and sections have been removed because the programs to which these regulations apply were deleted by Pub. L. 105–393 as follows: Part 302 Economic Development Districts, Subpart B—Standards for Designation, Modification, and Termination of Economic Development Centers and Subpart C, Financial and Other Assistance to Economic Development Centers and Districts; part 312, Supplemental and Basic Assistance Under Section 304 of the Act; references to and requirements under the Public Works Impact Program in parts 301 and 305 and § 316.3; § 305.10 Construction cost increases; § 316.2 Certification as to waste treatment, and § 316.5 Electric and gas facilities.

Other parts and sections were removed to streamline and simplify the rules such as: § 302.1 Authorization of Economic Development Districts, and § 305.12 Variance in cost of grant projects.

New Parts and Sections

New parts and sections have been added to implement Pub. L. 105–393 as follows: Pursuant to sec. 302 of Pub. L. 105–393, new language has been added in §§ 301.3, 305.3 and 308.5 on requirements for strategies for public works and economic adjustment projects (except for planning); pursuant to sec. 601 of Pub. L. 105–393, with EDA's prior written approval EDA may release its grant related property interests 20 years after the grant award, and § 314.11(b) releases all real and personal property in projects funded under Pub. L. 94–369, as amended by Pub. L. 95–28. Other sections have been added in light of new provisions in Pub. L. 105–393, such as § 316.13 Economic development information clearinghouse, § 316.17 Acceptance of certifications by applicants, and § 316.18 Reports by recipients, and part 318 Evaluations of Economic Development Districts and University Centers.

New parts of sections have been added for other reasons, for example, § 314.3(c) defines ''adequate consideration'' to distinguish it from fair market value; and § 314.7(c) provides exceptions to the title requirement when for example, a railroad or state or local highway is part of the EDA funded project.

Significant Revisions

Part 301—Designation of Areas has been substantially rewritten because under Pub. L. 105–393 areas designated by EDA prior to the effective date of Pub. L. 105–393 will no longer be so designated and areas thereafter will be determined on a project by project basis (for public works and economic adjustment projects, except for planning activities); and § 316.2 has been redesignated and substantially changed to more accurately reflect statutory intent and practices and procedures for determining if a project would result in excess capacity.

Other significant changes—Grant rates have been modified at § 301.4 to cover all EDA grants (not just public works awards) and to reflect changed unemployment conditions; and § 308.3 has been changed to revise area criteria for economic adjustment projects to emphasize unique economic adjustment tools.

Note

- EDA has recently established a task force to examine its Revolving Loan Fund (RLF) program as described in part 308 of these rules. The results of this task force may lead to changes in EDA's RLF program.
- An interest rate buy down program (see § 308.3), is being considered under EDA's Economic Adjustment program. Suggestions on structuring and implementing such a program are welcome.
- As part of the economic development clearinghouse described in § 316.14, EDA's Office of Economic Development Information is accessible on the internet web sites at http://www.doc.gov/eda and http://netsite.esa.doc.gov/oeci.

TABLE OF CHANGES

Old section	New section	Description of change
§ 300.1	§ 300.1	Renamed and changed for Plain Language purposes.

TABLE OF CHANGES—Continued

Old section	New section	Description of change
Part 301—Designation of areas	Part 301—General eligibility and grant rate requirements.	Renamed.
§§ 301.1–301.16		Removed since under Pub. L. 105–393 there is no longer area designation except on a project-by-project basis.
	§§ 301.1–301.4	New §§ include information and requirements about applicants, area eligibility, strategy required and grant rates.
§ 302.1		Removed.
§ 302.2	§ 302.1	Redesignated and modified for Plain Language purposes.
§ 302.3	§ 302.2	Redesignated and modified for Plain Language purposes.
§ 302.4	§ 302.3	Redesignated and modified for Plain Language purposes.
§ 302.5	§ 302.4	Redesignated and modified for Plain Language purposes.
§ 302.6	§ 302.4	Made part of this new section.
§ 302.7	§ 302.5	Redesignated and streamlined.
§ 302.8	§ 302.6	Redesignated, modified and streamlined.
§ 302.9	§ 301.4(d)	Redesignated, terminology modified, and portions removed since Economic Development Centers are no longer part of PWEDA
	§ 302.7	New under Pub. L. 105–393.
§§ 302.10–302.19		Removed since Economic Development Centers are no longer part of PWEDA.
Part 303—Overall Economic Development Program.	Part 303—Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.	Renamed.
§ 303.1	§ 303.1	Renamed and modified to add definitions and streamlined.
§§ 303.2, 303.3		Removed.
§§ 303.4, 303.5, 303.6	§§ 303.2, 303.3	Renamed and revised for Plain Language purposes and consistent with Pub. L. 105–393.
§ 304.1	§§ 304.1, 304.2	Renamed and revised to make more accessible to reader.
§ 304.2	§§ 307.11, 307.14	Renamed and redesignated to implement Pub. L. 105–393.
Part 305—Public Works and Development Facilities Program.		Part 305—Grants for Public Works and Development Facilities Renamed.
§ 305.2	§ 300.2	Renamed and applicable to all programs.
	§ 305.3	Application requirements.
§§ 305.3, 305.4	§ 305.2	Renamed, merged and modified to implement Pub. L. 105–393.
§§ 305.5, 305.6	§ 305.4	Renamed, combined and modified to implement Pub. L. 105–393.
§ 305.7		Removed.
§§ 305.8, 305.9	§ 301.4	Renamed and applicable to all programs.
§ 305.10		Removed.
§ 305.11	§ 305.5	Redesignated and revised to make more accessible to reader.
§ 305.12		Removed.
§ 305.13	§ 305.6	Redesignated.
	§ 305.7	Added for guidelines and reports.
Part 306 [Reserved]; Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning—Subpart E—Economic Development Districts American Indian Tribes and Redevelopment Areas Economic Development Planning Grants and Subpart F—State and Urban Development Planning Grants.	Part 306—Planning Assistance	Renamed and revised under Pub. L. 105–393 and for Plain Language purposes.
Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Research and Evaluation and Planning.	Part 307—Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research and Evaluation.	Renamed consistent with Pub. L. 105–393.
§ 307.2	§ 300.2	Redesignated to apply to all programs and this program in particular.
§§ 307.3, 307.4	§ 307.2	Renamed, merged and revised to make more accessible to reader.

TABLE OF CHANGES—Continued

Old section	New section	Description of change
§ 307.5	§ 307.3	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393.
§ 307.6	§ 307.4	Redesignated.
§ 307.7	§ 300.2	Redesignated to apply to all programs and this program in particular.
§§ 307.8, 307.9	§ 307.5	Renamed, merged and revised to make more accessible to reader.
§ 307.10	§ 307.6	Renamed, redesignated and revised to make more accessible to reader and in accordance with Pub. L. 105–393.
Subpart C—National Technical Assistance, Subpart D—Research and Evaluation.	Subpart C—National Technical Assistance, Training, Research, and Evaluation.	Renamed, merged and redesignated to be consistent with Pub. L. 105–393.
§§ 307.11, 307.16	§ 307.7	Redesignated, merged and revised to make more accessible to reader.
§§ 307.12, 307.17	§ 300.2	Renamed and merged as applicable to all programs and to this program in particular.
§§ 307.13, 307.14, 307.18, 307.19	§ 307.8	Renamed, merged and revised to make more accessible to reader.
§§ 307.15, 307.21	§ 307.9	Renamed, revised and modified for Plain Language purposes.
§ 307.20		Removed—will be in Notice(s) of Funding Availability—Request for Proposals.
§§ 307.22	§ 306.1	Redesignated, merged and revised consistent with Pub. L. 105–393.
§ 307.23		Removed.
§§ 307.24, 307.30	§ 300.2	Applicable to all programs.
§§ 307.25, 307.26, 307.31, 307.32	§ 306.2	Renamed, merged, streamlined and modified for Plain Language purposes.
§§ 307.27, 307.33	§§ 306.3, 306.4	Redesignated and made consistent with Pub. L. 105–393.
§ 307.28	§ 302.3	Part of new provision on District Organizations.
Part 308—Requirements for Grants Under the Title IX Economic Adjustment Program.	Part 308—Requirements for Economic Adjustment Grants.	Renamed consistent with Pub. L. 105–393.
§ 308.2	§ 308.3	Renamed and revised to make more accessible to reader.
§ 308.3	§§ 308.5, 300.2	Renamed and revised to be more accessible to readers and applicable to all programs.
§ 308.4	§ 308.2	Renamed and revised for consistency with Pub. L. 105–393.
§§ 308.5, 308.6	§ 308.4	Renamed, merged and modified to implement Pub. L. 105–393 and to be more accessible to readers.
§ 308.7	§ 308.6	Renamed and streamlined.
Part 312—Supplemental and Basic Assistance Under.	Section 304 of the Act	Removed as no longer in effect.
Part 314—Property	Part 314—Property Management Standards	Renamed.
§ 314.9	§ 314.9	Renamed and expanded to refer to title requirements.
	Subpart D—Release of EDA's Property Interest.	Added to implement provision of Pub. L. 105–393 and to clarify EDA's property release requirements.
§ 316.2		Removed as no longer in effect.
§ 316.3	§ 316.2	Redesignated and clarified.
§ 316.4	§ 316.3	Redesignated.
§ 316.5		Removed as no longer in effect.
§ 316.6	§ 316.4	Redesignated.
§ 316.7	§ 316.5	Redesignated.
§ 316.8	§ 316.6	Redesignated.
§ 316.9	§ 316.7	Redesignated.
§ 316.10	§ 316.8	Redesignated and clarified.
§ 316.11	§ 316.9	Redesignated.
§ 316.12		Removed as included in § 316.8.
§ 316.13	§ 316.10	Renamed and modified.
	§§ 316.11–316.18	Added to implement provisions of Pub. L. 105–393.
	§ 316.19	Added to replace current procedures and requirements.
	Part 318—Evaluations of Economic Development Districts and University Centers.	Added to implement provisions of Pub. L. 105–393.

Savings Clause

The rights, duties, and obligations of all the parties pursuant to parts, sections and portions thereof of the Code of Federal Regulations removed by this rule shall continue in effect, except that EDA may waive administrative or procedural requirements of provisions removed by this rule.

Executive Orders 12866 and 12875

This rule has been determined to be significant for the purposes of E.O. 12866, Regulatory Planning and Review. In addition, it has been determined that, consistent with the requirements of E.O. 12875, Enhancing Intergovernmental Partnership, this interim final rule will not impose any unfunded mandates upon State, local, and tribal governments.

Notice and Comment

This rule is not subject to the rulemaking requirements of 5 U.S.C. 553 because it relates to public property, loans, grants, benefits, and contracts, 5 U.S.C. 553(c)(2), including the provision of prior notice and an opportunity for public comment and delayed effective date.

No other law requires that notice and opportunity for comments be given for this rule.

However, because the Department is interested in receiving comments from those who will benefit from the amendments, this rule is being issued as interim final. Public comments on the interim final rule are invited and should be sent to the address or numbers listed in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections above. Comments received by April 5, 1999 will be considered in promulgating a final rule.

Note: EDA is particularly interested in comments relating to its use of Plain Language in order to make these requirements more readily accessible to the public.

Regulatory Flexibility Act

Since notice and an opportunity for comment are not required to be given for the rule under 5 U.S.C. 553 or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612) no initial or final Regulatory Flexibility Analysis is required, and none has been prepared.

Paperwork Reduction Act

This regulation imposes new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), as amended, but has been cleared under OMB's Emergency Clearances process under OMB approval numbers: 0610–0093; 0610–0094; 0610–0095; 0610–0096 and will expire on July 31, 1999. To remain effective after such expiration date, EDA must receive OMB's final clearance and display a currently valid OMB control number. If such final clearance is not obtained after the expiration date of the Emergency Clearance so that a currently valid OMB control number is not displayed, applicants and recipients will not thereafter be required to submit information requested pursuant to this rule.

The information is needed to determine eligibility of those applicants and projects and to monitor projects for compliance with EDA's construction or Revolving Loan Fund requirements, as applicable. EDA then uses information obtained in these collections to help carry out its mission to aid economically distressed areas of the Nation. Responses to requests for information are necessary under Pub. Law 105–393 for obtaining and for keeping benefits. The reporting burden for this collection is estimated to be approximately 7 burden hours for the Proposal; approximately 50 burden hours for the Application; approximately 18 burden hours for Requirements for Approved Construction Projects; approximately 240 burden hours for the CED Strategy Guidelines; and approximately 76 burden hours for the series of Guidelines for the Revolving Loan program, including the time for gathering and maintaining the data needed for completing and reviewing the collection of information. 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 proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments regarding these burden estimates or any other aspects of the collection of information, including suggestions for reducing the burdens, should be forwarded to Edward M. Levin, Chief Counsel, Economic Development Administration, U.S. Department of Commerce, Herbert C. Hoover Building, 1401 Constitution Avenue, NW, Room 7005, Washington, DC 20230 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention EDA Desk Officer).

Administrative Procedure Act and Regulatory Flexibility Act

Executive Order 12612 (Federalism Assessment)

This action has been reviewed in accordance with the principles and criteria contained in E.O. 12612. It has been determined that this interim final rule does not have significant Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in E.O. 12612.

List of Subjects

13 CFR Part 300

Reporting and recordkeeping requirements; Non-profit organizations; American Indians.

13 CFR Part 301

Grant Programs; Community Development; American Indians.

13 CFR Part 302

Community Development; Grant programs-community development; Technical assistance.

13 CFR Part 303

Community Development; Grant programs-community development.

13 CFR Part 304

Selection and evaluation.

13 CFR Part 305

Community development; Community facilities; Grant programs-community development.

13 CFR Part 306

Community development; Grant programs-community development.

13 CFR Part 307

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; Research; Technical Assistance.

13 CFR Part 308

Business and industry; Community development; Community facilities; Grant programs-business; Grant programs-community development; American Indians; Manpower training programs; Mortgages; Research; Technical assistance.

13 CFR Part 314

Community development; Grant programs-community development.

13 CFR Part 315

Administrative practice and procedure; Community development; Grant programs-business; Technical assistance; Trade adjustment assistance.

13 CFR Part 316

Community development; Grant programs-community development; Freedom of Information; Uniform Relocation Act; Loan programs-business; Loan programs-community development; Environmental protection; Record retention; Records.

13 CFR Part 317

Civil rights; sex discrimination.

13 CFR Part 318

Colleges and universities.

For the reasons set forth in the preamble, 13 CFR Chapter III is revised to read as follows:

CHAPTER III—DEPARTMENT OF COMMERCE, ECONOMIC DEVELOPMENT ADMINISTRATION

Part
300 General Information.
301 General Eligibility and Grant Rate Requirements.
302 Economic Development Districts; standards for designation, modification and termination.
303 Planning Process and Strategies for District and Other Planning Organizations Supported by EDA.
304 General Selection Process and Evaluation Criteria.
305 Grants for Public Works and Development Facilities.
306 Planning Assistance.
307 Local Technical Assistance, University Center Technical Assistance, National Technical Assistance, Training, Research, and Evaluation.
308 Requirements for Economic Adjustment Grants.
309–313 [Reserved].
314 Property.
315 Certification and Adjustment Assistance for Firms.
316 General Requirements for Financial Assistance.
317 Civil Rights.
318 Evaluations of University Centers and Economic Development Districts.

PART 300—GENERAL INFORMATION

Sec.
300.1 Introduction and purpose.
300.2 Definitions.
300.3 OMB control numbers.
300.4 Economic Development Administration—Washington, DC, Regional and Economic Development Representatives.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 300.1 Introduction and Purpose.

(a) *Introduction.* Is your community suffering from severe economic distress (e.g., high unemployment, low income, sudden economic changes, etc.)? Are you a representative of a State or local unit of government, Indian tribe, public or private nonprofit organization, educational institution, or community development corporation looking for grant assistance to enhance your opportunities for economic development? If so, these regulations of the Economic Development Administration (EDA) of the U.S. Department of Commerce may be of help. These regulations tell you the purpose of EDA and outline the program requirements, project selection process, project evaluation criteria, and other relevant matters. The information in these regulations covers grant programs of EDA that provide financial awards for the following:

- Public Works and Development Facilities;
- Planning;
- Research, Evaluation, Training and Technical Assistance;
- Trade Adjustment Assistance; and
- Economic Adjustment Assistance.

(b) What is the Purpose of the Economic Development Administration?

(1) Many communities lag behind and suffer economic distress in one form or another, such as:

- High unemployment;
- Low income;
- Underemployment;
- Outmigration;
- Sudden economic changes due to the restructuring or relocation of industrial firms;
- Closing or realignment of defense bases or cutbacks in defense procurement;
- Economic impact of natural disasters or other emergencies;
- Actions of the Federal government (such as environmental requirements) that curtail or remove economic activities; and
- Impacts of foreign trade.

(2) The purpose of the Economic Development Administration is to address economic problems affecting economically distressed rural and urban communities; by helping them:

(i) Develop and strengthen their economic development planning and institutional capacity to design and implement business outreach and development programs; and

(ii) Develop or expand public works and other facilities, financing tools, and resources that will create new job opportunities, save existing jobs, retain existing businesses, and support the development of new businesses.

(3) To promote a strong and growing economy throughout the United States, EDA works in partnership with State and local governments, Indian tribes and local, regional, and State public and private nonprofit organizations. With them EDA develops and carries out comprehensive economic development strategies that address the economic problems of distressed communities. EDA helps such communities increase their economic development capacities so that they can take advantage of existing resources and development opportunities.

§ 300.2 Definitions.

Unless otherwise defined in other parts or sections of this Chapter, the terms listed are defined as follows:

Comprehensive Economic Development Strategy, CED Strategy, or *strategy* means a strategy approved by EDA under § 301.3 of these regulations.

Department means the Department of Commerce.

Economic Development District or *district:*

(1) Means any area in the United States that has been designated by EDA as an Economic Development District under § 302.1 of these regulations; and

(2) Includes any Economic Development District designated by EDA under sec. 403 of the Public Works and Economic Development Act of 1965, as amended, as in effect on the day before the effective date of Public Law 105–393.

EDA means the Economic Development Administration in the U.S. Department of Commerce when a place or agency is intended, and refers to the headquarters office in Washington, D.C., or a regional office, as appropriate; or it means the Assistant Secretary of Commerce for Economic Development or his/her designee when a person is intended. The locations of EDA's offices are listed each year in a Notice of Funding Availability (NOFA). The general information telephone number for EDA is (202) 482–2309.

Eligible applicant means:

(1) In general,—

(i) An entity qualified to be an eligible recipient, or

(ii) Its authorized representative.

(2) Except in the case of Research, Evaluation, Training, or Technical Assistance grants under part 307, a private individual or for-profit organization cannot be an eligible applicant.

Eligible recipient means

(1) In general,—

(i) An area described in § 301.2 of these regulations;

(ii) An Economic Development District;

(iii) An Indian tribe or a consortium of Indian tribes;

(iv) A State;

(v) A city or other political subdivision of a State or a consortium of political subdivisions;

(vi) An institution of higher education or a consortium of institutions of higher education; or

(vii) A public or private nonprofit organization or association acting in cooperation with officials of a political subdivision of a State.

(2) In the case of Research, Evaluation, Training, and Technical Assistance grants under part 307, eligible recipient also includes private individuals and for-profit organizations.

Federal agency means a department, agency, or instrumentality of the United States.

Financial assistance means grant.

Grant means the non-procurement award of EDA funds to an eligible recipient under PWEDA or the Trade Act, as applicable. The term includes a cooperative agreement, within the meaning of chapter 63 of title 31, United States Code.

Indian tribe means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native Village or Regional Corporation (as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. The term includes: The governing body of a tribe, nonprofit Indian corporation (restricted to Indians), Indian authority, or other nonprofit tribal organization or entity, provided that the tribal organization or entity is wholly owned by, and established for the benefit of, the tribe or Alaska Native Village.

Local share, matching share or *local share match* are used interchangeably to mean non-Federal funds or goods and services provided by recipients or third parties that are required as a condition of a grant, and includes funds from other Federal agencies only if there is statutory authority allowing such use.

Notice of Funding Availability or *NOFA*, refers to the notice or notices EDA publishes each year in the **Federal Register** and on EDA's internet web site, *http://www.doc.gov/eda,* describing the available amounts, particular procedures, priorities, and special circumstances for the EDA grant programs for that year.

OEDP (Overall Economic Development Program), as the term is used in part 317 (Civil Rights) of this chapter, means CED Strategy developed in accordance with part 303 of this chapter.

PWEDA means the Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105–393). (The term ''PWEDA'' was used to refer to EDA's authorizing legislation as it was in effect before the effective date of Public Law 105–393, signed into law on November 13, 1998. In these regulations, the term ''PWEDA'' refers to the legislation as currently amended by the 1998 law.)

Project means the activity or activities the purpose of which fulfills EDA program requirements and that EDA funds in whole or in part.

Proposed District means a geographic entity composed of one or more eligible areas proposed for designation as an Economic Development District.

Recipient and *grantee* are used interchangeably to mean an entity receiving funds from EDA under PWEDA or the Trade Act, as applicable, and includes any EDA approved successor to such recipient.

State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

The Trade Act means Title II, Chapters 3 and 5, of the Trade Act of 1974, as amended (19 U.S.C. 2341, *et seq.*).

United States means all of the States.

§ 300.3 OMB Control Numbers.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. EDA intends that this table comply with Section 3507(f) of the Paperwork Reduction Act, requiring agencies to display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control No.
301	0610–0094.
302	0610–0094.
303	0610–0093.
304	0610–0094.
305	0610–0094 and 0610–0096.
306	0610–0094.
307	0610–0094.
308	0610–0094 and 0610–0095.
314	0610–0094.
315	0610–0094.
316	0610–0094.

§ 300.4 Economic Development Administration-Washington, D.C., Regional and Economic Development Representatives.

For addresses and phone numbers of the Economic Development Administration in Washington, D.C., Regional and Field Offices and Economic Development Representatives, refer to EDA's annual Fiscal Year (FY) Notice of Funding Availability (NOFA).

PART 301—GENERAL ELIGIBILITY AND GRANT RATE REQUIREMENTS

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 301.1 Applicants.

(a) Eligible applicants are defined in § 300.2 of this chapter.

(b) Except as otherwise provided in part 307, a public or private nonprofit organization applicant must include in its application for assistance, a resolution passed by, or a letter signed by an authorized representative of, a political subdivision of a State or an Indian tribe, acknowledging that the applicant is acting in cooperation with officials of the political subdivision or Indian tribe, as applicable.

§ 301.2 Area eligibility.

(a) EDA awards public works and development facilities grants under part 305 and economic adjustment grants under part 308 for projects to enhance economic development in economically distressed areas.

(b) An area is eligible for a project grant under part 305 or 308 if it has one of the following:

(1) An unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate. For example, if the national average unemployment rate is 6 percent, an area is eligible under this provision if it has an unemployment rate of 7 percent.

(2) Per capita income that is, for the most recent period for which data are

available, 80 percent or less of the national average per capita income.

(3) A special need, as determined by EDA, arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe short-term or long-term changes in economic conditions, for example:

(i) Substantial outmigration or population loss;

(ii) Underemployment, that is, employment of workers at less than full time or at less skilled tasks than their training or abilities permit;

(iii) Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions;

(iv) Natural or other major disasters or emergencies;

(v) Extraordinary depletion of natural resources;

(vi) Closure or restructuring of industrial firms, essential to area economies; or

(vii) Destructive impacts of foreign trade.

(c) A non-distressed area [i.e., an area that does not meet the criteria of paragraph (b) of this section] within an Economic Development District is also eligible, provided the project will be of a substantial direct benefit to an area that meets at least one of the criteria of paragraph (b) of this section. A project provides substantial direct benefit if it provides significant employment opportunities for unemployed, underemployed or low income residents.

(d) Normally an area is defined by geographical/political boundaries, e.g., city, county, Indian reservation. However, a smaller area (without regard to political boundaries) is also eligible even though it may be part of a larger community that overall is experiencing low distress. When the boundaries of the project area differ from established political boundaries, the project area must be of sufficient size appropriate to the proposed project, and the applicant must justify the proposed boundaries in relation to the project's benefits to the area.

(e) Eligibility is determined at the time that EDA receives an application and is based on the most recent Federal data available for the area where the project will be located or where the substantial direct benefits will be received. If no Federal data are available to determine eligibility, an applicant must submit to EDA the most recent data available through the government of the State in which the area is located.

(f) EDA may reject any documentation of eligibility that it determines is inaccurate.

(g) There is no area eligibility requirement for a project grant under part 306 or 307.

(h) EDA will describe special needs criteria under paragraph (b)(3) of this section in a NOFA.

§ 301.3 Strategy Required.

(a) To be eligible for a project grant under part 305 or 308, the application for assistance must include a CED Strategy acceptable to EDA. The applicant may, however, incorporate by reference a current strategy previously approved by EDA, as an alternative to including the strategy in the application. (Exception: A strategy is not required when a funding request is for planning assistance, i.e., a strategy grant, under part 308.) The strategy must:

(1) Be the result of a continuing economic development planning process;

(2) Identify the economic development problems to be addressed using the assistance;

(3) Identify past, present, and projected future economic development investments in the area receiving the assistance;

(4) Identify the public and private participants in the investments and the sources of the funding for them;

(5) Describe how the problems identified under paragraph (a) (2) of this section will be addressed, in a manner that promotes economic development and opportunity, fosters effective transportation access, enhances and protects the environment, and balances resources through sound management of development; and

(6) Describe how the activities described under paragraph (a) (5) of this section will contribute to the solution of the problems.

(b) EDA will approve as acceptable a strategy that it determines meets the requirements of paragraph (a) of this section. The strategy may be one developed:

(1) With EDA assistance,

(2) Under another Federally supported program, or

(3) Through a local, regional, or State process.

(c) In determining acceptability of a strategy, EDA will take into consideration the circumstances of the application, so that for instance a strategy accompanying an application for assistance immediately following a natural disaster will require less depth and detail than would be the case in other circumstances.

(d) To be acceptable, a strategy must be approved by the applicant's governing body within one year prior to the date of application.

§ 301.4 Grant Rates.

(a) Except as otherwise provided for in this chapter, the amount of the EDA grant may not exceed 50 percent of the cost of the project. Cash or in-kind contributions, fairly evaluated by EDA, including contributions of space, equipment, and services, may provide the non-Federal share of the project cost. In-kind contributions must be eligible project costs and meet applicable Federal cost principles and uniform administrative requirements.

(b) EDA may supplement the Federal share of a grant project where the applicant is able to demonstrate that the non-Federal share that would otherwise be required cannot be provided because of the overall economic situation. It is not necessary for an applicant to prove that it would be impossible to provide a full 50 percent non-Federal share, but it must show circumstances warranting any reduction. In determining whether to provide a Federal share greater than 50 percent for a project, EDA will give due consideration to the applicant's economic situation and the relative needs of the area. In the case of Indian tribes, EDA may reduce or waive the non-Federal share, and in other cases EDA may reduce the non-Federal share of the cost of the project below 50 percent, in accordance with the following table, showing the maximum Federal grant rate, including the supplement:

Projects	Maximum grant rates (percentage)
Projects of Indian tribes where EDA has made a determination to waive the non-Federal share of the cost of the project	100
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, and for which the President established a rate of Federal participation, based on the public assistance grant rate of the Federal Emergency Management Agency (FEMA) for the disaster, of greater than 80 percent	100
Projects of Indian tribes where EDA has made a determination to reduce the non-Federal share of the cost of the project	(1)

Projects	Maximum grant rates (percentage)
Projects of States or political subdivisions of States that have exhausted their effective taxing and/or borrowing capacity, or non-profit organizations that have exhausted their borrowing capacity	[1]
Projects located in Federally-declared disaster areas for which EDA receives an application for assistance within one year of the date of declaration, unless the applicant or the area is otherwise eligible for a higher rate of Federal participation under another provision of this section	80
Projects located in eligible areas where: (1) the 24-month unemployment rate is at least 11 percent and is at least 225% of the national average or (2) the per capita income (PCI) is not more than 50% of the national average	80
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 9 percent and is at least 180% of the national average or (2) the PCI is not more than 60% of the national average	70
Projects located in eligible areas that are not eligible for a higher rate, where: (1) the 24-month unemployment rate is at least 7.5 percent and is at least 150% of the national average or (2) the PCI is not more than 70% of the national average	60
Projects in all other eligible areas	50

[1] Less than 100.

(c) Projects under part 306 or 307 are eligible for maximum grant rates as provided in those parts.

(d) Projects located in designated Economic Development Districts are eligible for an amount of additional Federal grant assistance not to exceed 10 percent of the estimated cost of the project, provided

(1) The project applicant is actively participating in the economic development activities of the district;

(2) The project is consistent with the strategy of the district; and

(3) The non-Federal share of the project is not less than 20 percent.

(e) EDA may make grants to supplement grants awarded in other Federal grant programs.

(1) Supplemental grants under paragraph (e) of this section are only available for projects:

(i) Under Federal grant programs that

(A) Provide assistance in the construction or equipping of public works, public service, or development facilities, and

(B) Are designated by EDA as eligible for supplemental EDA grants, and

(ii) Are consistent with a strategy.

(2) EDA's funds combined with funds from another Federal grant program may be at the maximum EDA grant rate, as set forth above, even if the other Federal program has a lower grant rate. If the other Federal program has a grant rate higher than the maximum EDA grant rate as set forth above, the combination of funds may exceed the EDA rate provided the EDA share does not exceed the EDA rate.

(f) An applicant is eligible for the highest applicable maximum grant rate, as set forth above, in effect between the time EDA invites the application and the time the project is approved. The Federal share of a project receiving EDA grant assistance may be (and often is) less than the maximum grant rate for which the recipient is eligible.

(g) EDA's NOFA will provide additional criteria to ensure that the level of economic distress of an area, rather than a preference for a geographic area or a specific type of economic distress, is the primary factor in allocating assistance.

PART 302—ECONOMIC DEVELOPMENT DISTRICTS; STANDARDS FOR DESIGNATION, MODIFICATION AND TERMINATION

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 302.1 Designation of Economic Development Districts.

EDA will designate a proposed district as an Economic Development District with the concurrence of the State or States in which the District will be wholly or partially located, when the proposed district meets the following requirements:

(a) It is of sufficient size or population, and contains sufficient resources, to foster economic development on a scale involving more than a single eligible area;

(b) It has an EDA approved strategy which:

(1) Contains a specific program for intra-district cooperation, self-help, and public investment;

(2) Is approved by each affected State;

(3) Identifies problems, and conditions underlying economic distress in the district; and

(4) Promotes economic development opportunities, plans for transportation access, enhancement and protection of the environment and balances resources through sound management of development;

(c) It contains at least one area, eligible for assistance under § 301.2, that has been identified in an approved strategy;

(d) At least a majority of the counties, or other areas as determined by EDA, within the proposed district boundaries have submitted documentation of their commitment to support the economic development activities of the district;

(e) A district organization has been established in the proposed district which meets the requirements of § 302.4; and

(f) The proposed district organization requests such designation.

§ 302.2 Designation of nonfunded districts.

The continuing designation of any Economic Development District is subject to the criteria and organization requirements of this part whether or not the Economic Development District organization receives any EDA financial assistance.

§ 302.3 District organizations.

(a) The district shall be organized in one of the following ways:

(1) As a public organization through an intergovernmental agreement for the joint exercise of local government powers; or

(2) As a public organization established under State enabling legislation for the creation of multi-jurisdictional area wide planning organizations; or

(3) As a non-profit organization incorporated under the laws of the State in which it is located.

(b) Each district organization must meet EDA requirements concerning membership composition [§ 302.3(c)], the maintenance of adequate staff support to perform its economic development functions [§ 302.3(d)], and its authorities and responsibilities for

carrying out economic development functions [§ 302.4]. Such requirements must also be met by the board of directors (or other governing body of the organization) as a whole.

(c) The district organization shall demonstrate that its governing body meets all of the following requirements:

(1) It is broadly representative of the principal economic interests of the district area including the interests of its minority and low-income populations;

(2) There is at least a simple majority of its membership who are elected officials and/or employees of a general purpose unit of local government who have been appointed to represent the government; and

(3) At least 20 percent of its membership who are private citizens, i.e., neither elected officials of a general purpose unit of local government nor employees of such a government who have been appointed to represent that government.

(d) The district organization shall be assisted by a professional staff drawn from qualified persons in economic development, planning or related disciplines. EDA may provide planning grants to Economic Development Districts to employ professional staff in accordance with part 306 of this chapter.

(e) The governing bodies of district organizations shall provide access for persons who are not members to make their views known concerning ongoing and proposed district activities in accordance with the following requirements:

(1) The economic development district organization must hold meetings open to the public at least once a year and shall also publish the date and agenda of the meeting enough in advance to allow the public a reasonable time to prepare to participate effectively.

(2) The district organization shall adopt a system of parliamentary procedures to assure that board members and others have access to and an effective opportunity to participate in the affairs of the district.

(3) Information should be provided sufficiently in advance of public decisions to give the public adequate opportunity to review and react to proposals. District organizations should seek to relate technical data and other material to the public so they may understand the impact of public programs, available options and alternative decisions.

§ 302.4 District organization functions and responsibilities.

(a) All Economic Development District organizations are responsible for seeing that the following are provided on a continuing basis, consistent with the requirements of § 302.3:

(1) Organizational actions, including:

(i) Arranging the legal form of organization which will be used;

(ii) Arranging for the membership of the governing body to meet § 302.3 requirements;

(iii) Recruiting staff to carry out the economic development functions;

(iv) Establishing a management system;

(v) Contracting for services to carry out district functions;

(vi) Establishing and directing activities of economic development subcommittees; and

(vii) Submitting reports as determined by EDA to comply with civil rights requirements under part 317 of this chapter.

(2) Actions to develop and maintain the required district strategy, and any subsequent supplements or revisions, including:

(i) Preparing the analytic, strategic and implementation components of the strategy;

(ii) Adopting the strategy by formal action of the Economic Development District governing board;

(iii) Submitting the strategy, any supplements or revisions and annual reports for reviews by appropriate governmental bodies and interested organized groups, and attaching dissenting opinions and comments received; and

(iv) Submitting to EDA an approvable strategy.

(b) Organizations receiving EDA financial assistance for the development and implementation of Comprehensive Economic Development Strategies must also:

(1) Coordinate and implement economic development activities in the district, including:

(i) Assisting other eligible units within the district to apply for grant assistance for economic development purposes;

(ii) Carrying out economic development related research, planning, implementation and advisory functions as are necessary to the development and implementation of the strategy;

(2) Coordinate the development and implementation of the strategy with other local, State, Federal and private organizations (including minority organizations);

(3) Carry out the annual strategy for implementation; and

(4) Comply with the requirement of part 303.

§ 302.5 Modification of district boundaries.

EDA, at the request of a district and with concurrence of the State or States affected (unless such concurrence is waived by the Assistant Secretary), may modify the boundaries of a district, if it determines that such modification will contribute to a more effective program for economic development.

§ 302.6 Termination and suspension of district designation.

EDA may, upon 30 days prior written notice, terminate the designation status of an Economic Development District:

(a) When the district no longer meets the standards for designation as set forth above;

(b) When a district has not maintained a currently approved strategy in accordance with part 303 of this chapter; or

(c) When a district has requested termination (with the approval of the State or States affected).

§ 302.7 Eligibility of non-distressed areas.

Areas in districts which are not themselves eligible for assistance under parts 305 or 308 may be eligible, as provided in § 301.2(c).

PART 303—PLANNING PROCESS AND STRATEGIES FOR DISTRICT AND OTHER PLANNING ORGANIZATIONS SUPPORTED BY EDA

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 303.1 Definitions, Purpose and Scope.

(a) As used in this part 303.

(1) *Planning organization* means an Economic Development District organization, Indian tribe, or other recipient of an EDA grant under part 306 which grant is awarded in whole or in part to develop, update, or replace a CED Strategy, and

(2) *Strategy committee* means that committee or other entity identified by the planning organization as responsible for developing, updating, or replacing a strategy.

(b) This part describes the planning process of and requirements for strategies developed and implemented by planning organizations supported by EDA. The requirements for a strategy in this part 303 exceed the requirements of § 301.3.

§ 303.2 Planning Process.

(a) The strategy committee must be inclusive and representative of the main economic interests of the area covered by the strategy. Such interests include public officials, community leaders, private individuals, business leaders, labor groups, minorities, and others who can contribute to and benefit from improved economic development in the area covered.

(b) The planning organization must support the strategy committee with a staff skilled in economic planning or related fields.

(c) The planning organization must conduct an initial and continuous study and analysis of the opportunities for economic development and of problems contributing to economic and related distress in the area covered, such as, for example, unemployment, underemployment, outmigration, or low per capita income, and possible solutions to such problems.

(d) Planning organizations covered by this part 303 must submit an initial strategy to EDA in compliance with the requirements of § 303.3, as determined by EDA. Each year thereafter, the planning organization must submit an annual strategy report, acceptable to EDA.

(e) A new or revised strategy is required at least every five years, or sooner if EDA or the planning organization determines that the strategy is inadequate due to changed circumstances. Each strategy must be available for review and comment by appropriate government bodies and interest groups in the area covered. Strategies submitted by Districts require concurrence by the State or States in which they are located, prior to EDA approval. If EDA identifies any deficiencies, it will notify the organization in writing and provide the organization a reasonable opportunity to remedy such deficiencies.

§ 303.3 Requirements for a strategy.

A strategy must contain the following:

(a) An analysis of economic and community development problems and opportunities including incorporation of any relevant material or suggestions from other government sponsored or supported plans;

(b) Background and history of the economic development situation of the area covered, with a discussion of the economy, including geography, population, labor force, resources, and the environment;

(c) A discussion of community participation in the planning efforts;

(d) A section setting forth goals and objectives for taking advantage of the opportunities of and solving the economic development problems of the area serviced;

(e) A plan of action, including suggested projects to implement objectives and goals set forth in the strategy; and

(f) Performance measures that will be used to evaluate whether and to what extent goals and objectives have been or are being met.

PART 304—GENERAL SELECTION PROCESS AND EVALUATION CRITERIA

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 304.1 Project proposal, application, selection and evaluation for programs under PWEDA.

(a) *Local projects.* Parties eligible as applicants who are interested in a public works, economic adjustment, planning, local technical assistance or university center project grant should contact the appropriate Economic Development Representative (EDR) (or EDA Regional or headquarters office), identified in the NOFA. The EDR or other EDA official is available to provide program information, including the current published NOFA; provide a proposal form approved by the U.S. Office of Management and Budget (OMB), and provide assistance as needed in filling out the proposal form.

(1) After submission of the proposal to the appropriate EDR or Regional Office of EDA, the appropriate Regional Office Project Review Committee (PRC), consisting of at least three EDA officials, will review the proposal. The EDR or other appropriate EDA official will evaluate the proposal under § 304.2, program specific sections of this rule, and the NOFA, if applicable, before submitting it to the EDA Regional Office for its review.

(2) After review by the PRC, EDA will send a letter in a timely manner to each submitter advising either that:

(i) EDA invites the submitter to prepare and present a formal application on a standard application form, with attachments for the type of grant being requested; or

(ii) EDA returns the proposal because of specified deficiencies and suggests resubmission when the deficiencies are cured; or

(iii) EDA denies the proposal for specifically stated reasons.

(b) *National Technical Assistance Research, Evaluation, or Training Projects.* Parties eligible as applicants who are interested in a national technical assistance, research, evaluation, or training project under PWEDA, should make initial contact with EDA in Washington, D.C., at locations identified in the NOFA, for information and assistance concerning proposals and to obtain program information, including a copy of the current NOFA, and OMB approved proposal form. After submission of the proposal to the appropriate EDA Washington, D.C. office, generally, three or more technically knowledgeable EDA officials will review the proposal for relevance and quality.

(1) If EDA determines that the proposal is acceptable under § 304.2, program specific sections of this rule, and the NOFA, if applicable, EDA may by letter invite the submitter to provide an application with a more detailed and comprehensive project narrative. EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter.

(2) If EDA determines that the proposal is not acceptable because of specified deficiencies, EDA will so notify the submitter in writing in a timely manner.

(c) EDA expects that applications will generally be submitted within 30 days after receipt of an invitation letter. EDA's invitation to submit an application does not assure EDA funding.

§ 304.2 How EDA evaluates proposals and applications for projects funded under PWEDA.

(a) General proposal and application evaluation criteria for projects funded under PWEDA are as follows: EDA will screen all proposals/applications for:

(1) Conformance to statutory and regulatory requirements,

(2) The relative severity of the economic problem of the area,

(3) The quality of the scope of work proposed to address the problem,

(4) The merits of the activity(ies) for which funding is requested, and

(5) The ability of the prospective applicant to carry out the proposed activity(ies) successfully.

(b) EDA will also review applications for conformance with any additional program specific evaluation criteria as stated in applicable sections of these rules or the NOFA.

(c) The NOFA may identify special areas of interest or priority consideration for the period of such NOFA.

PART 305—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

Subpart A—General

Subpart B—Other Requirements

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—General

§ 305.1 Purpose and scope.

The purpose of Public Works and Development Facilities grants is to help the Nation's distressed communities revitalize and expand their physical and economic infrastructure and thereby provide support for the creation or retention of jobs for area residents by helping eligible recipients with their efforts to promote the economic development of distressed areas. The primary focus is on the creation of new, or the retention of existing, long-term private sector job opportunities in communities experiencing significant economic distress as evidenced by high unemployment, low income, or a special need arising from actual or threatened severe unemployment or severe changes in local economic conditions. These grants are intended to help communities achieve sustainable economic development by developing and expanding new and existing public works and other infrastructure facilities that will help generate long-term jobs and economic growth, improve economic conditions or otherwise enhance and promote the economic recovery of the area.

§ 305.2 Criteria.

(a) A grant may be made under part 305 for the following purposes:

(1) For the acquisition or development of land and improvements for use for a public works, public service or other type of development facility; or

(2) For the acquisition, design and engineering, construction, rehabilitation, alteration, expansion, or improvement of such a facility, including related machinery and equipment.

(b) A grant may be made under part 305 only when:

(1) The project for which the grant is applied for will, directly or indirectly—

(i) Improve the opportunities, in the area where the project is or will be located, for the successful establishment or expansion of industrial or commercial plants or facilities;

(ii) Assist in the creation of additional long-term employment opportunities in the area; or

(iii) Primarily benefit the long-term unemployed and members of low-income families;

(2) The project for which the grant is applied for will fulfill a pressing need of the area, or a part of the area, in which the project is or will be located; and

(3) The area for which the project is to be carried out has a strategy and the project is consistent with the strategy.

(c) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

(d) Maximum assistance for each State. Not more than 15 percent of the annual appropriations available to carry out this part may be expended in any one State.

§ 305.3 Application requirements.

Each application for a grant under part 305 must:

(a) Include evidence of area and applicant eligibility;

(b) Include, or incorporate by reference, a strategy, as provided in § 301.3;

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 305.2.

§ 305.4 Selection and Evaluation.

(a) Projects will be selected in accordance with the application evaluation criteria set forth in § 304.2 of this chapter.

(b) In addition to the evaluation criteria set forth in part 304 of this chapter, project selection and evaluation will be made on the basis of whether, and to what extent, the proposed project will:

(1) Assist in creating new or retaining existing private sector jobs and assist in the creation of additional long-term employment opportunities rather than merely transferring jobs from one area of the country to another;

(2) Be supported by significant private sector investment;

(3) Leverage or be a catalyst for the effective use of private, local government, State or other Federal funding that is available;

(4) Likely be started and completed in a timely fashion; and

(5) If the project is located in an area with a stable economy and low distress, provide employment opportunities for residents of nearby areas of high distress.

Subpart B—Other Requirements

§ 305.5 Disbursements of funds for grants.

(a) Disbursements of funds for construction grants are generally made on a reimbursable basis on request of the recipient for reimbursement. Disbursements may be made only:

(1) After execution of all contracts required for the completion of the project. This condition may be waived by EDA if the grantee can demonstrate that enforcement of the condition would place an undue burden on it;

(2) For itemized and certified eligible costs incurred, as substantiated by such documentary evidence as EDA may require;

(3) On the basis of the work accomplished and the percentage of EDA participation, but in no event for more than the total sum stated in the financial assistance award accepted by the grantee;

(4) Upon such evidence as EDA may require that grantee's proportionate share of funds is on deposit;

(5) After a determination by EDA that all applicable terms and conditions of the grant have been met; and

(6) After meeting such other requirements as EDA may establish in accordance with other Federal laws, rules and regulations.

(b) Disbursements are generally made in installments, based upon grantee's actual rate of disbursement in accordance with the grant rate.

(c) Advances of funds are allowable when disbursement on a reimbursable basis would impose an undue burden, as determined by EDA, upon the recipient.

§ 305.6 Final inspection.

A final inspection will be scheduled by the recipient and appropriate notification given to EDA, when the project has been completed and all deficiencies have been corrected. EDA personnel may attend and participate in the final inspection and, in any event, EDA must be advised of the outcome of such final inspection and the recipient's acceptance of the work.

§ 305.7 Requirements for Approved Projects.

(a) The requirements for approved projects are set forth in this part and the EDA publication, *Requirements for Approved Construction Projects,* Appendix A to this part displayed at EDA's web site, **http://www.doc.gov/eda.** A copy of this publication is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

(b) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

Appendix A to Part 305—Requirements For Approved Construction Projects

OMB Approval No. 0610–0096
Approval Expires 07/31/99

Burden Statement for REQUIREMENTS FOR APPROVED CONSTRUCTION PROJECTS INTERIM NINTH EDITION, OCTOBER 1998:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor construction projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 18 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Requirements for Approved Construction Projects

Table of Contents

Section I—General and Pre-Construction Requirements

1. Basis for Economic Development Administration (EDA) Requirements

A. These Requirements for Approved Projects apply to all awards for construction projects and they are based on Office of Management and Budget (OMB) administrative requirements for Federal grants as set forth in OMB Circulars and on regulations set forth in the Code of Federal Regulations (CFR) Section 13 Chapter III, Section 15 Part 24 and Section 15 Part 14 as they may be amended.

B. These Requirements for Approved Projects are intended to organize and explain the various requirements that apply to Federally-assisted construction programs. They are not intended to derogate, replace, or negate the above cited Federal requirements. Conflicts between these Requirements for Approved Projects and the documents referred to above should be brought to the attention of EDA immediately. Any inconsistences or conflicts shall be resolved in favor of such Federal requirements.

C. EDA, as a Federal agency, is obligated to promulgate policies and procedures applicable to Recipients of EDA grants to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote the effective use of grant funds in accomplishing the purpose for which they

were granted. Pursuant to this obligation, grant terms and conditions require Recipients to comply with changes in regulations and other requirements and policies EDA may issue from time to time. Such changes apply to actions taken by all Recipients of EDA grants, existing and prospective, after the effective date of the changes.

D. EDA's policy is to administer grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic development problems, requests for variances to the requirements of this Requirements for Approved Projects will be considered if they are consistent with the goals of EDA programs, make sound and financial sense, and do not conflict with applicable Federal and regulatory requirements.

2. The EDA Grant Award

The EDA grant award contains mandatory requirements and information vital to the accomplishment of the project. It should be read carefully with particular attention paid to:

A. The description of the project. This description and the corresponding scope of work must be adhered to. Proposed changes to EDA approved projects will be permitted by EDA only if they are necessary to the proper functioning of the project. Enhancements to the project that were not envisioned in the grant award will not be approved for EDA participation.

B. The Standard Terms and Conditions for Title I Public Works and Development Facilities and Title IX Economic Adjustment Construction Projects. The Standard Terms and Conditions contain, by reference or substance, a summary of the pertinent statutes, regulations published in the **Federal Register** or Code of Federal Regulations, Executive Orders or OMB Circulars.

C. The Special Conditions of the grant award. The Special Conditions generally contain two types of information. The first type relates specifically to the grant being awarded. The second type relates to all approved grants and are of recent origin and therefore have not yet been incorporated into the Standard Terms and Conditions. Special attention should be paid to the Project Development Time Schedule. The time schedule can only be extended as a result of a written request from the Recipient and a written approval by EDA. Failure to meet the time schedule is considered a violation of the grant award and may result in action by EDA to suspend and/or terminate the grant. No disbursement of EDA grant funds is permitted when a project has exceeded the time schedule in the grant award unless EDA has given written approval to a time schedule extension.

D. Please note that, unless otherwise stated, EDA funds are available for a period beginning at the time the project is approved and ending five years after the end of the fiscal year in which the project was approved. Any funds not disbursed to the Recipient before the end of that period are automatically canceled and will be deobligated and will no longer be available for payment of costs incurred by the Recipient.

E. Combination construction and nonconstruction grants. If the EDA grant award is for both construction and nonconstruction, the Recipient must obtain prior written approval from EDA before making any fund or budget transfer from nonconstruction to construction or vice versa.

F. Performance Measures. The Standard Terms and Conditions of the EDA grant award make reference to ''Core Performance Measures'' that require post-construction reports to be submitted to EDA. The first report will be due at the completion of construction of the project. The due dates for the submission of the second and third reports are 3 years and six years after the completion of construction. Questions regarding the content or submission of these reports should be directed to EDA.

3. Initial Actions

A. After the Grant Award has been affirmed, the EDA Regional Office will mail a pre-construction package to the Recipient that includes a copy of ''Requirements for Approved Projects'', and a list of items that need special attention (such as the project development time schedule), and a list of any unresolved problems identified during the preapproval review process. The EDA Project Manager will then contact the Recipient to offer assistance and guidance, to arrange for an updated schedule of the Recipient's proposed activities and to arrange a Project Management Conference.

B. Because it is the policy of EDA to discourage the undertaking of any construction prior to the submission of an application for financial assistance, special consideration and judgment must be executed if it becomes necessary for a project to proceed prior to award of the EDA grant. Commencement of a project prior to approval of the application for assistance is not prohibited, but it may jeopardize the favorable consideration of such application since, among other things, it raises a rebuttable presumption that funds necessary for the accomplishment of the project are otherwise available and that proper contracting procedures and labor standards may not have been followed.

C. If construction of the project was begun before affirmation of the grant award, the Recipient will be required to document to EDA's satisfaction that it has complied with all EDA requirements, including but not limited to the payment of Davis-Bacon wages from the start of construction and environmental requirements, in order to qualify for EDA reimbursement of costs incurred, if agreed to in the grant award.

4. Project Management Conference

Whenever practical, the Project Management Conference will be held at the Recipient's location; however, if necessary and required for appropriate EDA personnel to be present, it may be held at another location including in the Regional Office. The Recipient's Authorized Representative, Architect/Engineer, attorney and possibly the Recipient's financial representative should be in attendance. Reasonable costs for transportation, meals and lodging for these individuals are an authorized cost under the administrative line item in the project budget. Per diem costs eligible for EDA reimbursement may not exceed the current Federal per diem rate.

5. Selection of the Architect/Engineer

A. If an Architect/Engineer has been selected by the Recipient prior to EDA approval of the grant award and the contract between the Recipient and the Architect/Engineer has not been previously submitted to EDA, it should be submitted as soon after the grant award as possible. If the selection has not been made at the time of grant award the contract should be sent to the EDA Regional Office as soon as possible after its execution by both parties.

B. For EDA to participate in the cost for architect/engineer services the Architect/Engineer must be selected competitively by sealed bids (formal advertising) or by competitive proposals. If the selection is made by competitive proposal the following requirements apply:

(1) Requests for proposals shall be publicized and shall identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(2) Proposals will be solicited from an adequate number of qualified sources (normally sufficient to secure at least three proposals from qualified proposers);

(3) The Recipient will have a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered;

(4) The Recipient will determine the responsible firm whose proposal is most advantageous to the program, with price and other factors considered. Competitor's qualifications will be evaluated and the most qualified competitor will be selected, subject to negotiation of fair and reasonable compensation.

6. The Architect/Engineer Contract for Services

A. The architect/engineer agreement shall provide for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

B. The Architect/Engineer's fee for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on a determination, subject to audit, that the compensation is reasonable.

C. The use of the cost-plus-a-percentage-of-cost and percentage of construction cost forms of compensation are specifically prohibited.

D. The Architect/Engineer's fee shall cover all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, ''as-built'' or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs. The basic fee shall not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services shall be identified in the agreement. Such additional charges may be approved for grant participation by EDA if they:

(1) Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

(2) Are a proper charge against the project cost; and

(3) Are reasonable for the extra services to be rendered.

E. Regardless of who furnishes the construction inspector, the Architect/Engineer shall be held responsible for making sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

F. All negotiated Architect/Engineer contracts (except those of $100,000 or less awarded under small purchase procedures) awarded by Recipients shall include a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant project) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

G. EDA requirements for the agreement for Architect/Engineer services are contained in Exhibit A–1 to these ''Requirements for Approved Projects''.

7. Multiple Contracts and Phasing

A. The Recipient is strongly urged to award all contracts for the project construction at one time. Where compelling reasons justify phasing the project, the Recipient must secure the approval of EDA for phasing prior to advertising any portion for bid. The Recipient's request for approval of phasing must include:

(1) Valid reasons justifying the request, and

(2) A statement from the Recipient that it can, and will, fund any overrun that arises in the later phases.

B. Normally EDA will not disburse funds until all construction contracts have been awarded (an exception is the development of a water source when required to determine the availability of an adequate source of water supply in terms of both quality and quantity as called for in the Grant Agreement). Disbursement of grant funds by phases must be approved by EDA. Such approvals will be given only if the Recipient can demonstrate that a severe hardship will result if such approval is not given and there are compelling reasons why all phases cannot be contracted for at the same time. The Recipient must be capable of meeting incurred costs prior to the first disbursement of EDA grant funds.

8. Recipient Furnished Equipment and/or Materials

The Recipient may wish to incorporate into the project equipment and/or materials which it will secure through its own efforts. It is the responsibility of the Recipient to assure that such equipment and/or materials are adequate for the proposed use. The use of such equipment and materials must be approved by EDA to be eligible for EDA financial participation. The Recipient must be prepared to show that the cost claimed for such equipment and/or materials is competitive with local market costs. Acquisitions of Recipient furnished equipment and/or materials under this section is subject to the requirements of 15 CFR Part 24 or OMB Circular A–110 (or any DOC rule implementing such Circular, as applicable). The Recipient shall be required to submit with its request for approval either a paid invoice or current quotes from not less than three suppliers who normally distribute such equipment and/or materials. EDA may require that major equipment items be subject to a lien in favor of EDA and may also require a statement from the Recipient regarding expected useful life and salvage value.

9. Services Performed by the Recipient's Own Forces

A. The Recipient may have a portion or all of the design, construction, inspection, legal services, or other work and/or services in connection with the project performed by personnel who are employed by the Recipient either full-time or part-time (in-house), subject to the following conditions:

(1) EDA must review and approve the Recipient's plan if this method is to be elected by the Recipient.

(2) Such work or services performed by in-house personnel may be considered an eligible cost for EDA reimbursement if in conformance with Office of Management and Budget Circulars A–87, A–21 or A–122, as appropriate.

(3) If a portion of the architect/engineer services is to be performed by in-house forces, the Recipient will submit a statement listing the services to be so performed. This statement should accompany the architect/engineer agreement when it is submitted to EDA for approval.

B. Due to the difficulty in monitoring force account construction and the limited EDA staff available to perform the monitoring, force account construction is strongly discouraged. The force account method of construction may be approved only if:

(1) The Recipient has a special skill required for the construction, e.g., construction of unique Indian structures, or

(2) Substantial cost savings can be demonstrated, or

(3) The Regional Office is satisfied that the Recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors, such as the remoteness of the site combined with a small contract or an overabundance of construction work in the project area, or

(4) It has been determined by EDA that special circumstances require its use to successfully complete the project.

(5) EDA has available the publication, ''Guidelines for Force Account Projects'', which can be secured from the EDA Regional Office. This publication can be very helpful in ensuring that this type of project activity would be an eligible project cost.

10. Construction Management Services

A. For the purposes of this document, Construction Management is defined as the services of a firm with competent and experienced staff to act as the Recipient's agent to perform all or part of the following:

(1) Aid the project designer to find expedited or less costly methods of construction (Value Engineering).

(2) Monitor the contracting process. This may vary in scope from giving advice to the Recipient to complete control of the contracting process.

(3) Inspection or supervision of inspection of the construction work.

(4) Controlling the expenditure of project funds on a multi-faceted or highly complex project.

(5) Controlling unusual methods of contracting such as ''fast track'' or ''turn-key''.

B. EDA will not normally approve the use of a Construction Management firm for projects costing less than $5 million.

C. If the Recipient wishes to use a Construction Manager, EDA will participate in such costs only if EDA approves the proposed or actual contract for such services between the Recipient and the Construction Manager.

D. The compensation for Construction Management services is subject to the same rules as those for architect/engineer services.

E. The Construction Management Agreement must spell out who is responsible for construction inspection, approval of construction and supply contracts, change orders and other areas of possible conflicts (i.e., the division of responsibility and authority between the Recipient, the Architect/Engineer and the Construction Manager).

11. Certification of Acquisition of Land, Easements and Rights-of-Way

A. As required in the Financial Assistance Award the Recipient must furnish evidence satisfactory to the EDA that it has good and merchantable title to the tracts or parcels of land on which buildings, structures, or other project improvements will be located, with any liens or encumbrances noted, and that it has obtained all necessary easements, permits, rights-of-way, franchises, condemnations, and all Federal, State and local approvals necessary to the completion of the project.

B. To aid EDA in making its determination, the Recipient must furnish a description of the sites and rights-of-way on which the project will be located. Exhibit C of this

document is a ''Certificate as to Project Site, Rights-of-Way, and Easements,'' which is a format acceptable to EDA as evidence of the Recipient's title to the real property necessary for the project. The Recipient has the option to prepare the title opinion in a format that meets local law or custom. Any title opinion submitted must be approved by EDA. EDA may require additional documentation.

C. If land acquisition is a part of the project, the EDA project file must be documented to show the basis for determining that the amount of land acquired and the cost of the land is reasonable. If an appraisal is required, a professional appraiser(s) should perform the service. An appraiser registered with a national society and/or licensed by the State will normally be required.

D. Any significant change in the amount and cost of land from that upon which the project approval was based must be approved by EDA to be eligible for EDA reimbursement.

E. No financial assistance under the Act will be approved for a project involving public or privately owned land adjacent to or in the vicinity of a federally owned or operated airfield, unless the Recipient can demonstrate that the proposed project is compatible with the airfield land use plan prepared for that facility.

12. Relocation Assistance

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646), as amended, are applicable to all States and political subdivisions of States and non-profits which are recipients of EDA funding assistance. This Act requires financial and other assistance to persons, businesses, or farm operations displaced from real property acquired for a project financed wholly or in part with Federal funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of this Act.

13. Certification of Adequacy of Treatment of Sewage and Other Waste

A. EDA will not provide financial assistance for projects involving sewer or other waste disposal facilities unless a State permit has been obtained by the Recipient in those States where EPA has delegated authority to the State to certify adequacy of treatment. In those States where EPA has not delegated such authority, a certificate of adequacy of treatment must be obtained from EPA in addition to a State permit.

B. Certification of adequacy of treatment is not normally required under the following conditions:

(1) For single service connections unless an unusual effluent is expected.

(2) For replacement of portions of an existing sewer system where sewage flow resulting from the project is not increased.

(3) For projects which will include only storm drainage as the component and the flow from the storm sewer is not introduced in the existing sanitary sewer system.

C. If EPA certification is required, EDA will not authorize the advertising, bid opening nor a disbursement of grant funds until an unconditional certificate has been obtained. The EDA Project Manager will prepare all EDA requests to EPA for Certificates of Adequacy of Treatment for projects which involve sewage and/or storm drainage facilities. The certification should be obtained as early as practicable after acceptance of the project application by EDA. The Recipient must provide as much of the following information as is required to obtain the certification:

(1) For sanitary sewer system.

a. A general descriptive statement of the project explaining the problem to be eliminated and the proposed method of elimination.

b. A vicinity map of the complete project area showing the location and size of all existing and proposed sanitary and storm sewer lines in plan view, the street system, topographical features, overflows and bypasses.

c. Project design criteria, including the following data:

(i) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(ii) Line and treatment facility sizing and design criteria used therefor.

(iii) Population figures used.

(iv) Number of existing and planned sewer connections.

d. Design criteria to be used for the new treatment facilities. This should include the following data:

(i) Type and extent of existing treatment.

(ii) Industrial and domestic contribution. (Type of industrial contribution should be stated).

(iii) Peak and average flow data.

(iv) Component sizing and design criteria used therefor.

e. For existing treatment facilities to be affected by the proposed project submit the design criteria, permit number and effluent limitations.

f. If available, as-built drawings of existing treatment facilities showing the location, type, number and size of the treatment facilities. If as-built drawings are not available a single line drawing of the existing structures such as lift stations, manholes, pumping stations, etc., will be accepted.

g. Agreements, if any, for treatment by other entities.

(2) For projects involving only storm sewer facilities submit the following dated statement, signed by the Recipient's authorized representative; ''This proposed storm water sewer system will be constructed and operated so as to exclude the introduction of domestic sewage and industrial or agricultural waste and will not be connected in any way to a sanitary sewer system.''

(3) Upon receipt by EDA, the certification of adequacy of treatment will be reviewed to assure that the certification is unconditional. EDA will not accept a conditional certification (defined as an approval conditioned on the occurrence of a future event such as the future construction of a sewage treatment plant).

14. Project Financing

Prior to obtaining EDA approval of the project's final plans and specifications, the Recipient should furnish evidence to the EDA Project Manager that the Recipient has its share of matching funds either on hand or firmly committed. Any change in the amount or availability of the Recipient's share must be made known to EDA at this time. This is equally true of the interim financing amount and availability.

15. Safeguarding Funds

A. Checks drawn to pay project costs will be signed by the Authorized Representative of the Recipient and may be counter-signed by other representatives of the Recipient if he/she so designates. The Recipient shall retain all bank statements, deposit slips, canceled checks, and related invoices pertaining to these project costs to facilitate final audit.

B. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks as the depository for project funds.

C. Although a separate bank account is not required by EDA, the Recipient is urged to use one for the EDA project as it will be helpful to audit project costs claimed by the Recipient at project closeout.

D. For non-governmental Recipients EDA requires that the Recipient furnish evidence that the custodian of the project funds is bonded in an amount not less than the amount of the EDA grant. If subject to 15 CFR Part 24, the Recipient must furnish assurances that the Recipient's financial management system meets the requirements of 15 CFR Part 24.20, Financial Administration, if this was not accomplished prior to approval of the grant award.

16. Department of Commerce Metric Program

Section 5164 of the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100–418) designates the metric system of measurement as the preferred system of weights and measures for U.S. trade and commerce.

17. Seasonality

It is EDA policy to promote construction of projects continuously throughout the year. Recipients and their Architect/Engineers are encouraged to design projects so that construction will not be unreasonably curtailed by weather.

18. Design for the Handicapped

A. Any building or facility financed in whole or in part with assistance under the Act must be designed, constructed, or altered, so as to insure ready access to, and use of, such building or facility by the physically handicapped, as required by P.L. 90–480 (42 U.S.C. 4151–4156) and the regulations promulgated thereunder (41 CFR Subpart 101–19.6).

B. Except as otherwise provided in paragraph C of this section, every building, except a residential structure, shall be designed, constructed, or altered in accordance with the minimum standards contained in the ''American National Standard Specifications for Making Buildings

and Facilities Accessible to, and Usable by, the Physically Handicapped,'' Number A 117.1 (1971) approved by and available from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

C. The standards established in paragraph (B) of this section shall not apply to:

(1) The design, construction, or alteration of any portion of a building or facility which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installations or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building or facility, or of such portions thereof, to which application of the standards is not structurally possible.

D. The standards established in paragraph (B) of this section may be modified or waived on a case-by-case basis, provided that the Administrator of the General Services Administration determines that such waiver or modification is clearly necessary.

19. Reporting of Project Progress

A. Recipients are required to constantly monitor project progress to assure that time schedules are being met, project work units by time periods are being accomplished, and other performance goals are being achieved. This review shall be made for each program, function, or activity as set forth in the approved grant application.

B. The Recipient is required to submit a project performance report for each calendar quarter. The report will cover the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the timetable established in the Grant Award;

(2) Reasons for delays in those cases where the time table approved by EDA was not met;

(3) Any change to the purpose, nature, location, bona-fide need, neighborhood served, size, funding, or cost of the project;

(4) All change orders issued up to the date of the report and not previously reported to EDA, and

(5) Other pertinent information including, when appropriate, an analysis and explanation of and cost overruns or high unit costs.

C. The project performance report will be due not later than January 15, April 15, July 15 and October 15 for the immediate previous quarter year. This requirement shall begin with the Recipient's acceptance of the EDA Grant Award and shall end when EDA approves the final grant disbursement.

D. Between the required performance reporting dates, events may occur which have significant impact upon the project or program. In such cases, the Recipient will be required to inform EDA as soon as the following types of conditions become known:

(1) Problems, delays, or adverse conditions which will materially affect the ability of the Recipient to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work by established time periods. This disclosure shall be accomplished by a statement of the action taken, or contemplated, and any Federal assistance needed to resolve the situation.

(2) Favorable developments or events which enable meeting time schedules and goals sooner than anticipated or producing more work than originally projected; or

(3) If any performance review conducted by the Recipient discloses the need for change in the budget estimates, the Recipient is required to submit a request for budget revision.

E. A sample format for the required project performance report is included herein as Exhibit J. The report will be sent to the EDA Regional Office. The Recipient may use a format other than the EDA sample, provided that the information called for in this section is furnished.

F. EDA does not normally permit grant advances. However, where EDA determines that grant advances are necessary and in the best interest of the Government and the Recipient, the Recipient will be required to submit with the project performance report a Report of Federal Cash Transactions. The EDA Regional Office shall furnish the required forms for this report.

G. EDA will not process any requests for grant disbursement from Recipients with delinquent performance reports.

20. Environmental Requirements

A. EDA is required by law to insure that proper environmental review of its actions take place; that there is a proper balance between the goals of economic development and environmental enhancement in its actions; and, that adverse environmental impacts from its actions are mitigated or avoided to the extent possible.

B. Environmental assessments of EDA actions are conducted in accordance with the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 et. seq.), the Environmental Quality Improvement Act (42 U.S.C. 4371 et. seq.), The Clean Air Act, as amended (42 U.S.C. 7401 et. seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.), The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271 et. seq.), the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4002 et. seq.), the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et. seq.), and the Council on Environmental Quality (CEQ) Regulations (40 CFR Section 1500–1508), as specified in EDA Directives 17.02–2, 17.02–7, and 17.04, as hereafter amended or superseded. Directives are available from any EDA office.

C. EDA recipients are subject to Federal, state and local requirements concerning hazardous substances, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Public Law 96–510 (1980), as amended by Public Law 99–499 (1986), 42 U.S.C. 9601–9675; and the Resource Conservation and Recovery Act (RCRA), Public Law 89–272 (1965), as amended by Public Law 94–580 (1976), Public Law 96–482 (1980) and Public Law 98–616 (1984), 42 U.S.C. 6901–6991.

21. Project Revisions

After Recipient acceptance of the EDA grant award, any change to the project as described in the grant award must be reviewed and approved by EDA. To be eligible for EDA financial participation the proposed revision must meet certain conditions. See Section V of this document for guidelines on securing EDA approval of proposed project revisions.

Section II—Contracting For Project Construction

1. Contracting Standards

A. For States: If a State is the recipient of the EDA grant award, the State may follow the same policies and procedures it uses for procurements from its non-Federal funds provided that the State will ensure that every purchase order or other contract includes any clauses required by Federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A–87 will be applicable.

B. For Other than States: Recipients of EDA grants other than States may use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards contained in these ''Requirements for Approved Projects''. Recipients may request EDA to approve self-certification of their procurement system. Such self-certification shall not limit EDA's right to survey the system. The Recipient must cite specific procedures, regulations, standards, etc. as being in compliance with EDA and other Federal requirements and have its system available for review. In the absence of written procurement regulations issued by the Recipient which meet the following requirements, applicable federal procurement standards shall govern.

C. Contract Administration System: Recipients will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions and specifications of their contracts or purchase orders.

D. Standards of Conduct: Recipients shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Federal funds. No employee, officer or agent of the Recipient shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of the following has a financial or other interest in the firms elected for award:

(1) an employee, officer or agent

(2) any member of his/her immediate family

(3) his or her partner

(4) an organization which employs, or is about to employ, any of the above.

The Recipient's officers, employees or agents shall neither solicit nor accept

gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements except that Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

To the extent permitted by State or local law or regulations, such standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the Recipient's officers, employees, or agent, or by contractors or their agents.

E. State and Local Agreements: To foster greater economy and efficiency, Recipients are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

F. Surplus Property: Recipients are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

G. Value Engineering: Recipients are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. EDA will not normally approve value engineering costs for construction contracts with estimated costs of less than $1,000,000. Value engineering is defined for the purposes of this paragraph as a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost. Value engineering, as a function, is done separately from the architect/engineer design by a person or firm not controlled by the architect/engineer.

H. Awards to Responsible Contractors: Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.

I. Maintenance of Records: Recipients will maintain records sufficient to detail the significant history of each procurement affecting the EDA assisted project. These records will include, but are not necessarily limited to, the rationale for method of procurement, selection of contract type, contractor selection or rejection, and the basis for contract price.

J. Time and Material Contracts: Recipients will use time and material type contracts only:

(1) After a determination that no other type of contract is suitable, and

(2) If the contract includes a ceiling price that the contractor exceeds at its own risk.

K. Settlement of Issues: Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes and claims. These standards do not relieve the Recipient of any contractual responsibilities under its contracts. EDA will not substitute its judgment for that of the Recipient unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

L. Protest Procedures: Recipients will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to EDA. A protestor must exhaust all administrative remedies with the Recipient before pursuing a protest with EDA. Reviews of protests by EDA will be limited to:

(1) Violations of Federal law or regulations (violations of State or local law will be under the jurisdiction of State or local authorities); and

(2) Violations of the Recipient's protest procedures for failure to review a complaint or protest. Protests received by EDA other than those specified above will be referred to the Recipient for resolution.

2. Competition in Procurement

A. All procurement transactions affecting the EDA project will be conducted in a manner providing full and open competition consistent with the standards contained herein. Some of the situations considered to be restrictive of competition include but are not limited to:

(1) Placing unreasonable requirements on firms in order for them to qualify to do business,

(2) Requiring unnecessary experience and excessive bonding,

(3) Noncompetitive pricing practices between firms or between affiliated companies,

(4) Noncompetitive awards to consultants that are on retainer contracts,

(5) Organizational conflicts of interest,

(6) Specifying only a ''brand name'' product instead of allowing ''an equal'' product to be offered and describing the performance of other relevant requirements of the procurement, and

(7) Any arbitrary action in the procurement process.

B. Recipients will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in these Requirements for Approved Projects preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographical location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

C. Recipients will have written selection procedures for procurement actions. These procedures will ensure that all solicitations:

(1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such descriptions shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

D. Recipients will ensure that all lists of prequalified persons, firms or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, Recipients will not preclude potential bidders from qualifying during the solicitation period.

3. Acceptable Methods of Procurement

A. Procurement by Small Purchase Procedures: Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at $100,000) in the aggregate. If small purchase procurements are used, price or rate quotations will be obtained from an adequate number of qualified sources (normally at least three quotes will be required).

B. Procurement by Sealed Bids (formal advertising): Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction. In order for sealed bidding to be feasible, the following conditions should be present:

(1) A complete, adequate and realistic specification or purchase description approved by EDA is available,

(2) Two or more responsible bidders are willing and able to compete effectively for the business, and

(3) The procurement lends itself to a firm fixed-price contract and the selection of the successful bidder can be made principally on the basis of price.

C. If sealed bids are used, the following requirements apply:

(1) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids.

(2) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond.

(3) All bids will be publicly opened at the time and place prescribed in the invitation for bids.

(4) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of.

(5) Any or all bids may be rejected if there is a sound and properly documented reason.

D. Procurement by Competitive Proposals: The technique of competitive proposals may be used on EDA projects to secure architect/engineer services and is conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(1) Requests for proposals will be publicized and will identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical.

(2) Proposals will be solicited from an adequate number of qualified sources (normally EDA requires responses from at least three responsible firms).

(3) Recipients will have a method for conducting technical evaluations of the proposals received and for selecting awardees.

(4) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered.

(5) Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

E. Procurement by Noncompetitive Proposals: This technique requires EDA prior written concurrence and is conducted by solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(1) The item is available only from a single source; or

(2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate.

4. Unacceptable Method of Procurement

The cost-plus-a-percentage-of-cost method of contracting is unacceptable for use on EDA assisted projects. EDA grant funds may not be used to reimburse costs incurred under such a contract.

5. Contracting with Disadvantaged Firms

A. The Recipient shall make positive efforts to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises;

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration, and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

6. Contract Cost and Price Analysis

A. Recipients must perform a cost or price analysis in connection with every procurement action including contract modifications (change orders). The method and degree of analysis is dependent upon the facts surrounding the particular procurement situation, but as a starting point, Recipients must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural/engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

B. Recipients will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance and industry profit rates in the surrounding geographical area for similar work.

C. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see OMB Circulars A–21, A–87 or A–122 as applicable). Recipients may reference their own cost principles that comply with the applicable Federal cost principles.

D. The cost-plus-a-percentage of cost and percentage of construction cost methods of contracting shall not be used.

7. Advertising for Bids

A. In the absence of State or local law to the contrary, the advertisement for bids should appear in publications of general circulation a minimum of four times within a 30 day period prior to the opening of bids.

B. When the estimated construction cost exceeds one million dollars, the advertisement for bids should appear in publication(s) with national circulation a minimum of four times within the 30-day period prior to the opening of bids.

C. Additional circulation of the invitation for bids is encouraged if it is needed to obtain the coverage necessary to secure competitive bids.

D. Generally, a minimum of 30 days should be allowed for submission of bids.

8. Bonding and Insurance Requirements

A. For construction or facility improvement contracts or subcontracts exceeding $100,000 the following minimum bonding requirements apply:

(1) The bonding company selected must be listed in U.S. Treasury Department Circular 570.

(2) A bid guarantee from each bidder equivalent to five percent of the bid price. The bid guarantee shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(3) A performance bond on the part of the contractor for 100 percent of the contract price.

(4) A payment bond on the part of the contractor for 100 percent of the contract provisions.

B. The Recipient shall require that each construction contractor and all subcontractors maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by the nature of the work and State and local law. When appropriate, the Recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In any case, the responsibility for seeing that coverage is obtained and kept in force remains with the Recipient. Such coverage is an eligible project cost, when obtained by the Recipient directly.

9. Bid Schedules for Alternative Materials

A. Should the Recipient, acting upon the advice of his/her consultant Architect/Engineer desire to obtain competitive prices for differing materials, such bids should be requested on the basis of ''Bid Schedule A'', ''Bid Schedule B'', etc. Bid Schedules, as used herein, refer to the method used to obtain bids on more than one material to be used for the same purpose. As an example, if 2,000 linear feet of sewer line were to be installed, Bid Schedule A might call for the pipe material to be cast iron. Bid Schedule B might call for the pipe material to be ductile iron. Bid Schedule C might call for the material to be asbestos cement, etc.

B. If bids are asked for on the basis of two or more Bid Schedules as set forth above, the bid documents must clearly set forth that the contract will be awarded to the bidder having proposed the lowest responsive bid within the amount of funds announced as available by the Recipient to finance the contract and including the Bid Schedule upon which that Contractor bid the lowest price.

C. If the Recipient wishes to use a bid material which will result in increased cost, EDA may permit the use of the material chosen, but the amount of grant participation by EDA shall remain based on the lowest responsive bid. The contract must be awarded to the lowest bidder determined in accordance with the procedure described above unless a deviation is specifically allowed in applicable State and local law.

10. Non-EDA Work

A. If the Recipient plans to add work that is an addition to the approved EDA project, the following will apply:

(1) The advertisement for bids, all bid documents, and contract documents shall clearly define and separate the EDA portion of the work from the non-EDA portion.

(2) The Recipient may offer for bid and award work in addition to the EDA portion, provided:

a. the Recipient understands that EDA will participate in the EDA portion only;

b. the additional work does not adversely affect the original intent of the EDA project or its economic impact, as approved.

(3) Contracts shall be so drawn that the EDA-assisted portion of the work is clearly identifiable at all times during construction.

(4) Underruns in the EDA project cannot be applied to assist the Recipient in funding work which is not a part of the EDA project. It is the responsibility of the Recipient to pay for all added work in full.

(5) In the event of an overrun on the EDA portion of the work, it is the Recipient's responsibility to supply the necessary additional funds and to deposit such funds in the project account. A revised project budget estimate will then be prepared which will clearly show the portion of project cost to be shared by EDA and the portion the Recipient must fund in its entirety. In addition, the overall percentage participation of EDA in the project shall be clearly identified.

B. When the EDA project is included with non-EDA assisted work, the Recipient will normally award to the lowest bidder on all the work. However, EDA participation will be based on the lowest bid for the EDA-assisted portion. When this occurs, the Recipient will prepare a memorandum to EDA, which will clearly present the details of the award.

11. EDA Review of Proposed Procurement Documents

A. If a Recipient wishes to have its procurement system certified by EDA, it should follow the procedures in Section II 1 B of these ''Requirements for Approved Projects''. If EDA certifies the Recipient's procurement system, the Recipient may not have to submit proposed bid documents to EDA for approval if instead it submits an executed copy of the Checklist for Construction Contracts (see Exhibit A–2).

B. EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the EDA grant award and does not attest to the accuracy or completeness of design, dimensions, details, proper selection of materials nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

C. A pre-bid review of proposed construction bid documents by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and the Recipient's procurement procedures and operations have not been certified by EDA and/or do not comply with the procurement standards of this document, or

(2) The scope of the work as approved in the EDA grant award has changed, or

(3) The proposed bid documents specify one or more ''brand name'' products.

D. A pre-award review by EDA is required if:

(1) The procurement is expected to exceed the simplified acquisition threshold (currently $100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation, or

(2) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement, or

(3) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold, or

(4) The Recipient's procurement procedures or operation fails to comply with the procurement standards in this Requirement for Approved Construction Projects, or

(5) The procurement, which is expected to exceed the simplified acquisition threshhold, specifies a ''brand name'' product.

E. It will greatly expedite EDA's review of the proposed bid documents if the Recipient completes the Checklist for Construction Contracts (Exhibit A–2), has it signed by the Recipient's authorized representative and submits it to the EDA regional office with the proposed construction bid package for approval. EDA review and approval of the proposed contract documents will also be expedited if the Recipient uses standardized documents such as ''Contract Documents for Construction of Federally Assisted Water and Sewer Projects'' jointly prepared, endorsed by, and available from, the Environmental Protection Agency, the Rural Development Agency, the Department of Housing and Urban Development, the Associated General Contractors of America, the Consulting Engineers Council and the National Society of Professional Engineers. Standardized contract forms available from the American Institute of Architects are also acceptable to EDA.

F. Until EDA has reviewed and approved the Recipient's proposed contracts and related procurement documents, the Recipient will be proceeding at its own risk regarding the eligibility of costs incurred.

12. Construction and Services Contract Provisions

A. The proposed contract documents to be part of the invitation for bids should contain at least the following:

(1) An Index.
(2) Advertisement for Bids.
(3) Information for Bidders.
(4) Bid Form.
(5) Contract Form.
(6) Bid Bond.
(7) Performance Bond.
(8) Payment Bond.
(9) General Conditions.
(10) ''Supplemental General Conditions'' (to be furnished by EDA).
(11) Technical Specifications.
(12) Working Drawings.
(13) Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246 and 41 CFR 60–4) (Exhibit E).

B. The package sent to EDA should also contain a documentation of the estimated cost for the proposed contract (see Section II 6. of these ''Requirements for Approved Projects'').

C. The Recipient shall include the following contract provisions or conditions in all procurement contracts and subcontracts for the EDA assisted project.

(1) Contracts in excess of the simplified acquisition threshold (currently $100,000) shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.

(2) Contracts in excess of the simplified acquisition threshold shall contain suitable provisions for termination by the Recipient including the manner by which it will be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(3) All contracts awarded in excess of $10,000 by the Recipient and their contractors or subrecipients shall contain a provision requiring compliance with Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(4) All contracts and subgrants in excess of $2,000 for construction or repair shall

include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public works, to give up any part of the compensation to which he/she is otherwise entitled. The Recipient shall report all suspected or reported violations to EDA.

(5) All construction contracts in excess of $2,000 awarded by the Recipient and Subrecipients shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Recipient shall place a copy of the current prevailing wage determination issued for each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The Recipient shall report all suspected or reported violations to EDA.

(6) Where applicable, all contracts awarded by the Recipients and Subrecipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). Under Section 102 of this Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1–½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week.

(7) Section 107 of the Contract Work Hours and Safety Standards Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(8) Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Grants, Contracts and Cooperative Agreements''.

(9) All negotiated contracts (except those awarded by small purchases procedures) awarded by the Recipient shall include a provision to the effect that the Recipient, EDA, the Office of Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract.

(10) The Recipient shall require contractors to maintain all required records for three years after the Recipient makes final payments and all other pending matters are closed.

(11) Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.) Violations shall be reported to EDA and the regional office of the Environmental Agency (EPA).

(12) Recipients and subrecipients must contain mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan, where applicable, issued in compliance with the Energy Policy and Conservation Act (P.L. 94–165).

(13) EDA may require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

(14) The EDA project number should appear on all drawings and on the face sheet of specification documents. In the case of a single sheet layout included in folders, the project number should be shown on the face of the sheet or at a point which will be outside when folded. If the layout consists of two or more sheets, all sheets should be so identified.

(15) In all cases, a reasonable time must be allowed to perform the work and the contract documents should stipulate the number of calendar days allowed for completing the work.

(16) EDA urges that a liquidated damage provision be included in all construction contracts with a specific dollar amount of daily damage to be assessed against the Contractor for each calendar day beyond the stipulated completion date. The daily amount of damages shall be a reasonable and adequate amount based upon the circumstances and estimated dollar cost of the individual contract, or the revenue-producing capacity of the project. The liquidated damages provision provides the Recipient with a feasible means of securing compensation for damages for delays in completing the work. Without such a provision, the proving of such damage is difficult and usually entails court action. In the event that the Recipient objects to the inclusion of a liquidated damages provision in construction contracts, a statement of the reasons for objecting should be submitted with the proposed contract documents.

(17) The Architect/Engineer should be encouraged to use deductive alternates which do not alter the scope of the project, affect the economic impact or project revenue, or change the project justification. Thus, should the bids exceed the cost estimate, deductive alternates may be used to reduce the cost to the extent necessary to come within the approved funds. Deductive alternates, where used, must be listed in the order to be used on the bid documents and *must* be taken in that order when awarding the contract. Deductive alternates should not be used for material. EDA recommends that unit price bidding based on quantities estimated by the Architect/Engineer so as to arrive at a total base bid be used to the greatest practical degree.

(18) The limiting of materials and/or equipment to a particular manufacturer or brand name (''sole source'') must have EDA approval to be eligible for reimbursement from grant funds unless an ''or equal'' clause is included in the equipment specifications.

(19) EDA discourages the use of performance type specifications. If the Recipient or his/her Architect/Engineer wishes to use performance type specifications, written approval must be secured from EDA.

(20) See Section II, paragraph 8 of these ''Requirements for Approved Projects'' for bonding and insurance requirements.

(21) Exhibit B, ''Supplemental General Conditions'' found in the Exhibits section of these ''Requirements for Approved Projects'' must be made a part of the construction bid and contract documents unless all EDA and other Federal requirements contained therein are covered elsewhere.

(22) The bidding documents should stipulate that:

a. the Recipient may consider any bid informal which is not prepared and submitted in accordance with the provision of the bid documents and may waive any informalities or reject any and all bids;

b. any bid may be withdrawn prior to the time scheduled for the opening of bids but not afterward; and

c. any bid received after the time and date specified for the bid opening shall not be considered.

(23) Stated allowances may be used for certain items such as door and/or window hardware with the approval of EDA.

(24) All of the above documents shall be included in the sets of bidding documents to be issued to prospective bidders, with any changes or additions recommended by EDA. The responsibility for complying with all State and local laws rests with the Recipient.

(25) Exhibit E to these ''Requirements for Approved Projects'' is a notice which provides goals and timetables for minority and female participation in construction work. This notice must be included in all invitations for bids for construction projects for which the prime contract and any related subcontracts are in excess of $10,000. EDA shall furnish the Recipient with the appropriate goals and timetables to be inserted in the above notice. In addition, the requirements of the above notice have been provided in the ''Supplemental General Conditions'' (Exhibit B) as the Standard Federal Equal Employment Opportunity Construction Contract Specifications.

(26) EDA approval of plans, specifications, contract and related documents is to assure compliance with terms of the Grant

Agreement and does not imply nor attest to the accuracy or completeness of design, dimensions, details, proper selection of materials, nor compliance with required codes or ordinances. This responsibility rests with the Recipient.

(27) In the absence of State or local law to the contrary, the advertisement for bids will conform to the requirements of Section II 7 of these ''Requirements for Approved Projects''.

(28) Only complete sets of plans and specifications should be issued to prospective contractors and/or subcontractors.

(29) Generally, a minimum of 30 days should be allowed for submission of bids.

13. Wage Rates

A. Wage rates paid for labor must not be less than the prevailing area wages as determined by the Secretary of Labor and embodied in the construction contract, pursuant to the provisions of the Davis-Bacon Act, as amended (40 U.S.C. 276a to 276a–7). EDA will secure the wage determination for the Recipient based on the following.

B. Most areas of the United States are covered by existing Department of Labor (DOL) wage decisions published and updated at irregular intervals. If the Recipient's project is in a covered area, the EDA Regional Office will supply copies of the applicable wage decision upon the Recipient's request. If the area is not covered by an existing wage decision the following procedure will apply. Between 60 and 45 days prior to the anticipated date of advertising for bids, the Recipient shall send to the EDA Regional Office a request for a wage determination (also referred to as a wage decision) defining the type of construction category (Building, Heavy or Highway) with each feature of work listed under the appropriate category. In addition, the crafts or skills needed for each category shall be listed and any pertinent wage information available submitted, such as statements from the secretaries of the Association of General Contractors and the Building Trades Council having jurisdiction. In isolated communities, certified copies of current contractors' payrolls for similar type work in the area concerned may accompany the request. When a State wage determination is required by State law, the Recipient must secure a schedule of rates from the State Labor Department and incorporate both State and Federal schedules of rates in the contract documents. The Recipient is responsible for seeing that the wage rates shown in the contract documents reflect not less than the higher of the Federal or State rate by trade. EDA will secure the wage decision from the appropriate Department of Labor Regional Administrator.

C. Each feature of work scheduled must call for Building, Heavy, or Highway wage rates, if applicable. Where a proposed contract involves only one type of construction, the specifications shall so state. Where more than one type of construction is involved, the specification shall identify, as specifically as possible, into which category of construction each work item falls. This decision, made by the Recipient in consultation with the Architect/Engineer, shall be based on local or area practice to insure fairness to all prospective bidders on construction contracts to be awarded.

D. Wage decisions are only valid for a 120-day period and extensions of wage decisions shall not be granted. If the decision expires without being superseded prior to award of contract, a new wage decision must be secured and included in the proposed contract documents prior to award. The request for a new wage decision shall be addressed to the EDA Regional Office. If the wage rate included in the Invitation for Bids is superseded, the new wage rate must be substituted if the new wage rate decision is dated over ten days prior to the bid openings; otherwise the old wage rate shall apply.

E. Contractors and subcontractors shall be advised that upon acceptance of their bids, they are obligated to pay not less than the established wage rate unless otherwise required by law. Wage rates need not be listed for non-manual workers, including executive, supervisory, administrative and clerical employees.

F. Wage rate schedules are generally not required for contracts between Recipients and railroads and other public utilities for construction services to the extent that the services are performed by personnel employed directly by the utility concerned and paid at rates prevailing for the type of work and utility concerned.

G. EDA or the Department of Labor may cause investigation to be made as may be necessary to assure compliance with the labor standard clauses required by the regulations contained in 29 CFR, Part 5 and the applicable statutes listed therein. Complaints made to, or which come to the attention of the Recipient, shall be called to the attention of the EDA Regional Office.

H. The Recipient shall require each contractor and subcontractor to submit, in compliance with the Davis-Bacon Act, a weekly payroll record. These records shall be retained for a period of three years from the date of completion of the contract and in a manner reasonably accessible. Such payroll records shall be made available at all times for inspection by EDA, the Department of Commerce Inspector General or their authorized representative, and by authorized representatives of the Department of Labor. The Recipient shall file these records by contract number. If the Recipient wishes to use another system for maintaining these records, the EDA Regional Office shall be consulted to avoid any violations of the Privacy Act. The Recipient shall check the submitted payroll records to assure they contain the following:

(1) A properly completed payroll Form WH–347, or

(2) If another form is used, all the information required by Form WH–347, including the name, address, correct job classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid for all employees; and the Statement of Compliance, properly executed as shown on the reverse side of Department of Labor Form WH–347, ''Payroll Reporting Form'' containing all of the information requirements including the Statement of Compliance. Copies are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

I. Where a construction contract has been awarded and work has commenced on the EDA approved project prior to acceptance of the Grant Award, wage rates and requirements listed herein shall be retroactive to the date of start of construction.

14. The Bid Opening

A. Whether or not an EDA representative is present at the bid opening, the Recipient will furnish the following to the EDA Regional Office:

(1) a statement signed by the Authorized Representative of the Recipient, certifying that all bids were received sealed and were opened in his/her presence;

(2) copy of official minutes of the bid opening;

(3) a copy of the bid tabulation.

15. Overrun at the Bid Opening

A. If the lowest responsive bid received at the bid opening exceeds the amount of funds available to finance the contract:

(1) the Recipient may without taking deductive alternates:

a. reject all bids;

b. augment the funds available in an amount sufficient to enable award to the lowest responsive bidder.

(2) The Recipient may take deductive alternates in the order shown in the Invitation for Bids until at least one of the responsive bids less deductive alternates result in a price within the funds announced as available. Then award may be made to that bidder. It should be noted that this procedure may change the order of bidders and thus extra care must be exercised to insure that:

a. all responsive bids are considered;

b. deductive alternates have been taken in the exact order shown in the Invitation for Bids; and

c. only sufficient deductive alternates have been taken to reduce at least one of the responsible bids to or below the amount of funds announced as available.

(3) In no event, however, should the Recipient negotiate with the low bidder or other bidders in order to reduce the cost within the funds available.

B. If the low bid less all deductive alternates exceeds the funds available, the Recipient may:

(1) furnish the additional funds required. If the Recipient intends to finance the overrun from his/her own funds, he/she will furnish a written letter or statement to the EDA regional office affirming his/her intention to finance the overrun and indicating the source of funds. If such funds are to be borrowed an appropriate supplemental financial plan must be prepared by the Recipient; or

(2) reject all bids and have the Architect/Engineer redesign the project, within the approved scope, to reduce the cost to, or below the approved amount and readvertise; or

(3) request additional EDA financial assistance as a last resort. However, before the Regional Office can accept a request for additional EDA funds, it will be necessary for the Recipient to furnish the following documentation to the EDA Regional Office:

a. a written statement from the Architect/Engineer giving his/her professional opinion that redesign of the project within the approved scope or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and

b. a written statement from the Authorized Representative or governing body of the Recipient that the Recipient cannot furnish the additional funds required, giving the reasons plus documentation and/or statistics relative to the financial condition of the Recipient.

16. Underrun Funds at the Bid Opening

A. If the total amount of construction contract awards is less than the approved line item for construction and/or any of the other line items in the EDA approved budget experiences an underrun such that the total expected actual cost will be less than the cost estimated in the EDA approved budget, EDA must be notified.

B. Underrun funds resulting from the situation described in paragraph A above may not be used to enhance or increase the scope of the project.

17. EDA Approval of the Contract Award

A. EDA must review and approve the award of all necessary contracts in order for the cost to be eligible for EDA reimbursement. However, pending EDA approval the Recipient may issue the Notice to Proceed permitting the work to go forward.

B. To obtain approval of the contract award, the Recipient shall submit to the EDA Regional Office:

(1) those items listed in Section II, Paragraph 13A and 13B of these ''Requirements for Approved Projects'', if not furnished previously;

(2) evidence of bidder's qualification. Architect/Engineer must review and add his/her opinion of bidder's qualifications;

(3) evidence of publication of advertisement for bids;

(4) certified evidence of the Recipient's ability to provide the financial participation required by the Grant Agreement;

(5) evidence of ability to provide construction financing;

(6) evidence of ability to provide the movable equipment and furnishings necessary to make the project a usable facility;

(7) a résumé of Resident Engineer's or Resident Inspector's qualifications for approval if not previously furnished;

(8) evidence of establishing a project accounting system for the project; and

(9) evidence of bonding of those persons authorized to draw upon the project funds as required by State and/or local law.

C. Prior to awarding any contract the Recipient should contact the EDA Regional Office so that the contractor can be checked against the list of contractors debarred, ineligible, or suspended from dealing with the Federal government or indebted to the United States. Costs for work done by such contractors are ineligible for EDA financial participation.

18. Executed Bid Award

A. After the bid award has been made, if EDA requests it, the Recipient will submit to EDA one set of bound executed contract documents. Each set shall consist of:

(1) all documents furnished the bidder prior to receipt of bids and upon which base bids were submitted;

(2) a signed or certified copy of the contract or agreement executed between the Recipient and the Contractor, including all addenda as issued, with necessary blanks completed;

(3) a copy of performance and payment bonds, dated the same date or subsequent to the date of the contract, supported by a properly signed and dated power of attorney, issued by the Surety. The Surety must be authorized to transact a fidelity and surety business in the State where the project is located and must be on the Treasury Department's current Circular 570, as ''Companies Holding Certificate of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies''. The underwriting limitations provided for in the said Treasury Department listing shall be applicable. A bound set of final plans are to be submitted with each set of contract documents.

(4) copies of insurance policies and/or certificates described in paragraph 5 of Section III of these ''Requirements for Approved Projects''.

19. Preconstruction Conference

Before the start of construction, an EDA representative may arrange to meet with the Recipient, the Architect/Engineer, and the Prime Contractor(s) to discuss EDA requirements on such matters as project supervision, on-site inspections, progress schedules, reports, payrolls, payments to contractors, contract change orders, insurance, safety, and other items pertinent to the project. At this conference, all parties shall be prepared to discuss any anticipated problems or issues that could affect the timely completion of the project.

Section III—Construction Procedures

1. Recipient Responsibilities

A. The Recipient is responsible for expeditiously prosecuting the project to completion, for monitoring project progress, for keeping EDA advised of project progress, for adequate construction inspection, for prompt payment of costs incurred for the project and for monitoring the contractor's compliance with local, State and Federal construction requirements.

B. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the plans, specifications and other contract documents. The Recipient, with the assistance of its architect/engineer, is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, and compliance with applicable building codes or ordinances. EDA review of proposed and/or final contract documents does not in any way relieve the Recipient of the foregoing responsibilities.

2. Employment of Local Labor

A. The maximum feasible employment of local labor shall be made in the construction of EDA assisted public works projects. The Recipient should supply a list of the successful bidder's anticipated labor requirements to the applicable Federal/State Employment Office far enough in advance of the start of construction so that the employment office may provide the contractor with the names of suitable local personnel from its rolls.

B. The contractor shall be required to include the above requirement in every subcontract for all work on the EDA assisted project.

3. Construction Progress Schedule

A. If requested by EDA, the Recipient will secure from the contractor or Architect/Engineer, and furnish a copy to EDA, of the predicted construction progress chart and a schedule of amounts for contract payments.

B. The construction progress chart should be updated monthly by the Recipient, the Architect/Engineer or the contractor. A copy for each month will be attached to the Quarterly Performance Report. The EDA Regional Office will advise as to the content of the report. The report will be due quarterly throughout the construction of the project.

C. After a review of the project the EDA project manager may discuss with the Recipient, or the Recipient's representative, the appropriate type of progress chart. The bar graph type of chart will generally be acceptable but some type of network analysis may be more appropriate for projects with cost in excess of $1 million and with greater than average complexity. The cost for such network analysis may be an eligible project cost if EDA approves its use.

4. Construction Sign

A. The Recipient shall require the prime contractor to secure or construct, erect, and maintain in good condition throughout the construction period, a sign or signs, (specifications for the sign are included as an exhibit to this document), at the project site in a conspicuous place indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant.

B. Project signs will not be erected on public highway rights-of-way.

C. Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area if any possibility exists for obstruction to traffic line of sight.

D. Whenever EDA site sign specifications conflict with State law or local ordinance, the EDA regional director may modify such conflicting specifications so as to comply with the State law or local ordinance.

E. When appropriate, EDA may require that a bilingual project sign be used. Specifications for such a sign are contained in this document in Exhibit B.

5. Inspection of Construction

The Recipient must provide competent project inspection during the construction period. The inspector may be an employee of the Recipient, an employee of the architect/

engineer, or a person(s) under contractual control of the Recipient. The extent of the inspection and the selection of the inspector must be approved by EDA. Pertinent information regarding the proposed inspector's experience, qualifications, salary plan and the scope of his responsibilities and authorities shall be furnished to EDA for this purpose.

6. Occupancy Prior to Completion

A. If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the Recipient must:

(1) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;

(2) secure the written consent of the contractor;

(3) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and.

(4) secure permanent fire and extended coverage insurance, where applicable, including a permit to complete construction.

B. EDA may require from the Recipient an assurance to protect the EDA investment in the project, prior to the approval of occupancy and/or use of all or any part of the project before completion of the construction.

7. Contractor Payrolls

A. Each contractor and subcontractor must be required by the Recipient to maintain weekly payroll records. These records are to be retained for a period of three years from the date of project closeout. Each contractor and subcontractor must also be required to furnish a copy of each payroll to the Recipient. The Recipient is responsible to assure that the payrolls meet the following standards:

(1) Wage rates and fringe benefits paid agree with the Department of Labor wage rate, or State wage rates if they are higher.

(2) Name, address, and Social Security number and work classification is shown for all employees.

(3) The Certificate of Prime Contractor on the reverse side of the Form WH–347 has been properly executed. If EDA has approved a substitute form for the WH–347 the substitute form must contain the certification as well as all of the above standards.

B. EDA may require that copies of the weekly payroll records be furnished to the applicable EDA regional office.

8. Civil Rights Requirements

The regulations issued under Executive Order 11246 (41 CFR 60–1.7) require the submission of compliance reports regarding civil rights. Standard Form 100 is to be used for this purpose. The requirement applies to any person or entity subject to Executive Order 11246 who:

(1) has 50 or more employees; and

(2) is a prime contractor or first-tier subcontractor; and

(3) has a Federally assisted contract, subcontract or purchase order amounting to $50,000 or more.

9. Contract Change Orders

A. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the Recipient and accepted by the contractor. All contract change orders must be concurred in by EDA even if the Recipient is to pay for all additional costs resulting from the change or the contract price is to be reduced. The work on the project may continue pending EDA review and concurrence in the change order but the Recipient should be aware that all such work is at the Recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.

B. The Recipient or its architect/engineer shall perform a cost or price analysis in connection with every change order which affects the contract price.

C. Proposed contract change orders will be prepared by the Recipient in sufficient quantity that two copies can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications, and plans will be attached. Before submission to the EDA regional office, the change order must be signed by the Recipient, the Architect/Engineer, and the contractor. The Recipient will be notified in writing of EDA concurrence if the change order is acceptable to EDA.

D. EDA will not approve change orders which change the purpose and intent (the scope) of the project. Change orders that add minimally or incidently to the cost of the project but do not change the project scope may be approved by EDA provided that either:

(1) the Recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or

(2) there are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.

E. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA approved project budget. EDA approval of change orders must be based on a finding by EDA that the work called for in the change order *is within the project scope and* is necessary for the proper functioning of the project.

F. Normally change orders should be submitted to EDA for approval as the changes occur.

G. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. When actual quantities differ substantially from those estimated quantities upon which the contractor's bid was based, a ''substantial variation'' results. A substantial variation is usually considered to be for actual quantities in excess of 115% to 120% or less than 85% to 90% of the estimated quantities. Substantial variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity which will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract.

10. Inspection for Final Acceptance

A. A final inspection will be scheduled by the Recipient when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed.

B. The final inspection will be made by representatives of the Recipient, the architect/engineer and the contractor(s). EDA must be given advance notice of the final inspection so that an EDA representative may participate, at the option of EDA.

11. Specific Requirements for Subcontractors

A. The Recipient is responsible to ensure that the contractor(s) causes appropriate provisions to be inserted in all subcontracts to bind subcontractors to EDA contract requirements as contained herein, in 15 CFR Part 24, or in 15 CFR Part 14 as appropriate.

B. Each subcontractor must agree to comply with all applicable Federal, State, and local requirements in addition to those set forth in this section.

C. Prior to the approval of any subcontract EDA will check the proposed subcontractor against the listing of contractors debarred, ineligible, suspended or indebted to the United States from contractual dealings with Federal government departments. The work performed by any such contractor or subcontractor will be ineligible for reimbursement wholly or partially from EDA grant funds.

D. All subcontracts in excess of $10,000 shall include, or incorporate by reference, the equal opportunity clause of Executive Order 11246.

E. All subcontracts must contain a nondiscrimination clause.

F. Each subcontract must contain a requirement for compliance with the Davis-Bacon and related acts.

G. Each subcontractor must submit weekly payroll records and a weekly statement of compliance. These documents should be submitted to the prime contractor. The subcontractor can satisfy this requirement by submitting a properly executed Department of Labor Form WH–347.

H. Each subcontract with every subcontractor must contain a clause committing the subcontractor to employment of local labor to the maximum extent possible.

I. The Standard Terms and Conditions of the grant agreement impose other requirements which the Recipient will be required to have the prime contractor impose on the subcontractor.

J. All subcontractors who meet the conditions set forth in Paragraph 9B of this Section III must submit a completed Standard Form 100 by March 30 of each year.

K. Subcontractors performing work in areas covered by published goals for minorities will be required to report monthly on Form CC–257.

12. Safety

A. All contractors on EDA assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5). The Recipient or its Architect/Engineer should periodically check the contractor's compliance.

B. The Recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA assisted project.

Section IV—Financial Administration

1. Standards for Financial Management Systems

A. A State must expend and account for grant funds in accordance with State laws and procedures for expending and accounting for its own funds. Fiscal control and accounting procedures of the State, as well as its Subrecipients and cost-type contractors, must be sufficient to:

(1) Permit preparation of reports required by this document and applicable regulations and statutes cited herein, and

(2) Permit the tracing of funds to a level of expenditures adequate to establish that such funds have not been used in violation of the restrictions and prohibitions of applicable statutes.

B. The financial management systems of other Recipients must meet the following standards:

(1) Financial reporting: Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) Accounting records: Recipients must maintain records which adequately identify the source and application of funds provided for financially assisted activities. These records must contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal controls: Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Recipients must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) Budget controls: Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable costs: Applicable OMB cost principles, agency program regulations, and the terms of grant agreements will be followed in determining the reasonableness, allowableness, and allocability of costs.

(6) Source documentation. Accounting records must be supported by such source documentation as canceled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) Cash management. Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by Recipients must be followed whenever advance payment procedures are used. When advances are made by electronic transfer of funds methods, the Recipient must make drawdowns as close as possible to the time of making disbursements.

C. EDA may review the adequacy of the financial management system of any applicant for financial assistance as part of a pre-award review or at any time subsequent to award.

2. Grant Disbursements

A. Reimbursement. Reimbursement is the preferred method of grant disbursement. EDA will not use the percentage of completion method to pay construction grants. The Recipient may use that method to pay its construction contractor. However, EDA's payments to the Recipient will be based on the Recipient's actual rate of disbursement.

B. Effect of program income, refunds, and audit recoveries on payment. Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional grant disbursements.

C. Withholding payments. EDA will not withhold payments for proper charges incurred by Recipients unless—

(1) The Recipient has failed to comply with grant award conditions, or

(2) The Recipient is indebted to the United States.

Cash withheld for failure to comply with grant award conditions, but without suspension of the grant, shall be released to the Recipient upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with the section on enforcement contained in this document.

EDA will not make payment to Recipients for amounts that are withheld by Recipients from payment to contractors to assure satisfactory completion of work. Payments shall be made by EDA when the Recipients actually disburse the withheld funds to the contractors or to escrow accounts established to assure satisfactory completion of work.

D. Cash depositories. Consistent with the national goal of expanding the opportunities for minority business enterprises, Recipients are encouraged to use minority banks (a bank which is owned at least 50 percent by minority group members). A list of minority owned banks can be obtained from the Minority Business Development Agency, Department of Commerce, Washington, DC 20230. EDA will not require the Recipient to maintain a separate bank account unless required by Federal-State agreement.

E. Interest earned on advances.

(1) For entities subject to 15 CFR Part 24: Except for interest earned on advances of funds exempt under the Intergovernmental Cooperation Act (31 U.S.C. 6501 *et seq.*) and the Indian Self-Determination Act (23 U.S.C. 450), Recipients shall promptly, but at least quarterly, remit interest earned on advances to EDA. The Recipient may keep interest amounts up to $100 per year for administrative expenses.

(2) For entities subject to 15 CFR Part 14 and any DOC rule implementing such Circular: Entities not subject to the Cash Management Improvement Act may keep up to $250 for administrative costs, to be remitted annually.

3. Allowable Costs

A. Limitation on use of funds. Grant funds may be used only for:

(1) The allowable costs of the Recipients, and cost-type contractors, including allowable costs in the form of payments to fixed-price contractors; and

(2) Reasonable fees or profit to cost-type contractors but not any fee or profit (or other increment above allowable costs) to the Recipient.

B. Applicable cost principles. For each kind of organization, there is a set of Federal principles for determining allowable costs. Allowable costs will be determined in accordance with the cost principles applicable to the organization incurring the costs. The following chart lists the kinds of organizations and the applicable cost principles.

TABLE 1.—COST PRINCIPLES

For the costs of a—	Use the principles in—
State, local or Indian tribal government.	OMB Circular A–87.
Private nonprofit organization other than an (1) institution of higher education, (2) hospital, or (3) organization named in OMB Circular A–122 as not subject to that circular.	OMB Circular A–122
Educational institutions.	OMB Circular A–21.
For-profit organization other than a hospital and an organization named in OMB Circular A–122 as not subject to that circular.	48 CFR Part 31. Contract Cost Principles and Procedures, or uniform cost accounting standards that comply with cost principles acceptable to EDA.

4. Period of Availability of Funds

A. Generally, the maximum period for any EDA financial assistance that is provided is not more than 5 years from the end of the fiscal year of the award. Normally, costs incurred after the end of the funding period will not be eligible for reimbursement from the EDA grant.

B. Liquidation of obligations. A Recipient must liquidate all obligations incurred under the award not later than 90 days after the acceptance of the project from the construction contractor or before the end of the funding period, whichever occurs earlier.

5. Matching or Cost Sharing

A. Acceptable Costs and Contributions: With the qualifications and exceptions listed on the next page of this section, a matching or cost sharing requirement may be satisfied by either or both of the following:

(1) Allowable costs incurred by the Recipient, or a cost-type contractor under the assistance agreement. This includes allowable costs borne by non-Federal grants or by cash donations from non-Federal third parties.

(2) The value of third party in-kind contributions applicable to the period to which the cost sharing or matching requirements applies.

B. Qualifications and exceptions:

(1) Costs borne by other Federal grant agreements. Except as provided by Federal statute, a cost sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to income earned by a Recipient or Subrecipient from a contract awarded under another Federal grant.

(2) General revenue sharing. For the purpose of this section, general revenue sharing funds distributed under 31 U.S.C. 6702 are not considered Federal grant funds.

(3) Cost or contributions counted towards other Federal costs-sharing requirements. Neither costs nor the values of third party in-kind contributions may count towards satisfying a cost sharing or matching requirement of a grant agreement if they have been or will be counted towards satisfying a cost sharing or matching requirement of another Federal grant agreement, a Federal procurement contract, or any other award of Federal funds.

(4) Costs financed by program income. Costs financed by program income, as defined in the following section on program income, shall not count towards satisfying a cost sharing or matching requirement unless they are expressly permitted in the terms of the assistance agreement.

(5) Services or property financed by income earned by contractors. Contractors under a grant may earn income from the activities carried out under the contract in addition to the amounts earned from the party awarding the contract. No costs of services or property supported by this income may count toward satisfying a cost sharing or matching requirement unless other provisions of the grant agreement expressly permit this kind of income to be used to meet the requirement.

(6) Records. Costs and third party in-kind contributions counting towards satisfying a cost sharing or matching requirement must be verifiable from the records of Recipients or cost-type contractors. These records must show how the value placed on third party in-kind contributions was derived. To the extent feasible, volunteer services will be supported by the same methods that the organization uses to support the allocability of regular personnel costs.

(7) Special standards for third party in-kind contributions.

a. Third party in-kind contributions count towards satisfying a cost sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

b. Some third party in-kind contributions are goods and services that, if the Recipient, or contractor receiving the contribution had to pay for them, the payments would have been an indirect costs. Costs sharing or matching credit for such contributions shall be given only if the Recipient, or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions.

c. A third party in-kind contribution to a fixed-price contract may count towards satisfying a cost sharing or matching requirement only if it results in:

(i) An increase in the services or property provided under the contract (without additional cost to the Recipient or Subrecipient), or

(ii) A cost savings to the Recipient or Subrecipient.

d. The values placed on third party in-kind contributions for cost sharing or matching purposes will conform to the rules in the succeeding sections of this part. If a third party in-kind contribution is a type not treated in those sections, the value placed upon it shall be fair and reasonable.

C. Valuation of Donated Services:

(1) Volunteer services. Unpaid services provided to a Recipient by individuals will be valued at rates consistent with those ordinarily paid for similar work in the Recipient's organization. If the Recipient does not have employees performing similar work, the rates will be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(2) Employees of other organizations. When an employer other than a Recipient, or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services will be valued at the employee's regular rate of pay exclusive of the employee's fringe benefits and overhead costs. If the services are in a different line of work, paragraph A of this section applies.

D. Valuation of Third Party Donated Supplies and Loaned Equipment or Space:

(1) If a third party donates supplies, the contribution will be valued at the market value of the supplies at the time of donation.

(2) If a third party donates the use of equipment or space in a building but retains title, the contribution will be valued at the fair rental rate of the equipment or space.

E. Valuation of Third Party Donated Equipment, Buildings, and Land: If a third party donates equipment, buildings, or land, and title passes to a Recipient or Subrecipient, the treatment of the donated property will depend upon the purpose of the grant, as follows:

(1) Awards for capital expenditures. If the purpose of the grant is to assist the Recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(2) Other awards. If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following paragraphs of this section apply:

a. If approval is obtained from EDA, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost-sharing or matching. In all cases, the approval may be given only if a purchase of the equipment or rental of the land would be approved as an allowable direct cost. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

b. If approval is not obtained under the above paragraph, E(2)b no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third party in-kind contributions. Instead, they are treated as costs incurred by the Recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in OMB Circulars A–87, A–21 and A–122, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

F. Valuation of Recipient Donated Real Property for Construction/Acquisition: If a Recipient donates real property for a construction or facilities acquisition project, the current market value of that property may be counted as cost-sharing or matching. If any part of the donated property was acquired with Federal funds, only the non-federal share of the property may be counted as cost-sharing or matching.

G. Appraisal of Real Property: In some cases it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, EDA may require the market value or fair rental value be set by an independent appraiser, and that the value or rate be certified by the Recipient.

6. Program Income

A. General. Recipients are encouraged to earn income to defray program costs. Program income includes income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, from the sale of commodities or items fabricated under a grant agreement, and from payments of principal and interest on loans made with grant funds. Program income does not normally include interest on grant funds, rebates, credits, discounts, refunds, etc. and interest earned on any of them.

B. Definition of program income. Program income means gross income received by the Recipient directly generated by a grant supported activity, or earned only as a result of the grant agreement during the grant period. ''During the grant period'' is the time between the effective date of the award and the ending date of the award reflected in the final financial report.

C. Cost of generating program income. If authorized by Federal regulations or the grant agreement, costs incidental to the generation

of program income may be deducted from gross income to determine program income.

D. Governmental revenues. Taxes, special assessments, levies, fines, and other such revenues raised by a Recipient are not program income unless the revenues are specifically identified in the grant agreement as program income.

E. Royalties. Income from royalties and license fees for copyrighted material, patents, and inventions developed by a Recipient is program income only if the revenues are specifically identified in the grant agreement as program income.

F. Property. Proceeds from the sale of real property or equipment will be handled in accordance with the requirements of Section VII of these ''Requirements for Approved Projects''.

G. Use of program income. Program income shall be deducted from outlays which may be both Federal and non-federal as described below, unless the grant agreement specifies another alternative (or a combination of the alternatives). In specifying alternatives, the Federal agency may distinguish between sources, kinds, or amounts of income. Alternative uses include:

(1) Deduction. Ordinarily program income shall be deducted from total allowable costs to determine the net allowable costs. Program income shall be used for current costs unless EDA authorizes otherwise. Program income which the Recipient did not anticipate at the time of the award shall be used to reduce the EDA and Recipient contributions rather than to increase the funds committed to the project.

(2) Addition. When authorized, program income may be added to the funds committed to the grant agreement by EDA and the Recipient. The program income shall be used for the purposes and under the conditions of the grant agreement.

(3) Cost sharing or matching. When authorized, program income may be used to meet the cost sharing or matching requirement of the grant agreement. The amount of the Federal grant award remains the same.

H. Income after the award period. Income earned beginning at the end of the award period (see Paragraph 4A of this Section IV) and ending at the end of the useful life of the project shall be used only for the following purposes:

(1) To satisfy any debt service (mortgage payments) existing during this time period. Note that any new encumbrances on the EDA assisted facility during this period must have EDA approval.

(2) For necessary operation, maintenance and repair services.

(3) Any excess above the costs of (1) and (2) above may be used for other economic development purposes in the same economic development area *with the concurrence of EDA*.

7. Non-Federal Audit

A. Basic rule: Recipients and Subrecipients are subject to audit requirements contained in the Single Audit Act amendments of 1996 (31 U.S.C. 7501–7) and revised OMB Circular A–133, ''Audits of State, Local Governments, and Non-Profit Organizations''.

Section V—Amendments to Grant Agreements

1. General Requirements

A. Between approval and closeout of an EDA construction project, one or more changes in the project may be necessary to resolve unforeseen problems or remove obstacles to the project's successful completion. In most instances, the proposed change can be effected only through a formal amendment to the project.

B. Project amendments generally fall into the following categories.

(1) Time extensions;

(2) Budget revisions;

(3) Additional funding (overrun);

(4) Permitted waiver of EDA regulations;

(5) Changes which do not involve overall funding (e.g., change of Recipient; method and schedule of financing; addition, deletion, or change affecting a line item in the approved project cost estimate);

(6) Change to the Special Conditions of the Grant Award;

(7) Termination (for cause or by mutual consent).

C. A change-of-scope determination may be necessary before a decision can be made if the requested change involves a change to the purpose, bona fide need, nature or community served of the project.

2. Changes to the Project Scope

A. Project scope is defined as the purpose, bona fide need, nature and community served of the approved grant. A project amendment which amounts to a change of scope is, in fact, the substitution of one grant for another. A change of scope modification to a project which was funded in a prior fiscal year cannot be approved by EDA. Modifications to projects funded from the current fiscal year's appropriation, or from a no-year appropriation, do not constitute a prohibited change of scope but must have the written approval of EDA. Any proposed change to an EDA assisted project which is a change of scope will be disapproved by EDA.

B. Certain types of project modifications can be approved by EDA if specified findings can be made. These include time extensions for commencement or completion of work, waivers of certain EDA requirements and some types of budget line item changes.

C. Certain types of project modifications presumptively constitute a change of scope, although the facts of a particular situation could permit such modifications to be approved. Examples are:

(1) A change of Recipient;

(2) A change of project location;

(3) Addition of a new line item to the EDA approved budget;

(4) An expansion of the activity associated with a budget line item.

D. Every proposed modification to a grant shall be considered not only in the light of the foregoing policy on change of scope, but shall also be processed in accordance with all EDA legal and technical requirements so that grants as amended will not deviate from the standards employed in initial grant approval.

3. Time Extensions

A. The Recipient is responsible for expeditiously prosecuting the implementation of the project in accordance with the project development time schedule contained in the EDA grant award. As soon as the Recipient becomes aware that it will not be possible to meet the time schedule, it must notify the EDA Regional Office. The Recipient's notice to EDA should contain the following information.

(1) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain state or Federal approvals; or unplanned environmental mitigation required).

(2) A statement that no other changes to the project are contemplated;

(3) Documentation that demonstrates there is still a bona fide need for the project; and

(4) A statement that no further delay is anticipated and that the project can be completed within the revised time schedule.

B. EDA will advise the Recipient if a formal written request from the Recipient for a time extension will be required. The Recipient should be aware that grant disbursements may be suspended while the Recipient is not in compliance with the time schedule.

C. EDA reserves the right to suspend and/or terminate any grant if the Recipient fails to proceed with reasonable diligence to accomplish the project as intended.

4. Budget Line Item Revisions

A. The tabulation of estimated project costs contained in the EDA Grant Award is the controlling budget for the project. Budget line item revisions which do not involve a change of scope may be approved by EDA if:

(1) no new EDA funds are involved; and

(2) another budget line item (preferably the contingency line item, although this is not mandatory) has funds which can be used without significantly adversely affecting the object of that line item; and

(3) unless the line item which is proposed to be supplemented is supplemented, the activity associated with that line item cannot be completed; and

(4) no new line items are being added to the budget.

B. Funds may be transferred to other approved budget line items from the contingencies line item provided the activity associated with the line item cannot be completed unless the line item to be supplemented is supplemented.

C. The transfer of funds from line items other than the contingencies line item may be permitted with EDA written permission provided there will be no significant adverse effect to the object of the line item from which the transfer is to be made.

D. The construction line item shall be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts shall be transferred to the contingencies line item. Recipients are reminded that contingency funds are only to be used to cover situations resulting from unknown conditions and changes required

for the fulfillment of the previously authorized project activities intended under the grant award. Underrun funds cannot be used to change the scope of the project.

E. The Recipient shall notify EDA of any proposed transfer of funds from one budget line item to another.

5. Additional EDA Funding

A. In accepting the award of an EDA grant the Recipient agreed to fund any overrun(s). Additional EDA funding for an approved project is unlikely to be approved. To be considered for approval it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will accept a formal request for additional EDA funds it will be necessary for the Recipient to furnish the following documentation to EDA:

(1) A written statement from the Recipient's Architect/Engineer giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds.

(2) A written statement from the administrative head of the Recipient's organization justifying why the Recipient cannot furnish the additional funds required. Relevant data may be in the form of an audit performed within the past two years, schedule of bonded debt, assessed property values as a percentage of market value, tax rates, and percent of collection. The statement should state why non-EDA sources of funds cannot be used.

B. Acceptance by EDA of a request for additional EDA assistance does not indicate approval. Any further action by the Recipient pending EDA's review of the Recipient's request is at the Recipient's risk.

6. Termination of the EDA Grant

A. Termination for Cause

(1) If a Recipient materially fails to comply with any term of a grant award, whether stated in a Federal statute, regulation, assurance, grant application, or notice of award, EDA may take one or more of the following actions, as appropriate in the circumstances:

a. Temporarily withhold disbursement of grant funds pending correction of the deficiency by the Recipient, or more severe enforcement action by EDA;

b. Disallow (that is, deny both use of funds and matching credit for) all or part of the cost of the activity or action not in compliance;

c. Wholly or partly suspend or terminate the current award;

d. Withhold further awards for the project or program;

e. Take other remedies that may be legally available.

(2) In taking an enforcement action, EDA will provide the Recipient an opportunity for such hearing, appeal, or other administrative proceeding to which the Recipient is entitled under any statute or regulation applicable to the action involved.

(3) Costs resulting from obligations incurred by the Recipient after notice by EDA of suspension of, or termination of, the grant, are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other Recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if:

a. The costs result from obligations which were properly incurred by the Recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are noncancellable; and,

b. The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(4) The enforcement remedies identified in this section, including suspension and termination, do not preclude Recipient from being subject to ''Debarment and Suspension'' under E.O.s 12549 and 12689 and implementing regulations at 15 CFR Part 26.

B. Termination for Convenience

(1) Terminations for convenience have the following requirements:

a. EDA may propose the termination for convenience, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated; or

b. The Recipient may propose the termination to EDA in writing, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of a partial termination, EDA determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, EDA may terminate the grant in its entirety under the termination for cause procedures or termination for convenience procedures with the consent of the Recipient. An appropriate official of the Recipient may request EDA to cancel or terminate a project. This request must be accompanied by a certified resolution or ordinance authorizing the requesting party to make such request. EDA will determine the legal sufficiency of such request.

Section VI—Project Closeout Procedures

1. Audit Requirements

A. Recipients are subject to audit requirements contained the Single Audit Act of 1984, and the amendments of 1996, (31 U.S.C. 7501–7) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations''. If the Recipient has no current audit performed in accordance with the Single Audit Act, EDA will advise the Recipient of the procedure for securing the required audit.

B. Normally, if the Recipient has had an audit in accordance with the Single Audit Act within the prescribed period, EDA will not require a project specific audit. However, if the documentation supplied by the Recipient is inadequate for a determination by EDA of the eligibility of claimed costs for reimbursement from the EDA grant, EDA may require such a project specific audit. EDA reserves the right to: (1) require the Recipient to secure an independent audit of the project cost, or (2) conduct an audit of project costs using Department of Commerce auditors, and (3) recover any costs previously allowed for EDA reimbursement but found by the audit to be not allowable.

C. From time to time the Department of Commerce Office of the Inspector General selects an EDA assisted project for audit. If its project is one of those selected, the Recipient will be notified in advance.

D. In arranging for audit services, Section II, Contracting for Project Construction will be followed. An independent audit arranged by the Recipient must meet the standards of the Comptroller General publication, ''Standards for Audit of Government Organizations, Programs, Activities, and Functions''.

2. Closeout Procedures

A. When project construction is complete, the final inspection has been completed, and the Recipient has accepted the project from the contractor, the Recipient can begin the closeout process. This should include notifying EDA of the following actions:

(1) Compliance with all Special Conditions of the EDA grant award, including but not limited to the following:

(2) Securing permanent insurance for above ground facilities.

(3) Results of a review of the project to determine that all changes to the project have been brought to the attention of EDA.

(4) Provisions have been made for the retention for three years of all records pertaining to the project.

(5) Certificate of Final Completion has been prepared, executed and a copy furnished to EDA.

(6) As-built drawings have been received from the contractor and/or the architect/engineer.

(7) A copy of a current Single Audit Act audit of the Recipient has been furnished to EDA. If no Single Audit Act audit is available but is required, the Recipient's plan to secure the audit has been furnished to EDA and approved. If no Single Audit Act audit is required, EDA has been advised and has determined whether an independent audit will be required.

(8) To the knowledge of the Recipient there are no outstanding Davis-Bacon or local labor employment violations.

(9) EDA has been notified of any change, lien, mortgage or other encumbrance relating to the ownership of the project.

(10) EDA has been notified of any unresolved contract/contractor disputes.

(11) If required, a lien or Covenant of Purpose, Use, and Ownership in favor of EDA has been executed and recorded.

(12) A record will be maintained by the Recipient of the useful life of the facility as determined by EDA during which period the Recipient may not alienate its ownership or change the use and purpose of the EDA assisted facility without EDA's written permission.

B. Recipients shall submit, within 90 calendar days after the completion of the project, all financial, performance and other reports as required by the terms and conditions of the grant award.

C. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations

incurred under the grant award no later than 90 calendar days after the funding period or the date of completion, whichever is earlier, as specified in the terms and conditions of the award.

D. When EDA is satisfied that the audit requirement has been met and the actions discussed in paragraphs A, B, and C above have been accomplished, the Recipient may request the final grant disbursement. The request will be will be prepared on EDA Form ED–113, Outlay Report and Request for Reimbursement for Construction Programs. EDA may assist with filling out the form but it is the responsibility of the Recipient to assure that the numbers on the form are correct. The following documentation should accompany the executed form ED–113 when it is sent to the EDA Regional Office unless the documentation has been previously furnished:

(1) Copies of all executed contracts, subcontracts (if claimed separate from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the Form ED–113;

(2) A copy of the currently valid Single Audit Act audit if one was performed;

(3) Payroll forms, if any of the cost claimed is for work performed by in-house work forces

(4) Payroll Compliance Certificate;

(5) Civil Rights documents;

(6) Title opinions, legal descriptions, bills of sale, title records, etc., for any land cost being claimed; and

(7) Specifics of any administrative costs being claimed.

E. The Recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the Recipient, the balance will be paid by electronic transmittal. If the Recipient has received a grant amount in excess of the amount due the Recipient, the Recipient will be requested to refund the excess to EDA payable to the U.S. Treasury.

F. The closeout of an award does not affect any of the following:

(1) The right of EDA to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the Recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Requirements for property management, records retention and performance measurement reports.

(4) Audit requirements.

Section VII—Post Construction Grant Requirements

1. Real Property

A. All property that is acquired or improved with EDA grant assistance shall be held in trust by the grantee for the benefit of the project purposes under which the property was acquired or improved.

B. During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance.

C. EDA may approve the substitution of an eligible entity for a grantee. The original grantee remains responsible for the period it was the grantee, and the successor grantee holds the project property with the responsibilities of an original grantee under the award.

D. The requirements contained in this part apply solely to grant and cooperative agreement award projects.

2. Definitions

A. As used in this Section VII:

(1) *Dispose* includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

(2) *Estimated useful life* means that period of years from the time of award, determined by EDA as the expected life-span of the project.

(3) *Grantee* includes any recipient, subrecipient, awardee, or subawardee of grant assistance under the Public Works and Economic Development Act of 1965.

(4) *Owner* includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold.

(5) *Personal Property* means all property other than real property.

(6) *Project* means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs ''project'' includes such programs.

(7) *Property* includes all forms of property, real, personal (tangible and intangible), and mixed.

(8) *Real property* means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

3. Use of Property

A. The grantee or owner shall use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project as long as it is needed during the estimated useful life of the project and such property shall not be leased, sold, disposed of or encumbered without the written authorization of EDA.

B. In the event that EDA and the grantee determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, if EDA approves such use.

C. When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination.

D. When acquiring replacement personal property of equal or greater value, the grantee may trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be subject to the same requirements as the original property.

4. Unauthorized Use

A. Except as provided in 3B, 3C, or 3D above, whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of without the approval of EDA, or no longer used for the authorized purpose of the project, the Federal Government shall be compensated by the grantee for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR Part 24 and 15 CFR Part 14 or any supplements or successors thereto, as applicable, shall apply.

B. If property is disposed of without approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs A and B of this section, except that the total amount to be recovered shall not exceed the Federal share, plus costs and interest.

5. Federal Share

A. For purposes of this Section, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale).

B. Where the grantee's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor shall be considered in determining the percentage of the Federal share.

C. If property is transferred from the grantee to another eligible entity, as provided in paragraph 1C above, the Federal Government shall be compensated the Federal share of any money paid by or on behalf of the successor grantee to or for the benefit of the original grantee, provided that EDA may first permit the recovery by the original grantee of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

D. When the Federal Government is compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use or disposition of the property.

6. Encumbrances

A. Except as provided in paragraph 6C below, grantee-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be

used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project.

B. Encumbering such property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in paragraphs 4 and 5 above.

C. EDA may waive the provisions of paragraph 6A above for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the grantee, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The lender/grantor would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/grantee will not default on its obligation.

D. The EDA Assistant Secretary or his/her designee may waive the provisions of paragraphs A and B above as to an encumbrance on property which is financed by an EDA construction grant when he/she determines that the encumbrance arises solely from the provisions of a pre-existing water, sewer or other utility encumbrance which by its terms extends to additional property connected to such facilities. EDA's determination shall make reference to the specific requirements (for example, ''water system and all accessions, additions or improvements thereto'') which extend the terms of the pre-existing encumbrance to the property which is financed and/or improved by the EDA construction grant.

7. Civil Rights Restriction

Among other applicable requirements, the Recipient or in the case of a transfer , the transferee, of real property, structures or improvements thereon or interests therein acquired, leased, or improved with EDA assistance may not sell, lease, or otherwise make any part of such premises available for occupancy by any person, firm, or entity unless the Recipient includes in the instrument effecting the sale, lease or transfer a covenant running with the land that assures that the purchaser, lessee or occupant will comply with the nondiscrimination provisions of the Civil Rights Act of 1964, as amended as provided in 15 CFR 8.5(b)(5)(6) and (11).

8. Performance Reports

The Government Performance and Results Act of 1993 (GPRA) requires EDA to report the outputs and outcomes of projects (e.g. actual job creation). Recipients are required to submit reports of performance to EDA at the intervals stated in Section I Paragraph 2E of these Requirements for Approved Construction Projects.

9. Record Retention

Architect/engineering records and payroll records relating to the project must be retained as described in Section I Paragraph 6 F , Section II Paragraph 14 H, and Section III Paragraph 9 A.

10. Program Income Earned After the Award Period

The uses for program income earned after the award period are described in Section IV 6 H.

Section VIII—Exhibits

This section contains a copy of the Exhibits cited elsewhere in this Volume and other items which may be helpful to the Recipient as it proceeds through project design, construction, and closeout. The EDA forms shown as exhibits herein are updated and revised as new procedures and requirements become known. Thus, the exhibit may not be the latest version of the form currently in use. The Recipient should check with the EDA regional office to be sure the correct form is being used before the initial use of any of the exhibits. The documents marked with an asterisk (*) are available from the EDA regional office, if needed.

A. Checklists for:
  (1) Architect/Engineer Contracts
  (2) Construction Contracts
  (3) Initial Grant Disbursement
  (4) Project Closeout
B. Supplemental General Conditions
C. Certificate as to Project Site, Rights-of-Way, and Easements (Form ED–152)
D. *Sample Agreement and Mortgage
E. Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (E.O. 11246)
F. *Sample Contract Documents
  (1) Advertisement for Bid
  (2) Information for Bidders
  (3) Bid for Lump Sum or Unit Price Contracts
  (4) Bid Bond
  (5) Agreement (Construction Contract)
  (6) Performance Bond
  (7) Payment Bond
  (8) General Conditions
  (9) Contractor's Application for Payment (AIA Document #G 702)
  (10) Weekly Payroll Form (use Dept. of Labor's Form WH–347)
  (11) Notice of Award
  (12) Notice to Proceed
  (13) Change Order
G. Recipient's Outlay Report and Request for Reimbursement for Construction Programs (Form ED–113)
H. ACH Vendor/Miscellaneous Payment Enrollment Form (Form SF–3881)
I. Sample Final Acceptance Inspection Report
J. Sample Quarterly Performance Report
K. Sample Architect/Engineer's Certificate
L. Sample Certificate of Grantee/Borrower's Attorney
M. Information Required for EPA Certification as to Adequacy of Treatment
N. Financial Status Report (Form SF269)

Checklist for Architect/Engineer Contracts

Although the use of this checklist is not mandatory, its use will expedite EDA's review of the architect/engineer contract. When completed by the Recipient it should be submitted to the EDA regional office soon after the grant award is approved by EDA and accepted by the Recipient if the architect/engineer contract has been previously executed. If the architect/engineer contract has not been executed prior to the Recipient's acceptance of the grant award, this checklist may be completed and sent to the appropriate regional office as soon as the architect/engineer contract is signed and prior to any request for disbursement of EDA grant funds. The appropriate responses should be circled in ink and signed by the authorized representative of the Recipient.

Y	N	The Recipient has written procurement procedures with which the architect/engineer contract has been found to be in compliance.
Y	N	The Architect/Engineer was selected competitively by sealed bids (formal advertising) or by competitive proposals. If not, attach an explanation of the selection method and the reason(s) for using that method.
Y	N	Requests for proposals were publicized and all evaluation factors and their relative importance were identified therein. Any response to publicized requests for proposals were honored to the maximum extent practical.
Y	N	Proposals were solicited from an adequate number of qualified sources (normally it is sufficient to secure at least three proposals from qualified proposers). If less than 3 qualified proposals were secured, attach an explanation to this document.
Y	N	The Recipient has a method for conducting technical evaluations of proposals received and for selecting the best proposal, price and other factors considered.
Y	N	The Recipient determined the responsible firm whose proposal was most advantageous to the program, with price and other factors considered. Competitor's qualifications were evaluated and the most qualified competitor was selected, subject to negotiation of fair and reasonable compensation.
Y	N	The Architect/Engineer agreement provides for all services required by the Recipient for the planning, design and construction phase of the proposed project. Appropriate standards or guides developed by such professional organizations as the American Consulting Engineers Council (ACEC), American Society of Civil Engineers (ASCE), National Society of Professional Engineers (NSPE), and/or the American Institute of Architects (AIA) may be used where the Recipient does not have standard procurement documents.

Y N The Architect/Engineer's fee for basic services is either a fixed price or a cost reimbursement with an agreed maximum. (The amount of EDA participation will be based on a determination, subject to audit, that the fee compensation is reasonable)

Y N The architect/engineer contract compensation is not based on the use of the cost-plus-a-percentage-of-cost or percentage of construction cost form of compensation. (These forms of compensation are not eligible for EDA participation).

Y N The Architect/Engineer's fee covers all services necessary for the successful execution of the project, including consultations, surveys, soil investigations, supervision, travel, ''as-built'' or record drawings, arrow diagram (CPM/PERT) where applicable, and incidental costs.

Y N The basic fee does not exceed that prevailing for comparable services in the project area. If the total fee is in excess of the prevailing rate because of special services to be performed, these services are identified in the agreement. Such additional charges may be approved for grant participation by the EDA if they:

11. Do not duplicate a charge for services provided for in the basic fee and are within the normal scope of the Architect/Engineer's responsibilities;

12. Are a proper charge against the project cost; and

c. Are reasonable for the extra services to be rendered.

Y N Regardless of who furnishes the construction inspector, the agreement requires the Architect/Engineer to make sufficient visits to the project site to determine, in general, if the work is proceeding in accordance with the construction contract.

Y N If the Architect/Engineer contract(s) price exceeds $100,000 (awarded under small purchase procedures), it includes a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, the Inspector General of the Department of Commerce, or any of their duly authorized representatives, shall have access to any documents, books, papers, and records of the Architect/Engineer (which are directly pertinent to a specific grant program) for the purpose of making an audit, examination, excerpts, and transcriptions. The Recipient shall require the Architect/Engineer to maintain all required records for at least three years after the Recipient makes final payment and all pending matters are closed.

Y N The agreement for architect/engineer services provides an adequate basis for the Recipient to require the Architect/Engineer to:

Y N Design the project in accordance with the intent of the Grant Award;

Y N Redesign the project in the event the preliminary cost estimate, the final cost estimate, or the lowest responsive bid less deductive alternates, exceeds the funds available by an amount or percentage to be mutually agreeable to the Recipient and the Architect/Engineer;

Y N Design any sewage treatment or other sewage facility so that a certificate of adequacy of treatment can be obtained as required by Section 106 of the Public Works and Economic Development Act of 1965, as amended;

Y N Include in all contracts and subcontracts with costs in excess of $100,000 a provision which requires compliance with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et. seq.) and the Federal Water Pollution Act (33 USC 1251 et seq., as amended). (Violations shall be reported to EDA and to the regional office of the U.S. Environmental Protection Agency).

Y N Include in all contracts and subcontracts in excess of the small purchase threshold of $100,000, provisions or conditions which will allow for administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate;

Y N Include in all contracts in excess of $10,000 suitable provisions for termination by the Recipient including the manner in which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor;

Y N Include in all contracts in excess of $10,000 a provision requiring compliance with Executive Order 11246, entitled''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);

Y N Include in all contracts in excess of $2,000 for construction or repair a provision for compliance with the Copeland ''Anti-Kickback''Act (18 USC 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). This Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. (The Recipient shall report all suspected or reported violations to EDA).

Y N Include in all construction contracts in excess of $2,000 a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. A copy of the current prevailing wage determination issued by the Department of Labor must be included in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. (All suspected or reported violations shall be reported to EDA. Davis-Bacon wage determinations are not applicable to Recipient employed ''Force Account'' workers).

Y N Include in all contracts in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers, a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327–330) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence. Work performed by employees of the Recipient (in-house forces) on the EDA-assisted project will be subject to the following:

1. Work performed in excess of eight hours per day will be reimbursed by EDA at the normal rate of pay unless the Recipient can show that a higher rate is required by State or local law or union contract;

2. Work performed in excess of 40 hours per week may be reimbursed by EDA at a higher rate than normal if the Recipient can show that it normally pays for such work at a higher rate. In any case the rate for work in excess of 40 hours per week may not exceed one and one half times the normal hourly rate.

Y N Include a notice in all contracts involving research, developmental, experimental or demonstration work requiring that all patentable processes, discoveries or inventions which arise or are developed in the course of, or under, such contract shall be reported to EDA. The notice will state that the Government has an interest in any such patentable processes, discoveries or inventions corresponding to the percentage of total project cost funded by EDA.

Y N Include in all negotiated contracts (except those awarded by small purchase procedures) a provision to the effect that the Recipient, EDA, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions.

Y N Include in all contracts a requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor and all other pending matters are closed.

Y N State a specific timetable in the architect/engineer agreement for:

1. Completing preliminary plans and associated cost estimates;

2. Completing final plans, specifications, and cost estimates;

3. Securing required State and local approvals; and
4. Completing proposed contract documents in a form sufficient for soliciting bids for construction of the project.
(If the Recipient has executed an Architect/Engineer agreement without such a requirement for a timetable, EDA shall require that an addendum to the agreement be executed to incorporate this requirement).

Y N Provide surveillance of project construction to assure compliance with plans, specifications, and all other contract documents. If the Recipient chooses to use the Architect/Engineer as the project inspector, the requirements for construction inspection services shall be clearly defined and the amount the Recipient is required to pay for such services shall be stated.

Y N Be responsible for any damages arising from any defects in design or negligence in the performance of the construction inspector, if the inspector is furnished by the Architect/Engineer. (EDA recommends that the Architect/Engineer be required to take insurance, when available, to cover liability for such damages).

Y N Supervise any required subsurface explorations such as borings, soil tests, and the like, to determine amounts of rock excavation or foundation conditions, no matter whether they are performed by the Architect/Engineer or by others paid by the Recipient.

Y N Attend bid openings, prepare and submit tabulation of bids, and make a recommendation as to contract award.

Y N Review proof of bidder's qualifications and recommend approval or disapproval.

Y N Prepare and submit proposed contract change orders when applicable. There shall be no charge to the Recipient when the change order is required to correct errors or omissions by the Architect/Engineer. (To be eligible for EDA participation the specific change order must have written approval from EDA and must have some form of cost or price analysis performed by the Recipient or the Architect/Engineer).

Y N Submit a report not less frequently than quarterly to the Recipient covering the general progress of the job and describing any problems or factors contributing to delay.

Y N Review and approve the contractor's schedule of amounts for contract payment.

Y N Certify partial payments to contractors.

Y N Assure that a ten percent (10%) retainage is withheld from all payments on construction contracts until final acceptance by the Recipient and approval by the EDA Regional Office, unless State or local law provides otherwise.

Y N Prepare ''as-built'' or record drawings after completion of the project. Reproducible originals will be furnished to the Recipient within 60 days after all construction has been completed and the final inspection has been performed. (One set of copies shall be furnished to the EDA Regional Office only if requested by the Regional Office).

Y N Review and approve the contractor's submission of samples and shop drawings, where applicable.

Y N Comply with all Federal statutes relating to nondiscrimination. These include but are not limited to:

1. Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color, or national origin;
2. Section 112 of PL 92–45 and Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683, and 1685–1686) which prohibits discrimination on the basis of sex;
3. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794) which prohibits discrimination on the basis of handicaps;
4. The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101–6107) which prohibits discrimination because of age;
5. The Drug Abuse Office and Treatment Act of 1972 (P.L. 93–255), as amended, relating to non-discrimination on the basis of drug abuse;
6. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to non-discrimination on the basis of alcohol abuse or alcoholism;
7. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
8. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et. seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing;
9. Any other non-discrimination provisions in the specific statute(s) under which the application for Federal assistance is being made; and
10. The requirements of any other non-discrimination statute(s) which may apply.

Y N Incorporate into the proposed construction contract documents a designation of all of the different types of construction which will be used for the project; such as Building, Heavy or Highway in accordance with all local and State laws and practices. For this purpose either the plans, the specifications or both shall clearly delineate where each type stops and another starts.

Y N Consider in the establishment of the compensation any cost savings that may be realized through multiple use of the same design.

Y N Provide in all proposed construction contracts deductive alternates which can be taken, if necessary, to reduce the bid price so that the lowest responsive bid for construction of the project will not exceed the funds available.

Y N Design the facility to comply with the Americans with Disabilities Act (ADA) (P.L. 101–336) and the Accessibility Guidelines for Buildings and Facilities, as amended, (36 CFR Part 191 and Executive Order 12699.

Y N Design for seismic safety in accordance with Executive Order 12699 which imposes requirements that federally assisted facilities be designed and constructed in accordance with the 1991 ICBO Uniform Building Code or 1992 Supplement to the BOCA National Building Code and/or 1991 Amendments to the SBCC Standard Building Code.

Y N Provide sufficient plans, specifications, bid sheets, cost estimates, design analysis, and other contract documents required for the project. The number of copies to be furnished by the Architect/Engineer as part of his/her compensation for basic services shall be specified in the agreement.

Y N Use forms for instructions to bidders, general conditions, contract, bid bond, performance bond, and payment bond which meet EDA requirements. All proposed contract documents are subject to EDA approval. (Documents contained in ''Contract Documents for Construction of Federally Assisted Water and Sewer Projects'' are acceptable for this purpose).

The name and address of the Architect/Engineer is: _____

Y N The Architect/Engineer will perform project inspection services. If not, provide the name and address of the firm or person that will provide project construction inspection services:

_____

The contract price for Basic Services is $ ____
The contract price for Extra Services is $ ____
The contract price for inspection services is $. _____
The number of proposals received were ____
The number of bidders disqualified were __

_____
Recipients Authorized Representative

_____
Date

Checklist for Construction Contracts

Although the use of this checklist is not mandatory, its use by the Recipient will expedite EDA's review of the construction contract. When used by the Recipient, it should be submitted to EDA at or before the invitation for construction contract bids is published. EDA reserves the right to perform a pre-award review of the proposed procurement documents or a review of the executed contract documents at any time within the record retention time frame. The appropriate responses should be circled in ink and the authorized representative of the Recipient should sign the form where indicated.

The following documents are included in the invitation for bids:

Y N An index
Y N The advertisement for bids
Y N The information for bidders
Y N The bid form
Y N The contract form
Y N EDA's Supplemental General Conditions (to be furnished by EDA)
Y N The recipient's general conditions
Y N The technical specifications
Y N The working drawings
Y N The applicable wage rates (to be furnished by EDA)
Y N Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity (to be furnished by EDA)

The bid documents contain the following provisions:

Y N Details of how the successful bidder will be selected

Y N Actions to be taken by the Recipient if the lowest bid exceeds the funds available

Y N Requirement for 5% bid bond, 100% payment bond and 100% performance bond

Y N The order in which alternates, if any, are to be taken

Y N Provisions for termination of the contract including default of the contractor and conditions beyond the control of the contractor

Y N Provisions for administrative, contractural or legal remedies for contractor breach or violation of contract terms and provision for such sanctions and penalties as may be appropriate

Y N A requirement that the contractor maintain all relevant project records for three years after the Recipient has made final payment to the contractor

Y N A requirement that the bidders submit proof of qualification to do the work called for in the contract

Y N Notice that progress payments will have a 10% retainage (unless otherwise required by State or local law)

Y N A requirement for the contractor to submit all shop drawings, samples and change orders to the Architect/Engineer and Recipient for approval

Y N A requirement for a construction progress estimate and periodic progress reports from the construction contractor

Y N A procedure for the settlement of disputes between the contractor, the contractor's subcontractors, the Architect/Engineer and the Recipient

Y N A liquidated damages provision for failure of the contractor to meet the specified construction timetable. The amount specified in the proposed contract is $—— per day

Y N The proposed design contains no materials or products specified by brand name without an ''or equal'' provision

Y N A requirement is included for compliance with Federal regulations as listed in EDA's Supplemental General Conditions, EDA's Standard Terms and Conditions to the grant award and the Special Conditions to the grant award

Y N The bidders will be limited to those on a prequalified list maintained by the Recipient. If so, explain on an attached sheet the procedure that is used to place prospective bidders on the list.

Y N Recipient furnished materials and/or equipment will be incorporated into the projects outside the construction contract. If so, attach a list of such materials and/or equipment.

Y N No part of the project construction will be accomplished by the Recipient's own forces or by labor hired directly by the Recipient for this specific project. If so, contact the EDA regional office for further guidance

Y N The contract is solely for the EDA project. If non-EDA work is included, contact the EDA regional office for further guidance.

Y N The land, rights of way and easements required for the construction and operation of the project are owned by the Recipient or otherwise have been appropriately permitted by the responsible authorities.

Y N The Recipient's share of the project cost is on hand or immediately available.

Y N Provisions for construction inspection are in place.

Y N All applicable terms and conditions of the grant award have been satisfied. If not, please explain on an attached sheet.

Y N The scope of work for the project as described in the grant award has not changed.

The construction period specified in the proposed contract is for _____ months.

The Architect/Engineer's cost estimate for construction is $_____.

The advertising period will be from _____ to _____.

_____

Recipient's Authorized Representative

_____

Date

Checklist for Initial Grant Disbursement

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for guidance on the information the EDA regional office will need before an initial grant disbursement can be approved. The regional office may use their own version of this checklist which may or may not be required to be sent in with the initial grant disbursement request. Use of the checklist will expedite EDA processing of the initial grant disbursement.

Y N NA The EDA grant award/offer was accepted within the 15 day after receipt time limit.

Y N NA Those Special Conditions to the grant award requiring action prior to the initial grant disbursement have been satisfied.

Y N NA An architect/engineer contract has been approved by EDA.

Y N NA An unconditional ''EPA Section 106'' certificate has been secured and a copy furnished to, or received from, EDA.

Y N NA All required land, easements and rights-of-way have been secured and title opinion has been approved by EDA.

Y N NA The proposed bid documents were approved by EDA.

Y N NA The final plans, specifications and contract documents have been approved by EDA.

Y N NA All contracts required for completion of the project have been executed and approved by EDA.

Y N NA If the answer to the previous question is ''N'', a request for phasing has been made to, and approved by, EDA.

Y N NA Bid award of the construction contract was to the lowest bidder.

Y N NA The full firm name and owner's name of all contractors have been furnished to EDA for checking against the Federal debarred and ineligible list.

Y N NA The company listed as surety for the low bidder is listed on Treasury Department Circular 570 and possesses sufficient capability to insure the project.

Y N NA Davis-Bacon wage rates have been incorporated into all construction contracts.

Y N NA EDA's Supplemental General Conditions have been incorporated into all construction contracts.

Y N NA Matching funds for the Recipient's share are on hand or immediately available.

Y N NA A first lien or Property Management Agreement has been executed, recorded and submitted to EDA.

Y N NA A relocation assistance plan as required by the Uniform Relocation Assistance Act has been approved by EDA.

Y N NA Use of force account (workmen hired by the Recipient specifically for the EDA approved project) has been approved by EDA.

Y N NA Use of in-house forces (workmen who are part of the Recipient's current workforce) has been approved by EDA.

Y N NA EDA approval of the start of construction before the award of the EDA grant has been received.

Y N NA All work accomplished by change order which is part of the claim for the initial grant disbursement has been approved by EDA.

Y N NA All proposed or actual changes to the EDA approved budget have been approved by EDA.

Y N NA All project activities to the date of the initial grant disbursement request have been accomplished within the approved time schedule or EDA approved extension.

Y N NA Currently due project performance reports have been submitted to EDA.

Y N NA Tabulation of bids, bid form of the low bidder (and bid form of any bidder to whom the Recipient has made, or proposes to make to other than the lowest bidder) and certified minutes of the bid opening have been submitted to EDA.

Checklist for Project Closeout

Grant Recipient: _____

EDA Project # _____

Grant Recipient's Authorized Representative:

Name: _____

Title: _____

This checklist is for the Recipient's guidance on the information the EDA regional office will need to close out the EDA assisted project. Although its use is not mandatory, using it will expedite EDA's processing of the final grant disbursement.

Y N NA All of the Special Conditions to the EDA grant award have been satisfied and approved by the EDA regional office.

Y N NA A final inspection was performed by the Architect/Engineer and the completion of the project with all deficiencies corrected has been accepted by the Architect/Engineer in writing.

Y N NA The Recipient has accepted the project without deficiencies from the contractor.

Y N NA All currently due project progress reports have been submitted to the EDA regional office.

Y N NA The project was completed on time or an EDA approved time extension is on file.

Y N NA As-built drawings have been received from the Architect/Engineer and are on file.

Y N NA If requested by EDA, photographs of above ground facilities have been submitted to EDA.

Y N NA The Recipient understands that a warranty inspection is to be performed before the warranty expiration date and the results submitted to EDA.

Y N NA All audit issues have been resolved.

Y N NA If occupancy of the facilities by the Recipient was obtained prior to the Recipient's or Architect/Engineer's acceptance of the facility from the contractor evidence of consent of the contractor, the insurance carrier, and the surety is on file.

Y N NA Permanent insurance on the facility has been obtained.

Y N NA The Recipient is aware that project records must be retained for a minimum of three years.

Y N NA The Recipient is aware that for the EDA determined useful life of the EDA assisted facilities, all real property must be used for originally authorized purposes and the Recipient shall not dispose of or encumber its title or other interests. When the facility is no longer needed for the orignally authorized purpose and the useful life has not expired, the Recipient will request instructions from EDA. The instructions will conform to applicable DoC and EDA regulations.

Y N NA All payments due to contractors for construction, services and supplies for the project are current except for contract retainage if project has not been accepted.

Y N NA The first Post Construction Report evaluating the achievement of the Core Performance Measures listed in the Standard Terms and Conditions to the EDA grant has been submitted to EDA.

Exhibit B—Supplemental General Conditions

These Supplemental General Conditions are intended for use by Economic Development Administration Grantees. They contain specific EDA and other Federal requirements not normally found in non-Federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with EDA funds.

Supplemental General Conditions

S1 Definitions
S2 Federally Required Contract Provisions
S3 Required Provisions Deemed Inserted
S4 Inspection by EDA Representatives
S5 Construction Schedule and Periodic Estimates
S6 Contractor's Title to Material
S7 Inspection and Testing of Materials
S8 ''Or Equal'' Clause
S9 Patents
S10 Claims for Extra Cost
S11 Contractor's and Subcontractor's Insurance
S12 Contract Security
S13 Safety and Health Regulations for Construction
S14 Minimum Wages
S15 Withholding of Payments
S16 Payrolls and Basic Records
S17 Apprentices and Trainees
S18 Subcontracts
S19 Termination and Debarment
S20 Overtime Requirements
S21 Equal Employment Opportunity
S22 Other Prohibited Interests
S23 Employment of Local Labor
S24 Historical and Archeological Data Preservation Act of 1974
S25 Clean Air and Federal Water Pollution Control Act
S26 Use of Lead-Based Paints on Residential Structures
S27 Signs

Supplemental General Conditions

S–1 Definitions

The following terms as used in these Supplemental General Conditions are respectively defined as follows:

a. ''Contractor'': A person, firm, or corporation with whom this Contract is made by the Owner.

b. ''Subcontractor'': A person, firm, or corporation supplying labor and materials or only labor, for work at the site of the project, for and under separate contract or agreement with the Contractor.

c. ''Work on (at) the project'': Work to be performed at the location of the project, including the transportation of materials and supplies to or from the location of the project by employees of the Contractor and any subcontractor.

d. ''Apprentice'': (1) A person employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau; or (2) a person in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship council (where appropriate) to be eligible for probationary employment as an apprentice.

e. ''Trainee'': A person receiving on-the-job training in a construction occupation under a program which is approved (but not necessarily sponsored) by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and which is reviewed from time to time by the Manpower Administration to insure that the training meets adequate standards.

S–2 Federally Required Contract Provisions

a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold—currently fixed at $100,000, see 41 USC 403(11)).

b. Termination for cause and for convenience by the grantee including the manner by which it will be effected and the basis for settlement (All contracts in excess of $10,000).

c. Compliance with Executive Order 11246 of September 24, 1965 entitled ''Equal Employment Opportunity,'' as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by grantees and their contractors or subgrantees).

d. Compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subgrants for construction or repair).

e. Compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by grantees and subgrantees).

f. Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts awarded by grantees and subgrantees in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

g. EDA requirements and regulations pertaining to reporting.

h. EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

i. EDA requirements and regulations pertaining to copyrights and rights in data.

j. Access by the grantee, EDA, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

k. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

l. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (Contracts, subcontracts, and subgrants of amounts in excess of $ 100,000).

m. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub L. 94–163, 89 Stat. 871).

S–3 Required Provisions Deemed Inserted

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

S–4 Inspection by Economic Development Representatives

The authorized representatives and agents of the Economic Development Administration shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials and other relevant data and records.

S–5 Construction Schedule and Periodic Estimates

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver

to the Owner an estimated construction progress schedule in form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only for determining the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

S–6 Contractor's Title to Material

No materials or supplies for the work shall be purchased by the Contractor or by any subcontractor subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants that he/she has good title to all materials and supplies used by him/her in the work, free from all liens, claims or encumbrances.

S–7 Inspection and Testing of Materials

All materials and equipment used in the construction of the project shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner.

Materials of construction, particularly those upon which the strength and durability of the structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended users.

S–8 ''Or Equal'' Clause

Whenever a material, article or piece of equipment is identified on the plans or in the specifications by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard; and, any material, article or equipment of other manufacturers and vendors which will perform adequately the duties, imposed by the general design will be considered equally acceptable provided the material, article or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. It shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

S–9 Patents

The Contractor shall hold and save the owner and its officers, agents, servants and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article or appliance manufactured or used in the performance of the contract, including its use by the Owner, unless otherwise specifically stipulated in the contract documents.

License or Royalty Fee: License and/or royalty fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized licensee, directly by the Owner and not by or through the Contractor. If the Contractor uses any design, device or materials covered by letters, patent or copyright, he/she shall provide for such use by suitable agreement with the Owner of such patented or copyrighted design, device or material. It is mutually agreed and understood that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his/her Sureties shall indemnify and hold harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copyrighted design, device or materials or any trademark or copyright in connection with work agreed to be performed under this contract,and shall indemnify the Owner for any cost, expense or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

S–10 Claims for Extra Costs

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

S–11 Contractor's and Subcontractor's Insurance

The Contractor shall not commence work under this contract until he/she has obtained all the insurance required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

a. Types of insurance normally required are:

1. Workmen's Compensation.
2. Contractor's Public Liability and Property Damage.
3. Contractor's Vehicle Liability.
4. Subcontractors Public Liability, Property Damage and Vehicle Liability.
5. Builder's Risk (Fire and Extended Coverage).

b. Scope of Insurance and Special Hazards. The insurance described above shall provide adequate protection for the Contractor and his/her claims which may arise from operations under this contract, whether such operations be by the insured or by any one directly or indirectly employed by him/her and also against any of the special hazards which may be encountered in the performance of this contract.

c. Proof of Carriage of Insurance The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates and dates of expiration of policies.

S–12 Contract Security Bonds

If this contract is for an amount in excess of $100,000 the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the contract price as security for the faithful performance of this contract and also a payment bond in an amount equal to one hundred percent (100%) of the contract price or in a penal sum not less than that prescribed by State, Territorial or local law, as security for the payment of all persons performing labor on the project under this contract and furnishing materials in connection with this contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance each bond must be approved by the Economic Development Administration. If this contract is for an amount less than $100,000 the Owner will specify the amount of the payment and performance bonds.

S–13 Safety and Health Regulations for Construction

In order to protect the lives and health of his/her employees under the contract, the Contractor shall comply with all pertinent provisions of the Contract Work Hours and Safety Standards Act, as amended, commonly known as the Construction Safety Act as pertains to health and safety standards; and shall maintain an accurate record of all cases of death, occupational disease, and injury requiring medical attention or causing loss of time from work, arising out of and in the course of employment on work under the contract. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor.

The Contractor alone shall be responsible for the safety, efficiency, and adequacy of his/her plan, equipment, appliances, and methods, and for any damage which may result from their failure or their improper construction, maintenance, or operation.

S–14 Minimum Wages

All mechanics and laborers employed or working on the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949 in the construction or development of the project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and subcontractor and such laborers and mechanics; and the wage determination decision shall be posted by the Contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to

such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv).

Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

The Owner shall require that any class of laborers and mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformable to the wage determination and a report of the action taken shall be sent by the Federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the questions accompanied by the recommendation of the contracting officer shall be referred to the Secretary of Labor for final determination.

Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the Contractor is obligated to pay a cash equivalent of such a fringe benefit, the Owner shall require an hourly cash equivalent to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the Owner, shall be referred to the Secretary of Labor for determination.

If the Contractor does not make payments to a trustee or other third person, he/she may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract; provided, however, the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

S–15 Withholding of Payments

The Economic Development Administration may withhold or cause to be withheld from the Contractor as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the Contractor or any subcontractor on the work, the full amount of wages required by the contract in accordance with the Davis-Bacon Act. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee employed or working on the project site or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project, all or part of the wages required by the contract, the Economic Development Administration may, after written notice to the Contractor, sponsor, applicant, or Owner, take action as may be necessary to cause the suspension of any further payment, advance, or guaranty of funds until such violations have ceased.

S–16 Payrolls and Basic Records

Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the EDA project site, or under the United States Housing Act of 1937 or under the Housing Act of 1949, in the construction or development of the project. Such records shall contain the name and address of each employee, his/her correct classification, rate of pay (including contributions or costs anticipated of the types described in Section 9(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan program described in Section 1(b)(2)(B) of the Davis-Bacon Act the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, plus records which show the costs anticipated or the actual cost incurred in providing such benefits.

The Contractor shall submit weekly a copy of all payrolls to the Owner on DOL Form WH–347 or equivalent. The copy shall be signed on the reverse side by the employer or his/her agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he/she performed. This submission is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 20 CFR 5.5(a)(1)(iv) shall satisfy this requirement. The Prime Contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The Contractor shall make the records required under the labor standards clause of the contract available for inspection by authorized representatives of the Economic Development Administration and the Department of Labor, and shall permit such representatives to interview employees during working hours on the job.

S–17 Apprentices and Trainees

Apprentices will be permitted to work as such only when they are registered, individually, under a bona fide apprenticeship program registered with a State apprenticeship agency which is recognized by the Bureau of Apprenticeship and Training, U.S. Department of Labor; or, if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the Contractor as to his/her entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not a trainee as defined in Section S–1e herein and is not registered as above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The Contractor or subcontractor shall be required to furnish to the Owner written evidence of the registration of his/her program and apprentices as well as of the appropriate ratios and wage rates for the area of construction prior to using any apprentices on the contract work.

Trainees will be permitted to work as such when they are bona fide trainees employed pursuant to a program approved by the U.S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, and when the subparagraph below is applicable, in accordance with the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations.

On contracts in excess of $10,000, the employment of all laborers and mechanics, including apprentices and trainees, as defined in Section 29 CFR 5.5 shall also be subject to the provisions of Part 5, Subpart A, Title 29, Code of Federal Regulations. Apprentices and trainees shall be hired in accordance with the requirements of Part 5, Subpart A. The provisions of Sections S–14, S–15, and S–17 shall be applicable to every invitation for bids, and to every negotiation, request for proposals, or request for quotations, for an assisted construction contract, and to every such contract entered into on the basis of such invitation or negotiation. Part 5, Subpart A, Title 29, Code of Federal Regulations shall constitute the conditions of each assisted contract in excess of $10,000, and each Owner concerned shall include these conditions or provide for their inclusion, in each such contract. These ''Supplemental General Conditions'' shall also be included in each such contract.

S–18 Subcontracts

The Contractor shall insert in any subcontracts these same ''Supplemental General Conditions.''

S–19 Termination and Debarment

A breach of any one of the Sections S–15 through S–18 may be considered by the Owner and by the Economic Development Administration as grounds for termination of the contract and for debarment as provided in 29 CFR 5.6.

S–20 Overtime Requirements

No Contractor nor any subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any workweek in which he/she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic

rate of pay for all hours in excess of forty hours in such workweek.

In the event of any violation of the clause set forth in the subsection above, the Contractor and any subcontractor responsible therefor, shall be liable to any affected employee for his/her unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or territory, to such District of Columbia or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth above in the sum of $10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth above.

The Economic Development Administration may withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth above.

The Contractor shall insert in all subcontracts the clause set forth above in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts that may, in turn, be made.

S–21 Equal Employment Opportunity

No person in the United States shall, on the grounds of race, color, national origin, age, physical handicap, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance; Reference Title VI of the Civil Rights Act of 1964 (42 USC 2000d) and Section 112 of Public Law 92–65, Age Discrimination Act of 1975 (42 USC 6102) and Section 504 of the Rehabilitation Act of 1973 (26 USC 794).

Form ED–503. The Owner and all Contractors, subcontractors, suppliers, leasees and other parties directly participating in the Recipient's project agree that during and in connection with the associated agreement relating to the Federally assisted program, (i) they will comply, to the extent applicable, as Contractors, subcontractors, lessees, suppliers, or in any other capacity, with the applicable provisions of 13 CFR 311 and the Regulations of the United States Department of Commerce (Part 8 of Subtitle A of Title 15 of the Code of Federal Regulations) issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88–352), and will not thereby discriminate against any person on the grounds of race, sex, color, age, or national origin in their employment practices, in any of their own contractual agreements, in all services or accommodations which they offer to the public, and in any of their other business operations, (ii) they will provide information required by or pursuant to said Regulations to ascertain compliance with the Regulations and these assurances, and (iii) their non-compliance with the nondiscrimination requirements of said Regulations and these assurances shall constitute a breach of their contractual arrangements with the Owner whereby said agreements may be canceled, terminated or suspended in whole or in part or may be subject to enforcement otherwise by appropriate legal proceedings.

Executive Order 11246, 3 CFR 339 (1965) (Equal Opportunity Clause). During the performance of this contract, the Contractor agrees as follows:

a. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, handicap, or national origin. The Contractor shall take affirmative action to ensure the applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, handicap or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b. The Contractor agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the Grantee setting forth the provisions of this nondiscrimination clause.

c. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants shall receive consideration for employment without regard to race, color, religion, sex, or national origin.

d. A notice to be provided by the Grantee shall be sent to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract of understanding, advertising the labor union or workers' representative of the Contractor's commitment under Section 202 of Executive Order No. 11246 of September 24, 1965, and copies of the notice shall be posted in conspicuous places available to employees and applicants for employment.

e. The Contractor shall comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of rules, regulations, and relevant orders of the Secretary of Labor.

f. The Contractor shall furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the Economic Development Administration and the Secretary of Labor for purpose of investigation to ascertain compliance with such rules, regulations, and orders. Each Contractor and subcontractor of federally assisted construction work is required to file an Equal Employment Opportunity Employer Information Report (EEO–1) on Standard Form 100, annually on March 31. Forms and instructions are available at the EDA Regional Offices.

g. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed (and remedies involved) as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

h. The Contractor shall include the provisions of paragraphs a. through g. in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 203 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall take such action with respect to any subcontractor or purchase order as the Economic Development Administration may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the Grantee/Borrower, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

i. Exemptions to Above Equal Opportunity Clause (41 CFR Chap. 60):

(1) Contracts and subcontracts not exceeding $10,000 (other than Government bills of lading) are exempt. The amount of the contract, rather than the amount of the Federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding $10,000 for standard commercial supplies or raw materials are exempt.

Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246 et seq)

1. As used in these specifications:

a. ''Covered area'' means the geographical area described in the solicitation from which this contract resulted;

b. ''Director'' means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. ''Employer identification number'' means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941.

d. ''Minority'' includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South

American or other Spanish Culture or origin, regardless of race);

2. Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands);

a. American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

3. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of $l0,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

4. If the Contractor is participating (pursuant to 41 CFR 60–4.5) in a Hometown Plan approved by the U. S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to make good faith efforts to achieve the Plan goals and timetables.

5. The Contractor shall implement the specific affirmative action standards provided in Paragraphs 7a through p of these specifications. The goals set for the Contractor in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

6. Neither the provisions of any collective bargaining agreement nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

7. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

8. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority and female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Regional Director when the union or unions, with which the Contractor has a collective bargaining agreement, have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under Paragraph 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, Supervisors, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, and providing written notification to, and discussing the Contractor's EEO policy with, other Contractors and subcontractors with whom the Contractor anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after-school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.

k. Validate all tests and other selection requirements where there is an obligation to do so under 14 CFR Part 60–3.

l. Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment-related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from

minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (Paragraph 7a through p). The efforts of a contractor association, joint contractor-union, contractor community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under Paragraph 7a through p of these Specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and nonminority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in Paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations or these specifications, the Director shall proceed in accordance with 41 CFR 60–4.8.

14. The Contractor shall designate a responsible official to monitor all employment-related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof, as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. The goals for minority and female participation in each trade will be furnished by the Economic Development Administration of the U.S. Department of Commerce.

S–22 Other Prohibited Interests

No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part hereof. No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the project, shall become directly or indirectly interested personally in this contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the project.

S–23 Employment of Local Labor

a. The maximum feasible employment of local labor shall be made in the construction of public works and development facility projects receiving direct Federal grants. Accordingly, every Contractor and subcontractor undertaking to do work on any such project which is or reasonably may be done as on-site work, shall employ, in carrying out such contract work, qualified persons who regularly reside in the designated area where such project is to be located, or in the case of Economic Development Centers, qualified persons who regularly reside in the center or in the adjacent or nearby redevelopment areas within the Economic Development District, except:

(1) To the extent that qualified persons regularly residing in the designated area or Economic Development District are not available.

(2) For the reasonable needs of any such Contractor or subcontractor, to employ supervisory or specially experienced individuals necessary to assure an efficient execution of the Contract.

(3) For the obligation of any such Contractor or subcontractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that in no event shall the number of non-resident persons employed under this subparagraph exceed twenty percent of the total number of employees employed by such Contractor and his/her subcontractors on such project.

b. Every such Contractor and subcontractor shall furnish the United States Employment Service Office in the area in which a public works or development facility project is located with a list of all positions for which it may from time to time require laborers, mechanics, and other employees, the estimated numbers of employees required in each classification, and the estimated dates on which such employees will be required.

c. The Contractor shall give full consideration to all qualified job applicants referred by the local employment service, but it is not required to employ any job applicants referred whom the Contractor does not consider qualified to perform the classification of work required.

d. The payrolls maintained by the Contractor shall contain the following information: full name, address, and social security number and a notation indicating whether the employee does, or does not, normally reside in the area in which the project is located, or in the case of an Economic Development Center, in such center or in an adjacent or nearby redevelopment area within the Economic Development District, as well as an indication of the ethnic background of each worker.

e. The Contractor shall include the provisions of this condition in every subcontract for work which is, or reasonably may be, done as on-site work.

S–24 Historical and Archaeological Data Preservation Act Requirements

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction, to consult

with the State Historic Preservation Officer for recovery of the items. Reference: National Historic Preservation Act of 1966 (80 Stat 915, 16 USC 470) and Executive Order No. 11593 of May 31, 1971.

S–25 Clean Air Act of 1970, Et Seq. and Federal Water Pollution Control Act as Amended by the Clean Water Act of 1977

The Contractor agrees to comply with Federal clean air and water standards during the performance of this contract and specifically agrees to the following:

a. The term ''facility'' means any building, plant, installation, structure, mine, vessel or other floating craft, location or site of operations; owned, leased, or supervised; by the Contractor and the subcontractors; for the construction, supply and service contracts entered into by the Contractor;

b. Any facility to be utilized in the accomplishment of this contract is not listed on the Environmental Protection Agency's List of Violating Facilities pursuant to 40 CFR, Part 15.20;

c. In the event a facility utilized in the accomplishment of this contract becomes listed on the EPA list, this contract may be canceled, terminated, or suspended in whole or in part;

d. It will comply with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 and Section 308, respectively, and all regulations and guidelines issued thereunder;

e. It will promptly notify the Government of the receipt of any notice from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that any facility utilized or to be utilized in the accomplishment of this contract is under consideration for listing on the EPA List of Violating Facilities;

f. It will include the provisions of Paragraphs a. through g. in every subcontract or purchase order entered into for the purpose of accomplishing this contract, unless otherwise exempted pursuant to the EPA regulations implementing the Air or Water Acts above (40 CFR, Part 15.5), so that such provisions will be binding on each subcontractor or vendor;

g. In the event that the Contractor or the subcontractor for the construction, supply and service contracts entered into for the purpose of accomplishing this contract were exempted from complying with the above requirements under the provisions of 40 CFR, Part 15.5 (a), the exemption shall be nullified should the facility give rise to a criminal conviction (see 40 CFR 15.20) during the accomplishment of this contract. Furthermore, with the nullification of the exemption, the above requirements shall be effective. The Contractor shall notify the Government, as soon as the Contractors' or the subcontractors' facility is listed for having given rise to a criminal conviction noted in 40 CFR, Part 15.20.

S–26 Use of Lead-Based Paints on Residential Structures

If the work under this contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (see 42 U.S.C. 4831). The Contractor shall assure that paint used on the project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

a. For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.00006) lead by weight.

b. For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

As a condition to receiving assistance under the Act, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of Federal funds.

Definitions

1. ''Applicable surfaces'' are those exterior surfaces which are readily accessible to children under 7 years of age.

2. ''Residential structures'' means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under 7 years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

S–27 EDA Signs

The Contractor shall supply, erect, and maintain a project sign according to the specifications set forth below:

EDA Site Sign Specifications

Size: Sign A: 4′ x 8′ x 1⅞″ Sign B: 4′ x 8′ x ¾″

Materials: Face: Sign A: ¼″ tempered Masonite; Sign B: ¾″ or greater shop sanded (exterior) Plywood (one side only)

Framing: Sign A: 2″ x 4″ nominal on four sides and center cross bracing; Sign B: 2″ x 4″ center cross bracing only

Supports: 4″ x 4″ x 12′ nominal post

Assembly: Sign A: 2″ x 4″ frame to fit 4′ x 8′ board with 2″ x 4″ cross braces; Sign B: To be mounted directly to the 4″ x 4″ post, with cross bracing

Mounting: Signs A and B are to be mounted to the 4″ x 4″ post with a ⅜″ minimum bolt and nut, four on each side of the sign. Each bolt is to have two washers, one between the sign and the head of the bolt and the other between the post and the nut.

Erection: 4″ x 4″ posts are to be set three to four feet deep into concrete 12″ in diameter.

Paint: Face: Three coats outdoor enamel (sprayed); Rear: One coat outdoor enamel (sprayed)

Colors: Crimson Red, Stark White and Royal Blue. Specifically, white background; ''JOBS'' in red; ''for your community'' in blue; ''EDA'' logo and ''PROVIDED BY EQUAL OPPORTUNITY EMPLOYERS, in partnership with the U.S. DEPARTMENT OF COMMERCE—Economic Development Administration'' in black. ''By working together we can provide economic opportunities for Americans'' in black.

Lettering: Silk screen enamels. Lettering sizes and positioning will be as illustrated.

Project signs will not be erected on public highway rights-of-way.

Location and height of signs will be coordinated with the agency responsible for highway or street safety in the area, if any possibility exists for obstruction to traffic line of sight.

If, at the end of the project, the sign is reusable, it shall be disposed of as directed by the EDA Regional Office.

Whenever EDA Site Sign specifications conflict with State law or local ordinances, the EDA Regional Director may modify such conflicting specifications so as to comply with that State law or local ordinance.

BILLING CODE 3510–24–P

SAMPLE

U,S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS

Part One
Certificate of Engineer

I, the undersigned Engineer, certify that I am familiar with the design of the

_____
(Name/Type of Facility)

being constructed by the _____
(Name of Owner)

as part of EDA Project Number _____ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way hereinafter described and existing public streets and roads. I further certify that the land, leasehold interest and rights-of-way being purchased as hereinafter described are sufficient but not in excess of actual needs for the Project as planned and approved by the Owner.

1. Fee Title or a long term leasehold interest is required for the following property (Project elements constructed above ground should be on land owned in Fee. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed thereon, i.e., tank site, pumping station, treatment plant, etc.; if more space is needed use additional sheets marked 'Exhibit A"):

2. The following easements and rights-of-way will be required for this Project (Describe each easement and right**of-way,** whether presently owned or to be acquired, Describe **by** courses and distances and by name of Owner, including area in acres; if more space is needed use additional sheets marked "Exhibit B'):

3. The following state, railroad, highway or other permits will be required (Describe location and name of permitter; if more space is needed use additional sheets marked 'Exhibit C'):

WITNESS MY HAND, this the _____ day of _____, 19___

_____
Registered Professional Engineer

Telephone No. _____

_____
Address

_____
City State

(TO BE COMPLETED BY ARCHITECT/ENGINEER AND FORWARDED TO OWNER'S ATTORNEY)

Part Two
Title Opinion

I, _____Attorney-at-Law,

representing _____
(hereinafter the 'Owner') do hereby certify that:

1. I have examined the public record of _____ County, _____
State
from the period of _____, 19___ to _____ 19___ (which period of time should be at least 40 years). Based upon said examination, I find and am of the opinion that _____ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances and objections (if none write 'None'):

Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that all easements or rights-of-way described in Part One as being needed for the noted Project have been acquired by the Owner, that all long term leases described in Part One as being needed for the noted Project have been entered into by the Owner, that I have examined the instruments creating the easements, rights-of-way, or long term leases described in Part One, and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

I certify that I have examined the public records for the purpose of ascertaining that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination,is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.

4. All permits described in Part One as being needed for this Project have been obtained and I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.

5. Remarks and Explanations:

_____ _____
Date **Attorney-at-Law**

Telephone No. _____

_____ _____ _____
Address **City** State

- It is the sole responsibility of the Recipient/Grantee of the EDA grant award to provide a legal opinion verifying that the Recipient/Grantee has good title to all property required for completion of the Project as defined by the grant award.
- A long term leasehold interest is acceptable only if held by the Recipient/Grantee of the EDA grant award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.
- Only legal descriptions of the property described herein should be attached to this form.
- If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.
- EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

BILLING CODE 3510–24–C

Notice

This attached Exhibit D, ''Agreement and Mortgage'' is furnished as a sample. The actual form which the Recipient may be required to sign may differ from the sample dependent upon the type of property, the form of ownership, and the intent of the EDA assisted project (Check with the Regional Attorney in the EDA regional office). Attention is called to the ''useful life'', stated in terms of years, during which period the ''Agreement and Mortgage'' will remain in effect.

Agreement and Mortgage

WHEREAS, _____ (hereinafter called ''Mortgagor''), whose address is _____ has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (EDA), whose address is _____ a grant in the amount of _____ and No/100 Dollars ($) (Grant Amount) pursuant to a Grant Agreement entered into by the parties on _____, and bearing EDA Project Number ____-____-____ (the Project); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said grant and pursuant to the Grant Agreement, the Grant Amount is to be used for the purpose of making improvements consisting of _____ on the real Property described in Exhibit ''A,'' attached hereto and made a part hereof (the Property); and

WHEREAS, any transfer or conveyance of a Project by an EDA Grantee must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3121, is not authorized to permit transfer or conveyance of a Project to parties which are not eligible to receive EDA grants unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA grant was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid grant from EDA provides that the authorized purpose for which the Grant Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, *inter alia*, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Grant Agreement, or use the Property for purposes other than and different from those purposes set forth in the Grant Agreement and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 CFR Part 314, or by 15 CFR Part 24 or by Office of Management and Budget Circular A–110, Attachment N (the OMB Circular); and

WHEREAS, the value of EDA's right to repayment under the terms of 15 CFR Part 24 and OMB Circular A–110 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Grant Agreement, 15 CFR Part 24, OMB Circular A–110 or 13 CFR Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Grant Agreement or in violation of the regulations set forth in 13 CFR Part 314, 15 CFR Part 24, or OMB Circular A–110, as such Grant Agreement, regulations or Circular may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect years from the date hereof, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement shall be the Grant Amount or the amount actually disbursed or an amount determined pursuant to 13 CFR Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Grant Agreement, 15 CFR Part 24, OMB Circular A-110, or 13 CFR Part 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Grant Application and Grant Agreement authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the grant; said lease arrangements will provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and that the proposed Lessee is providing adequate compensation to Mortgagor for said lease. Any lease agreements entered into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges; Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term ''extended coverage.'' The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its grant percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage—Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, and after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may be enforced by the Secretary of Commerce of the United States of America, the Assistant

Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument which can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared to be severable.

IN WITNESS WHEREOF, Mortgagor has hereunto set its hand and seal on this the _____ day of _____19, _____.

WITNESS:

_____

_____

_____

By: _____

Mortgagor

Its: _____

STATE OF

COUNTY OF

The foregoing instrument was acknowledged before me, a Notary Public in and for said County and State, this day of _____ 19_____, by the _____ on behalf of said

_____

Notary Public

My commission expires _____

Notice of Requirements for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246 and 41 CFR Part 60–4)

The following notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000.

The Offerer's or Bidder's attention is called to the ''Equal Opportunity Clause'' and the ''Standard Federal Equal Employment Opportunity Construction Contract Specifications'' set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation for each trade
	* Insert goals for each year.	* Insert goals for each year.

* Goals to be furnished by EDA.

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed.

The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade. The Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR 60–4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the appropriate Regional Office of the Office of Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

As used in this notice, and in the contract resulting from this solicitation, the ''covered area'' is (insert description of the geographical area where the contract is to be performed giving the state, county and city, if any).

BILLING CODE 3510–24–P

ADVERTISEMENT FOR BIDS

_____
Owner

_____
Address

_____

Separate sealed BIDS for the construction of (briefly describe nature, scope, and major elements of the work)_____

_____

will be received by _____

at the office of _____

until _____, (Standard Time -- Daylight Savings Time) _____,

19_____, and then at said office publicly opened and read aloud.

The CONTRACT DOCUMENTS may be examined at the following locations:

_____

_____

_____

_____

Copies of the CONTRACT DOCUMENTS may be obtained at the office of _____

_____ located at_____

upon payment of $ _____ for each set.

Any BIDDER, upon returning the CONTRACT DOCUMENTS promptly and in good condition, will be refunded his payment, and any non-bidder upon so returning the CONTRACT DOCUMENTS will be refunded $ _____.

_____ _____
Date

Exhibit F-1

BILLING CODE 3510–24–C

Information for Bidders

BIDS will be received by _____ (herein called the ''OWNER''), at _____ until _____, 19_____, and then at said office publicly opened and read aloud.

Each BID must be submitted in a sealed envelope, addressed to _____ at _____. Each sealed envelope containing a BID must be plainly marked on the outside as BID for _____ and the envelope should bear on the outside the name of the BIDDER, his address, his license number if applicable and the name of the project for which the BID is submitted. If forwarded by mail, the sealed envelope containing the BID must be enclosed in another envelope addressed to the OWNER at _____.

All BIDS must be made on the required BID form. All blank spaces for BID prices must be filled in, in ink or typewritten, and the BID form must be fully completed and executed when submitted. Only one copy of the BID form is required.

The OWNER may waive any informalities or minor defects or reject any and all BIDS. Any BID may be withdrawn prior to the above scheduled time for the opening of BIDS or authorized postponement thereof. Any BID received after the time and date specified shall not be considered. No BIDDER may withdraw a BID within 60 days after the actual date of the opening thereof. Should there be reasons why the contract cannot be awarded within the specified period, the time may be extended by mutual agreement between the OWNER and the BIDDER.

BIDDERS must satisfy themselves of the accuracy of the estimated quantities in the BID Schedule by examination of the site and a review of the drawings and specifications including ADDENDA. After BIDS have been submitted, the BIDDER shall not assert that there was a misunderstanding concerning the quantities of WORK or of the nature of the WORK to be done.

The OWNER shall provide to BIDDERS prior to BIDDING, all information which is pertinent to, and delineates and describes, the land owned and rights-of-way acquired or to be acquired.

The CONTRACT DOCUMENTS contain the provisions required for the construction of the PROJECT. Information obtained from an officer, agent, or employee of the OWNER or any other person shall not affect the risks or obligations assumed by the CONTRACTOR or relieve him from fulfilling any of the conditions of the contract.

Each BID must be accompanied by a BID bond payable to the OWNER for five percent of the total amount of the BID. As soon as the BID prices have been compared, the OWNER will return the BONDS of all except the three lowest responsible BIDDERS. When the Agreement is executed the bonds of the two remaining unsuccessful BIDDERS will be returned. The BID BOND of the successful BIDDER will be retained until the payment BOND and performance BOND have been executed and approved, after which it will be returned. A certified check may be used in lieu of a BID BOND.

A performance BOND and a payment BOND, each in the amount of 100 percent of the CONTRACT PRICE, with a corporate surety approved by the OWNER, will be required for the faithful performance of the contract.

Attorneys-in-fact who sign BID BONDS or payment BONDS and performance BONDS must file with each BOND a certified and effective dated copy of their power of attorney.

The party to whom the contract is awarded will be required to execute the Agreement and obtain the performance BOND and payment BOND within ten (10) calendar days from the date when the NOTICE OF AWARD is delivered to the BIDDER. The NOTICE OF AWARD shall be accompanied by the necessary Agreement and BOND forms. In case of failure of the BIDDER to execute the Agreement, the OWNER may at his option consider the BIDDER in default, in which case the BID BOND accompanying the proposal shall become the property of the OWNER.

The OWNER within ten (10) days of receipt of acceptable performance BOND, payment BOND, and Agreement signed by the party to whom the Agreement was awarded shall sign the Agreement and return to such party an executed duplicate of the Agreement. Should the OWNER not execute the Agreement within such period, the BIDDER may by WRITTEN NOTICE withdraw his signed Agreement. Such notice of withdrawal shall be effective upon receipt of the notice by the OWNER.

The NOTICE TO PROCEED shall be issued within ten (10) days of the execution of the Agreement by the OWNER. Should there be reasons why the NOTICE TO PROCEED cannot be issued within such period, the time may be extended by mutual agreement between the OWNER and the CONTRACTOR. If the NOTICE TO PROCEED has not been issued within the ten (10) day period or within the period mutually agreed upon, the CONTRACTOR may terminate the Agreement without further liability on the part of either party.

The OWNER may make such investigations as he deems necessary to determine the ability of the BIDDER to perform the WORK, and the BIDDER shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any BID if the evidence submitted by, or investigation of, such BIDDER fails to satisfy the OWNER that such BIDDER is properly qualified to carry out the obligations of the Agreement and to complete the WORK contemplated therein.

A conditional or qualified BID will not be accepted.

Award will be made to the lowest responsible BIDDER.

All applicable laws, ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the PROJECT shall apply to the contract throughout.

Each BIDDER is responsible for inspecting the site and for reading and being thoroughly familiar with the CONTRACT DOCUMENTS. The failure or omission of any BIDDER to do any of the foregoing shall in no way relieve any BIDDER from any obligation in respect to his BID.

Further, the BIDDER agrees to abide by the requirements under Executive Order No. 11246, as amended, including specifically the provisions of the equal opportunity clause set forth in the SUPPLEMENTAL GENERAL CONDITIONS.

The low BIDDER shall supply the names and addresses of major material SUPPLIERS and SUBCONTRACTORS when requested to do so by the OWNER.

Inspection trips, for prospective BIDDERS will leave from the office of the

_____

The ENGINEER is _____. His address is _____.

Bid

Proposal of _____ (hereinafter called ''BIDDER''), organized and existing under the laws of the State of _____ doing business as _____.*

To the _____ (hereinafter called ''OWNER'').

In compliance with your Advertisement for Bids, BIDDER hereby proposes to perform all WORK for the construction of _____ in strict accordance with the CONTRACT DOCUMENTS, within the time set forth therein, and at the prices stated below.

By submission of this BID, each BIDDER certifies, and in the case of a joint BID each party thereto certifies as to his own organization, that this BID has been arrived at independently, without consultation, communication, or agreement as to any matter relating to this BID with any other BIDDER or with any competitor.

BIDDER hereby agrees to commence WORK under this contract on or before a date to be specified in the NOTICE TO PROCEED and to fully complete the PROJECT within _____ consecutive calendar days thereafter. BIDDER further agrees to pay as liquidated damages, the sum of $_____ for each consecutive calendar day thereafter as provided in section 15 of the General Conditions.

BIDDER acknowledges receipt of the following ADDENDUM:

_____

_____

BILLING CODE 3510–24–P

* Insert ''a corporation'', ''a partnership'', or ''an individual as applicable.

BIDDER agrees to perform all the work described in the CONTRACT DOCUMENTS for the following unit prices or lump sum:

BID SCHEDULE

NOTE: BIDS shall include sales tax and all other applicable taxes and fees.

NO.	ITEM	UNIT	UNIT PRICE	AMOUNT	TOTAL PRICE

TOTAL OF BID .....$ _____
LUMP SUM PRICE (if applicable) .....$_____

Respectfully submitted:

_____ _____
Signature Address

_____ _____
Title Date

_____ _____
License Number (if applicable)

(SEAL -- if bid is a corporation)

Attest _____

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____

_____ as Principal, and

_____ as Surety, are hereby held and firmly

bound unto_____ as OWNER in the penal sum of _____

_____

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19_____.

The Condition of the above obligation is such that whereas the Principal has submitted to

_____ a certain BID, attached hereto and

hereby made a part hereof to enter into a contract in writing, for the

_____

_____

_____

NOW, THEREFORE,

(a) If said BID shall be rejected, or

(b) If said BID shall be accepted and the Principal shall execute and deliver a con-tract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

_____
Surety

By:_____

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the project is located.

Exhibit F-4

AGREEMENT

THIS AGREEMENT, made this _____day of _____, 19_____, by

and between _____ (hereinafter called "OWNER"),
(Name of Owner), (an Individual)

and _____ doing business as (an individual,) or (a partnership.) or (a corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____

_____

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.

3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PRO-CEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.

4. The CONTRACTOR agrees to perform all of the WORK described in the CON- TRACT DOCUMENTS and comply with the terms therein for the sum of $_____, or as shown in the BID schedule.

5. The term "CONTRACT DOCUMENTS" means and includes the following:

(A) Advertisement for BIDS

(B) Information for BIDDERS

(C) BID

(D) BID BOND

(E) Agreement

(F) General Conditions

(G) SUPPLEMENTAL GENERAL CONDITIONS

(H) Payment BOND

(I) Performance BOND

(J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by_____ numbered____

_____through _____, and dated_____, 19_____

(N) SPECIFICATIONS prepared or issued by_____

_____

dated _____, 19_____

(O) ADDENDA:

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

No. _____, dated_____, 19_____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be deemed
(Number of Copies)
an original on the date first above written.

OWNER:

_____

BY _____

Name _____
(Please Type)

Title _____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

Title _____

CONTRACTOR:

_____

BY _____

Name _____
(Please Type)

Address _____

_____

(SEAL)

ATTEST:

_____

Name _____
(Please Type)

_____

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____ (Corporation, Partnership, or Individual) _____, hereinafter called Principal, and

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of_____

_____Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ (Number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 19_____.

ATTEST: _____ Principal

_____ Principal Secretary By _____ (s)

(SEAL)

_____ (Witness as to Principal) _____ (Address)

_____ (Address) _____

_____ _____ Surety

ATTEST:

_____ Surety Secretary

(SEAL)

_____ (Witness as to Surety) By _____ Attorney-in-Fact

_____ (Address) _____ (Address)

_____ _____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

_____
(Name of Contractor)

_____
(Address of Contractor)

a _____, hereinafter called Principal, and
(Corporation, Partnership, or Individual)

_____
(Name of Surety)

_____
(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

_____
(Name of Owner)

_____
(Address of Owner)

hereinafter called OWNER, in the penal sum of_____

_____Dollars, ($_____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19___, a copy of which is hereto attached and made a part hereof for the construction of:

_____

_____

_____

_____

NOW THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CON-TRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ (Number) counterparts, each one of which shall be deemed an original, this the _____ day of _____, 19_____.

ATTEST: _____ Principal

_____

By _____ (s) Principal Secretary

(SEAL)

_____ (Address)

_____

_____ (Witness as to Principal)

_____ (Address)

_____ _____ Surety

ATTEST: By _____ Attorney-in-Fact

_____ (Witness as to Surety) _____ Address

_____ (Address) _____

_____

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

BILLING CODE 3510–24–C

General Conditions

1. Definitions

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA—Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID—The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER—Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS—Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER—A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS—The contract, including Advertisement For Bids, Information for Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE—The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME—The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR—The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS—The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER—The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER—A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD—The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED—Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER—A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT—The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE—The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS—All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS—A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR—An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the work at the site.

1.22 SUBSTANTIAL COMPLETION—That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS—Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER—Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK—All labor necessary to produce the con struction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE—Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. Additional Instructions and Detail Drawings

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. Schedules, Reports and Records

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. Drawings and Specifications

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site

conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. Shop Drawings

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. Materials, Services and Facilities

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. Inspection and Testing

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. Substitutions

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. Patents

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. Surveys, Permits, Regulations

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and

comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. Protection of Work, Property and Persons

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. Supervision by Contractor

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. Changes in the Work

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. Changes in Contract Price

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

(a) Unit prices previously approved.

(b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. Time For Completion and Liquidated Damages

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather: and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. Correction of Work

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. Subsurface Conditions

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS: or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS

shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. Suspension of Work, Termination and Delay

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery, thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. Payments to Contractor

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER's title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably, stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached lo the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the

CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance, with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. Acceptance of Final Payment as Release

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. Insurance

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than, $500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than $500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than $200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than $200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, ''All Risk'' type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. Contract Security

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of ''Surety Companies Acceptable on Federal Bonds'' as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. Assignments

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. Indemnification

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury sickness, disease or death, or to injury to or destruction of

tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRAC-TOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. Separate Contracts

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. Subcontracting

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. Engineer's Authority

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. Land and Rights-of-Way

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. Guaranty

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL, COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. Arbitration

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Demand for arbitration shall in no event be made an any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. Taxes

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

BILLING CODE 3510–24–P

APPLICATION FOR PAYMENT

AIA DOCUMENT G702

OWNER ☐
ARCHITECT ☐
CONTRACTOR ☐
FIELD ☐
OTHER ☐

PROJECT:
(name, address)

ARCHITECT:

TO: (Owner)

DATE OF APPLICATION:
APPLICATION NO:

PERIOD FROM: TO:

State of:
County of:

The undersigned certifies that the Work herein has been completed in accordance with the Contract Documents, that all amounts have been paid for items which previous Certificates for Payment were issued and payments received, and that the current payment is now due.

Contractor

Address

By Date

Subscribed and sworn before me this
day of , 19

Notary Public:

My Commission Expires:

Application is made for Payment, as shown below, in connection with this Contract.

TOTAL COMPLETED TO DATE (F below) _____
STORED MATERIALS (see attached list) _____
TOTAL COMPLETED & STORED _____
RETAINAGE % _____
TOTAL EARNED LESS RETAINAGE _____
LESS PREVIOUS PAYMENTS _____
CURRENT PAYMENT DUE _____

ITEM NO. A	DESCRIPTION OF WORK B	SCHEDULED VALUE C	PREVIOUS APPLICATIONS D	THIS APPLICATION E	COMPLETED %	COMPLETED TO DATE F	BALANCE TO FINISH G
	SUB TOTAL OR TOTAL						

SAMPLE

U.S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION

Form Approved
Budget Bureau No. 44-R1093

PAYROLL

(For Contractor's Optional Use; See Instruction, Form WH-347 Inst.)

Name of Contractor ☐ or Subcontractor ☐		Address	
Payroll No.	For Week Ending	Project and Location	Project or Contract No.

(1) Name, Address & SSN of Employee	(2) # of Exempt	(3) Work Classification	OT or Std	(4) Day and Date / HOURS WORKED EACH DAY	(5) Total Hours	(6) Rate of pay	(7) Gross Earned	(8) Deductions: FICA	Tax			Other	Total Ded.	(9) Net wages
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FORM WH-347 (1/68) - FORMERLY SOL 184

Date _____

I, _____, _____ do hereby state:
(Name of Signatery party) (Title)

(1) That I pay or supervise the payment of the persons employed by _____ on the _____; that during the payroll period commencing on the _____ day of _____, 19____ and ending the _____ day of _____, 19____, all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948; 63 Stat. 108; 72 Stat. 967; 76 Stat. 357; 40 U.S.C. 276c), and described below:

_____
_____
_____
_____

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a state, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

□ -In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

□ - Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(c) EXCEPTIONS

Exception (Craft)	Explanation

Remarks:

Name & Title	Signature

The wilful falsification of any of the above statements may subject the contractor or subcontractor to civil or criminal prosecution. See Section 1001 of Title 18 and Section 231 of Title 31 of the United States code.

NOTICE OF AWARD

To: _____

_____

_____

_____

_____

PROJECT Description: _____

_____

_____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19_____, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of $ _____.
You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.
If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of you BID BOND. The OWNER will be entitled to such rights as may be granted by law.
You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

_____
Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____,

this the _____ day of _____, 19_____.

By _____

Title _____

NOTICE TO PROCEED

To:_____Date: _____

_____Project: _____

_____

_____

_____

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 19 ____, on or before _____, 19 _____, and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 19_____.

_____

Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by _____

this the _____ dayof _____, 19_____

By _____

Title _____

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

_____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE $ _____.

Current CONTRACT PRICE adjusted by previous CHANGE ORDER $ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)

by: $ _____.

The new CONTRACT PRICE including this CHANGE ORDER will be $ _____.

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

Exhibit G—[Reserved]

Exhibit H—[Reserved]

FINAL ACCEPTANCE REPORT

EDA Award Number:_____ Contract # _____ of _____ Contracts
Contract Title:_____ Contract Award Date:_____

The following persons were present during the inspection:

Architect/Engineer:_____
Owner:_____
Contractor:_____
Economic Development Representative:_____
Other:_____

RECITAL: The work performed under this contract was inspected on _____ for the purpose of determining acceptability of construction. The Date of Acceptance is hereby established as _____.

Definition of the term "Date of Acceptance": The Date of Acceptance" is the date which the Owner may occupy and/or use the facility for the purpose for which it is intended in accordance with the contract documents and all work for the facility has been completed with the exception of minor cleanup and minor corrective action as shown in the Architect/Engineer's list made during the final inspection.

_____ _____ _____
Architect/Engineer Signature Date

The Contractor agrees that the Date of Acceptance is also the date of commencement of all warranties required by the contract documents and that he, the Contractor, has released all liens on the project, including materialmen and mechanics liens or others filed by the Contractor. The Contractor will complete the work on the Architect/Engineer's list of minor cleanup and corrective work within _____ days of the Date of Acceptance.

_____ _____ _____
Contractor Signature Date

The Owner accepts the work as complete and will assume full possession thereof at _____ (time) on _____ (date).

_____ _____ _____
Owner Signature Date

SAMPLE

QUARTERLY PERFORMANCE REPORT

This report is for:
EDA Project No._____ Date of report preparation:_____
Period covered by this report:_____ to _____
Report number _____
Grantee: _____ _____
Name Address
Grantee's Authorized Representative:_____
Name
_____
Title
Grantee's Architect/Engineer:_____
Name
_____
Address

Current status of the project:

YES	NO	
___	___	1. Is the Grantee's share of expected project cost on hand or immediately available? If not, explain in the Narrative section on the next page why funds are not available and of when the funds give an estimate here, _____ of when the funds are expected to be on hand.
___	___	2. Has all land, rights-of-way, and easements necessary for the project been acquired? If not, explain in the Narrative section on the next page what is causing the delay and give an estimate here, _____ of when the problem will be resolved.
___	___	3. Are any problems expected in meeting any of the Special Conditions to the EDA Grant Offer? If so, explain in the Narrative section on the next page giving an estimated date for satisfying each Special Condition if a delay is expected.
___	___	4. The EDA approved date for completion of design is, _____. Is the design completed? If so, give date of completion, _____. If design is not completed, give date here, _____ of expected completion. If expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
___	___	5. The EDA approved date for start of construction is _____. Has construction started? If construction has started, the date was _____. If construction has not started, the estimated date for start of construction is _____. If the expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
___	___	6. The EDA approved date for completion of construction is _____. Is construction complete? If construction is complete, the date of completion was _____. If construction is not complete, the estimated date for completion is _____ and the percent of completion is ____%. If the estimated date for construction completion is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.

If not previously furnished to EDA please include the following date when applicable:

Architect/Engineer Agreement executed: _____
Design started: _____ Design completed: _____
Design approved by EDA: _____
Advertisement for construction bids: _____
Construction bid opening: _____
Construction bid award: _____
Issue of Notice to Proceed: _____
Construction start: _____

Construction completion: _____
Acceptance of facility by Grantee: _____
Warranty start: _____ Warranty end: _____
Final payment request: _____

NARRATIVE

PROBLEMS BEING EXPERIENCED:

ACTION TAKEN:

ACTION RECOMMENDED:

NOTE: If more space is needed for the above narrative, attach a separate sheet.

SAMPLE

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

ARCHITECT/ENGINEER'S CERTIFICATE

Project No. _____

I, _____, Architect/Engineer for the _____ certify that the following plans and specifications (check appropriate item):

Sheets numbered

□ **Site Plan** _____

□ **Architectural** _____

□ **Structural** _____

□ **Mechanical** _____

□ **Electrical** _____

□ **Equipment** _____

□ **Other (identify)** _____

(a) Are adequate and suitable for, and are in conformity with, the project contemplated in the approved application.
(b) Comply with applicable State and local laws, ordinances, and regulations pertaining to standards of construction and safety, and have been approved by:

AUTHORITYDATE OF APPROVAL

_____

_____

_____

_____

_____

Approved:

_____
Architect/EngineerOwner

_____
License NumberAddressDate

SAMPLE

Form ED-126 (Rev. 4-4-72)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

CERTIFICATE OF GRANTEE/BORROWER'S ATTORNEY

I, the undersigned, _____, the duly authorized and

acting legal representative of _____ do hereby certify

as follows:

I have examined the attached contracts and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

_____

Date: _____

Information Normally Required for
EPA/State Certification as to Adequacy of Treatment

Applicant:_____ EDA Award No.:_____

Contact:_____ Telephone: _____

Project Description:

_____

_____

_____

Sanitary Sewage Contribution

Estimate of flows: _____

Type of sewage: _____

Storm Sewer Contribution

Estimate of flows: _____

Projection of Type of Tenants for Industrial Developments

Type of Tenants: _____

Quantity of flows: _____

Strength of flows: _____

Receiving Sewage Treatment Plant

Name of Receiving Plant: _____

NPDES Number: _____

Design Capacity: _____

Effluent Disposal Capacity: _____

Current Flows: _____

CORE PERFORMANCE MEASURES REPORT Page 1 of 2

Federal Sponsoring Agency: **Economic Development Administration**

Program: **TITLE I PUBLIC WORKS AND DEVELOPMENT FACILITIES & TITLE IX IMPLEMENTATION CONSTRUCTION PROJECTS**

EDA Project No.:_____. Reporting Period: ☐ Project Completion ☐3 years ☐ 6 years

*Approval Date:*_____. *Short Project Description*:_____

I. GRANTEE ORGANIZATION: (*Information in italics will be generated from OPCS - do not enter)*

1. *Grantee Name*: _____
2. *Address*: _____
3. *Telephone:* _____
4. Fax: _____
5. E-mail Address: _____
6 Contact Person: Name:_____
Title:_____
7. Project Location: _____
County/ *State/* Zip Code
8. GIS Coordinates if available for Project Location: _____

II. EDA PROJECT BUDGET:

1. EDA Project Budget:

	Approved	*Final (Actual)*
EDA Funds	$_____	$_____
Applicant	$_____	$_____
Local Funds	$_____	$_____
State	$_____	$_____
Other Federal	$_____	$_____
Other	$_____	$_____
Total Project Dollars:	$_____	$_____

III. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION ONLY:

1. Construction Schedule:	*Estimated*	*Final (Actual)*
a. Start Dates:	_____	_____
b. Completion Dates:	_____	_____
2. Construction Jobs Created:	_____	_____

CORE PERFORMANCE MEASURES REPORT
TITLE I/TITLE IX CONSTRUCTION FACILITIES *EDA Project No.:* _____

IV. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION AND AT 3 YEARS AND 6 YEARS AFTER PROJECT COMPLETION.

1. Permanent Jobs

	Direct	Indirect
a. Created:	_____	_____
b. Retained (saved):	_____	_____
c. Total jobs:	_____	_____

d. If you used a multiplier to determine indirect jobs, show the multiplier here: ( ).

2. Additional dollars invested:

	Direct	Indirect
a. Private sector:	$_____	$_____
b. Local public:	$_____	$_____
c. State:	$_____	$_____
d. Other Federal:	$_____	$_____
e. Totals:	$_____	$_____

f. If you used a multiplier to determine indirect investment, show multiplier here: ( ).

3. Increase in Local Real or Business Property Tax Base:

a. Enter value of increase in tax base (prior to any abatement): $_____
b. If you used a multiplier to determine increased tax base show multiplier here: ( ).

4. Local Capacity Anticipated and Actual Results:

Local Capacity	Percent Anticipated:	Actual Results (Scale of 1-10, with 10 being highest):
a. Created infrastructure to support private investment:	____	____
b. Created infrastructure to stimulate economic development:	____	____
c. Stabilized and maintained the local economic base:	____	____
d. Diversified the local economy:	____	____
e. Other non-quantifiable benefits	____	____

Specify: _____:
Note: Attach brief explanation of results.

V. Please submit a good quality photograph of the EDA project and/or businesses assisted.

AUTHORIZED CERTIFYING OFFICIAL

Signature: _____ Date Report Submitted: _____

Typed or Printed Name & Title: _____ Telephone: _____

BILLING CODE 3510–24–C

Instructions for Completion of EDA'S Core Performance Measures Report for Title I/IX Construction Facilities

The instructions below are in outline form and correspond to identical items in the Core Performance Measures Report. Complete the report by filling in the spaces and responding to the questions. If there is not sufficient space on the report for a response, please respond on an attachment to the report. On page one of the Report, indicate the EDA Project Number and the Reporting Period.

Part I: Grantee Organization

1. *Grantee Name:* Enter the legal name of the Grantee.
2. *Address:* Enter the physical address of the Grantee.
3. *Telephone:* Enter the telephone number, including area code, of the Grantee.
4. *Fax:* Enter the facsimile number, including area code, of the Grantee.
5. *E-mail Address:* Enter the Internet address of the Grantee.
6. *Contact Person & Title:* Name the person to contact on matters related to this report. Also, provide the contact person's telephone number, including area code, if different from the Grantee's telephone number.
7. *Project Location:* Enter the county, state and zip code of project location.
8. *GIS Coordinates:* Provide geographic mapping coordinates for project location, if available.

Part II: EDA Project Budget

Enter the project budget as estimated at time of approval.

Enter the actual project budget at time of project completion and close-out.

Enter only dollars used as part of the EDA total project cost for the construction project (scope of work and eligible costs defined in the grant agreement).

Part III: Outcomes (Actual) Reported at Project Completion Only

1. Compliance With Construction Schedule

a. *Construction start date:* Ener the estimated date (specified in the Special Award Conditions) for starting construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for starting construction on the EDA project.

b. *Construction completion date:* Enter the estimated date (specified in the Award Conditions) for completing construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for completing construction on the EDA project.

2. Construction Jobs Created (Please provide information on construction jobs for all construction projects, not just PWIP)

a. *Construction jobs created:* Enter the estimated number of construction jobs at the time of project approval and the actual number of construction jobs at project completion (Part-time construction jobs which were created during the construction phase of the EDA project should be converted to FTE.). If estimated/actual figures are not available, please provide the average annual construction wage for your area $_____ and the proportion of total project costs allocated to labor for this or similar projects of this type _____%.

Part IV: Outcomes (Actual) Reported at Project Completion and at 3 Years and 6 Years After Project Completion.

1. Permanent Jobs:

a. *Created jobs:* Enter the number of private sector jobs created by project beneficiaries as a result of the EDA construction project. In tallying direct jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Indirect jobs should be reported separately in the space provided.

1. *Direct Jobs:* These are jobs that are created at the project site by the identified beneficiaries, and other directly-related jobs created by subsequent employers as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that which were not originally anticipated as part of the project, but which located or expanded in the area as a result of the project.

2. *Indirect Jobs:* These are jobs that are created within the local labor market area by the EDA project through increased supplier or consumer demand—commonly referred to as spin-off jobs resulting from increased employment by local suppliers and increased commercial/retail jobs due to increased wages generated by direct jobs. (For the purpose of this report, there is no need to distinguish between indirect and induced effects).

b. *Retained (saved) jobs:* Enter the number of private sector jobs retained or saved by project beneficiaries as a result of the EDA construction project. In tallying jobs, follow the instructions for created jobs in the paragraph (IV.1.a.) above.

c. *Total jobs:* Add the number of created jobs in IV.1.a. and the number of retained jobs in IV.1.b. and enter the total jobs here in IV.1.c.

Note: A list of the employers showing the number of jobs created or saved by each should be maintained as part of the supporting data in the Grantee's project files.

2. Additional Dollars Invested:

(Note: Dollars should be separated between: (1) dollars invested in the EDA construction project; and (2) dollars directly related to, but not a part of, the EDA construction project. Dollars invested in the EDA construction project are the non-Federal matching funds that were identified at the time of EDA grant approval and are included in the total project costs for the construction project shown in Section II above. Do not double count these dollars below.)

Additional dollars invested include dollars that support project objectives, but are not included as part of the EDA project costs. Though occasionally difficult to quantify these directly-related investments, an attempt should be made to identify them on this report. Examples are investments in facilities occupied by project beneficiaries or employers that were constructed with other public or private funds as a result of the EDA project. Also include investments by firms using residual capacity of EDA-financed infrastructure (notably water and sewer services).

Indirect investments are those associated with the location or expansion of spin-off commercial business and/or wholesalers resulting from increased demand for goods and services generated by the project, or new investment in retail and consumer services.

If you cannot determine indirect jobs or investment, estimate the number of firms which located or expanded in the area as result of the increased supplier/consumer demand generated by the project below: Estimated number of firms creating indirect jobs _____ and/or investment _____.

a. *Private Sector:* Enter the total dollars from private sector investors, employers and other private sector sources such as the local financing institutions, and private donors. Include private investment in plant and equipment.

b. *Local public:* Enter the total dollars from local public sources such city/county appropriations, G.O./revenue bond issues, and economic development sales taxes.

c. *State:* Enter the total dollars from state sources such as state appropriations and CDBG funds to the state.

d. *Other Federal:* Enter the total dollars from other Federal sources as HUD, Agriculture, and Transportation funds.

e. *Totals:* Add the other dollars from IV.2.a through IV.2.d. and enter the total dollars on IV.2.e.

3. Increase in Local Tax Base:

Enter here on IV.3 the dollar increase in the local tax base (the taxable real and business personal property) attributable to the EDA project. Please check whether these are actual dollars of dollars computed using a multiplier. Please provide the multiplier, if applicable.

4. Local Capacity Anticipated and Actual Results:

An evaluation should be made regarding how well the EDA construction project has met the initial objectives listed in IV.4.a through IV.4.e below. Indicate by percentages, that portion of the project which was initially envisioned as the justification for the project under one or more of the listed categories. Individual ratings (with 10 being the ''best'' (i.e., the project has totally met the objective in every conceivable way) and 1 being the ''worst'' (i.e., the project has not met the objective in any way at all). As an example, a project may have initially been intended to support a single private business (100%), but may actually have resulted in creating jobs associated with other businesses, perhaps diversified the local economy, or provided other community benefits. Thus, a rating would be warranted for those categories as well as for the first category.

Not all objectives listed here may apply to the EDA project. Please mark ''NA'' if a given result was not anticipated or achieved. A narrative explaining the results or any unique situations associated with the project would also be useful.

V. Please submit a photograph of the project and/or business activity assisted by the project.

PART 306—PLANNING ASSISTANCE

Sec.
306.1 Purpose and scope.
306.2 Application evaluation criteria.
306.3 Award requirements.
306.4 Award conditions.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

(a) Analyzing local economies;

(b) Defining economic development goals;

(c) Determining project opportunities; and

(d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

(1) Quality of the proposed work program;

(2) Management and staff capacity and qualifications of the applicant organization; and

(3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

(b) Grant rate:

(1) The maximum Federal grant rate for a project under this part is,

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater than the maximum supplemented grant rate provided in § 301.4(b), and the project meets the criteria of paragraph (b)(2) of this section.

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) The project is intended to address problems arising from actual or threatened severe unemployment, significantly low per capita income, or a special need that qualifies an area for eligibility under § 301.2(b),

(ii) The project is in substantial part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicants, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CED Strategy;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and economic development district plans were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

§ 306.4 Award conditions.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

Subpart A—Local Technical Assistance

Sec.
307.1 Purpose and scope.
307.2 Application evaluation criteria.
307.3 Award and grant rate requirements.

Subpart B—University Center Program

307.4 Purpose and scope.
307.5 Application evaluation criteria.
307.6 Award and grant rate requirements.

Subpart C—National Technical Assistance, Training, Research, and Evaluation

307.7 Purpose and scope.
307.8 Application evaluation criteria.
307.9 Award and grant rate requirements.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

(a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;

(b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and

(c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

§ 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to

the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;

(b) Benefits distressed areas;

(c) Helps to diversify distressed economies;

(d) Demonstrates innovative approaches to stimulating economic development in distressed areas;

(e) Is consistent with the CED Strategy or other strategy accepted by EDA for the area in which the project is located; and

(f) Presents a reasonable, itemized budget.

§ 307.3 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(c) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (d)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart B—University Center Program

§ 307.4 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas serviced.

§ 307.5 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

§ 307.6 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that:

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (e)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart C—National Technical Assistance, Training, Research, and Evaluation

§ 307.7 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs,

projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

§ 307.8 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

§ 307.9 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 100 percent when the applicant is able to demonstrate that

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CED Strategy;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that the strategy requirement shall not apply to planning projects.

(b) The term ''special need'' in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under § 301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3 Use of economic adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation,

construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

(c) Revolving Loan Fund (RLF) applicants must submit an RLF Plan in accordance with this part and RLF guidelines, Appendix A of this part, displayed at EDA's web site, http://www.doc.gov/eda. A copy of the RLF guidelines is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will review strategy grant applications for:

(1) Proper authority, mandate, and capacity of the applicant to lead and manage the planning process and strategy implementation;

(2) Representation of the public and private sectors in the development of the strategy's objectives. Representation may include: Public program and service providers, trade and business associations, educational and research institutions, community development corporations, minorities, labor, low-income, etc.; and

(3) The proposed scope of work for the strategy focuses on the structural economic problem(s) and includes provisions for undertaking appropriate research and analysis to support a realistic, market-based, adjustment strategy.

(c) *Implementation Grants.*

(1) EDA will review implementation grant applications for the extent to which,

(i) The strategy shows

(A) An understanding of the economic problems being addressed;

(B) An analysis of the economic sectors that constitute the community's economic base, including particular strengths and weaknesses that contribute to or detract from a community's current and potential economic competitiveness;

(C) Strategic objectives that focus on stimulating investment in new and/or existing economic activities that offer good prospects for revitalization and growth; and

(D) Identified resources and plans for coordinating such resources to implement the overall strategy; and

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.* For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy.

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301);

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 (except that a strategy is not required when a funding request is for planning assistance, i.e., a strategy grant);

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 308.2.

§ 308.6 Post-Approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendixes B–D of this part displayed at EDA's web site, http://www.doc.gov/eda. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines

OMB Approval No. 0610–0095.
Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Plan

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 40 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Purpose

EDA requires Revolving Loan Fund (RLF) grantees to manage their RLFs in accordance with a plan. The Plan must be approved by EDA prior to the grant award, but may be modified subsequently, with EDA approval,

as provided for in the RLF Administrative Manual (Section X.D.). These guidelines are designed to assist grant applicants prepare and document an RLF Plan that (1) is tailored to supporting implementation of the area's Economic Adjustment Strategy, (2) provides for administrative clarity, continuity and consistency, and (3) is acceptable to EDA.

EDA Evaluation Criteria

EDA will use the following criteria in evaluating RLF Plans:

1. The Plan flows from and is consistent with the Economic Adjustment Strategy for the area, as approved by EDA.
2. It is internally consistent, i.e., it is a coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies and loan selection criteria.
3. The financing strategy demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses.
4. The financing policies and portfolio standards are consistent with EDA policy and requirements.
5. The strategic objectives defined are sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.
6. The administrative procedures for operating the RLF are consistent with generally accepted prudent lending practices for public lending institutions.

Format and Content

The format for the Plan provides for two distinct parts: the Revolving Loan Fund Strategy and the Operational Procedures. Each part contains a number of sections designed to facilitate the orderly and logical presentation of the required information. However, the organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

The title page of the Plan document should show the grant recipient organization's name and the date the Plan was approved. Normally, approval is required to be by resolution of the organization's governing board. States are exempted from this requirement.

Part I: The Revolving Loan Fund Strategy

The RLF strategy is the approach selected by the grant recipient organization for using RLF financing as part of the broader business development strategy designed to support achievement of the goals and objectives established through the area/community's economic adjustment or development planning process. The sequence of the subsections of this Part are designed to lead the reader from the general to the more specific, providing the reader with an understanding of how the RLF strategy was arrived at, and establishing the strategic, organizational and programmatic context for the proposed use of the RLF.

A. Economic Adjustment Program Overview

A short description of the area's economic adjustment program, i.e., the strategy and the full range of activities planned and being implemented, should be provided. The following topics must be included:

1. The nature and scale of the economic adjustment problem(s) underlying the economic distress statistics that resulted in the area becoming eligible for Section 209 assistance.
2. The process through which the Economic Adjustment Strategy was developed. Was it an outgrowth of an ongoing economic development program, such as the Overall Economic Development Program (OEDP) required for other forms of EDA assistance, or a special initiative undertaken in-house or by a consultant? What community organizations and interest groups were, and continue to be, involved in further refining the strategy and overseeing its implementation?
3. Area resources/assets (potential or actual growth industries, industries that could be more productive, work force skills, natural resources, etc.) on which the strategy is designed to build. What specific opportunities have been identified for expanding or strengthening existing economic activities and/or creating new activities?
4. The strategic adjustment goals and objectives derived from the conclusions described above and an assessment of the capacity of the community to invest in pursuing the opportunities identified.
5. The implementation programs and activities, both underway and planned, that support the strategic objectives. Note that while business development activities should be identified here, in addition to other activities, Section B requires a detailed discussion of the business development strategy.
6. The organizational structure and distribution of responsibility for managing the on-going adjustment program. What agency is responsible for maintaining the adjustment strategy, evaluating results and updating it as needed? What agencies/organizations manage or coordinate implementation of key elements in the overall strategy, in particular, the business development strategy of which the RLF is to be a component.

B. The Business Development Strategy

As emphasized in EDA's guidelines for preparing an Economic Adjustment Strategy, a key element of any community's adjustment program should be its business development strategy. A community's business development strategy will depend on the particular opportunities identified for stimulating business investment and productivity. Participation of the business community in the development of the strategy is essential, as is a firsthand knowledge of the characteristics of firms within the targetted economic sectors and their individual needs for assistance.

It is the experience of working with the business sector in designing and implementing a business development strategy that enables the community to (1) determine the need for an RLF, and (2) define the types of RLF investments that will be most effective in complementing other types of business assistance in supporting the objectives of the adjustment program.

If the business development strategy is already well documented in the community's Economic Adjustment Strategy, it need only be summarized sufficiently to provide a bridge between the adjustment strategy and the RLF financing strategy. If not well documented, it should be described in more detail. The following features of the strategy should be addressed:

1. The objectives of the business development strategy, for example, increase the capacity of local firms to supply parts and services to a major local manufacturer, encourage creation of firms to develop and commercialize products that add value to a local resource, assist small manufacturing firms incorporate new production technologies and/or develop new markets, etc.
2. The pertinent characteristics of the businesses or prospective businesses in the economic sectors targeted by the strategy; for example, their size, age, ownership, management, products, markets, competitiveness, production processes, capital, etc.
3. The types of assistance needed by these businesses and would-be entrepreneurs to take advantage of the opportunities identified; for example, access to technical information (market data, new technologies and production processes, exporting), hands-on management and technical assistance, financing, incubator space, etc. How were and are these needs being identified: surveys, on-site interviews, business forums, etc.?
4. The programs/activities being undertaken by the public sector and/or development organizations to address the identified needs. Are there other sources of assistance available; for example, a technical college, business development center, industrial extension service, SCORE program, an SBA Small Business Development Center and/or a Certified Development Corporation, etc.? Are there private sector organizations, industry and/or business associations that promote information exchange and technical support?

C. The Financing Strategy

The community's financing strategy should take into account all the sources of financing, public and private, available to support its business development objectives, and should identify the best and appropriate sources to meet the differing creditworthiness and needs of the types of businesses targeted for investment. Analysis of the characteristics of the demand for and supply of financing will determine the appropriate financing niche for the RLF. This should be discussed in terms of the following:

1. The current types of financing needs and opportunities in the targeted business sectors and specific types of firms within them. What further needs and opportunities are expected to emerge as implementation of the strategy progresses?
2. The current availability of public and private financing in the area. What are the prevailing commercial lending policies/restrictions? What role is anticipated for the public and private lenders in supporting the community's business development strategy?

3. The characteristics of the financing niche that the RLF would occupy.
a. Types of businesses/firms?
b. Types of financing?
c. Types of terms?
4. The impact RLF financing is anticipated to have on accomplishing the community's economic adjustment objectives in the next 3–5 years. For example, with respect to:
a. Restructuring/strengthening the local economy.
b. Stimulating private investment, both through leveraging commercial financing and ''showing the way to other investors.''
c. Enhancing job opportunities.

D. Financing Policies

Consistent with the role identified for the RLF in the community's financing strategy, and with due consideration for the need to manage and protect the RLF capital, the specific policies designed to govern RLF financing should be discussed as follows:
1. The standard lending terms, and any concessionary or special financing techniques that the RLF will entertain to accomplish the objectives of the business development strategy. Discuss the key factors that will determine how such techniques might be employed.
a. The range of allowable interest rates the RLF will charge borrowers.
b. Requirements for equity or cash injections to be provided by the RLF borrower.
(1) Will the policy be the same for new as opposed to established businesses?
(2) Will any deviations be allowed, e.g., for working capital loans?
c. The standard repayment terms for both working capital and fixed asset loans, and any deviations.
(1) If the RLF anticipates moratoria on principal payments, specify the maximum moratorium period.
(2) What key factors will determine when any deviations will be employed?
2. The types of collateral to be required of borrowers.
3. The minimum and maximum loan sizes that the RLF will entertain.

E. Portfolio Standards and Targets

RLF portfolio standards and targets are used by EDA as surrogate measures for the economic performance of an RLF. They should be established as follows:
1. The anticipated percentage of RLF investments in each of the following:
a. Industrial/commercial/Service businesses (Show any subcomponents, if significant and if identified in the business development strategy.)
b. New businesses/expansion/retention
2. The anticipated percentage of the RLF portfolio that will be targeted towards working capital loans and fixed asset loans (note that EDA allows a maximum of 50 percent for working capital loans during the grant disbursement phase of the RLF)
3. Private investment leveraging ratio for the portfolio overall. Sources of private investment that may be included are: financing from other lenders (e.g., banks, investment companies, etc.) or private investment on the part of the borrower or other firms in conjunction with the RLF financing.
4. Cost per job for the portfolio overall.

F. RLF Loan Selection Criteria

In addition to the required selection criterion that financing is not otherwise available, what ''economic impact'' criteria will be used to evaluate proposed loans?

G. Performance Assessment Process

Describe the process and factors that the grant recipient will use (1) to periodically assess the performance of the RLF in accomplishing its stated economic adjustment objectives, and (2) to modify the RLF Plan as needed.

Part II: Revolving Loan Fund Operational Procedures

This part of the RLF Plan is designed to cover in detail the specific operational procedures to be followed by the grant applicant/recipient in administering the RLF.

Section A requires an overview of the organizational distribution of responsibility for the key elements in operating the RLF. Sections B. through E. require, for each item indicated, a short description of (1) how it will be addressed, the procedure/requirement to be used, if any, (2) the documentation that will be used, (3) the party(ies) responsible for carrying out the requirement, and (4) the time frame within which it is to be implemented.

A. Organizational Structure

1. Provide an overview of the organizational structure within which the RLF will be operated. For each of the functions critical to the conduct of the RLF's lending activities, identify the responsible parties including any from outside the organization. Use a schematic diagram if helpful.

Critical operational functions include: identification and development of appropriate financing opportunities; provision of business assistance and advisory services to prospective and actual borrowers (identify the types and sources of services available); environmental reviews; and loan management (loan processing, credit analysis, loan write-ups and recommendations, closings, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements). Note that a more detailed description of how some of these functions will be handled is requested in sections below.

2. Describe the size and general composition of the organization's RLF loan board; include experience and occupational requirements. Describe its duties and responsibilities, membership terms and quorum requirements.

An RLF loan board must be responsible for approving loans, all major loan modifications (or waivers), and loan foreclosure actions. It must also be responsible for at least recommending RLF loan policy (actual approval of loan policy may take place at a higher level). The loan board should include members with business experience (representation of targeted industries and/or business sectors is desirable provided it will not cause a conflict of interest), members with financing experience, members from both the public and private sectors and minority members representative of the community. At least one member with financing experience (similar to the type of loans to be made under the RLF program) must be present for each loan decision.

B. Loan Processing Procedures

1. Standard Loan Application Requirements—include a list of items or a checklist showing the items to be required of RLF loan applicants. [It is acknowledged that not all items will apply to each loan applicant and that certain situations may require additional items not on the list.]
2. Credit Reports.
3. Appraisal Reports.
4. Environmental Reviews.
5. Standard Collateral Requirements—include requirements for personal guarantees and insurance (hazard, keyman life, flood, and title).
6. Standard Equity Requirements—when listing equity requirements, differentiate between existing and new companies, and fixed asset and working capital loans. Note that an allowable requirement for a working capital loan may simply require a borrower to have a certain net working capital position. Equity is defined as an amount or percentage of capital (or lien free assets) that is required to be added to a project from borrower or investor sources.
7. Loan Write-up—indicate the items to be addressed in the RLF loan write-up. At a minimum, a loan write-up must discuss how the proposed RLF loan is not replacing private lender funding sources—refer to Section IV.B.3. of the RLF Administrative Manual. Other items should include a summary of the firm's history, management, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the RLF's financing policy and whether there are any environmental problems associated with the project. A Loan Write-up summarizes the key aspects of a loan; it is prepared by the RLF grant recipient and is usually provided to the RLF loan board prior to the loan decision.
8. Procedures for loan approvals, documentation of loan board decisions, and notification of borrowers.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements—include documentation required to confirm any needed equity injection and private lender financing.
2. Loan Closing Documentation Requirements—provide a checklist of the standard documents that will be required for the types of loans to be made under the RLF. Indicate any special timing requirements, e.g., Uniform Commercial Code (UCC) searches prior to and/or subsequent to a UCC filing on personal property.
3. Loan Disbursement Requirements—indicate borrower requirements for drawing loan funds, i.e., is a borrower required to provide any evidence (e.g., an invoice) that it has ordered an asset prior to receiving loan funds to ensure that funds are ordered only when actually needed and that they will be

used as agreed in the loan agreement, any pre-disbursement requirements for working capital loans, any special requirements for construction financing, and any other disbursement procedures that are necessary to protect RLF assets.

D. Loan Servicing Procedures

1. Loan Payment and Collection Procedures—indicate the standard method(s) of loan payment by RLF borrowers, e.g., payment coupon books, automatic payment withdrawals, or other methods. Indicate any procedures for protection and timely deposit of RLF loan payments. Note that unused RLF funds must be Federally insured if deposited in a financial institution.

2. Loan Monitoring Procedures—indicate the standard procedures for monitoring loan conditions, including requirements/ procedures for financial statements, annual insurance renewals, UCC refilings, borrower site visits, tickler files, and compliance with any Federal requirements of the grant.

3. Late Payment Follow-up Procedures—indicate the standard procedures for handling loans that are in arrears up to 90 days and discuss any late penalty requirements (which should be stated in the note).

4. Procedures for Handling Loans over 90 days in arrears.

5. Write-off Procedures—indicate how the RLF will account for loan write-offs.

E. Administrative Procedures

1. Procedures for Loan Files and Loan Closing Documentation—indicate what should be included in an RLF loan file, e.g., the application, loan commitment letters, copy of private lender loan agreement, financial statements, annual insurance certifications, annual site visit reports, general correspondence, job reports, etc. Indicate any procedures for safekeeping loan documents, particularly the loan closing documents. At a minimum, all original notes, loan agreements, personal guarantees and security agreements should be placed in a fireproof facility or container.

2. Procedures for Complying with EDA Reporting Requirements—provide an overview of how RLF loan payments and RLF Income sources will be tracked and accounted for in order to meet EDA reporting requirements. [RLF Income sources including interest from loans and from accounts holding idle RLF funds, loan fees, late payment fees, and any other sources of RLF revenue.]

3. Grantee control procedures for ensuring compliance with all grant requirements and for monitoring the RLF portfolio.

Prior to the initial grant disbursement, the grant recipient must also certify that the basic loan documents are in place and that these documents have been reviewed by counsel for adequacy to protect the interests of the RLF. The minimum documents required are:

—Note
—Loan Agreement
—Security Agreement(s)
—Deed of trust or Mortgage
—Agreement of Prior Lienholder

Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions

Approval expires 07/31/99.

Burden Statement for Revolving Loan Fund Standard Terms and Conditions

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Table of Contents

A. Program Statement

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*).

For the purpose of these Standard Terms and Conditions, (a) the term ''Government'' refers to the Economic Development Administration (EDA); (b) the term ''Recipient'' refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part; © the term ''Department'' refers to the Department of Commerce; (d) the term ''Regional Office'' refers to the appropriate Regional Office of the Economic

Development Administration; (e) the term ''Federal Program Officer'' refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award); (f) the term ''Grants Officer'' refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards); (g) the term ''Project'' refers to the activity for which the Government grant was awarded; and (h) ''RLF'' refers to this revolving loan fund grant project.

B. Overall Statutory and Executive Order Requirements

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section D. herein:

.01 EDA Statute and Regulations: Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89–136, as amended (42 U.S.C. 3121, *et seq.*)and regulations in 13 CFR, Chapter III.

.02 Administrative Requirements: Administrative requirements for grants, OMB Circular No. A–110, ''Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' and its attachments, as amended or as superseded in the Department's regulations, or those found in 15 CFR Part 24, ''Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments,'' as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

.03 Civil Rights Requirements: Title VI of the Civil Rights Act of l964, as amended (42 U.S.C. 2000d–2000d–4); 15 CFR Part 8; Executive Orders 11246 and 11375; 4l CFR Part 60–4; P.L. 92–65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101 *et seq.*) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

.04 Hatch Act: Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

C. General Requirements

.01 Grant Terms and Conditions: The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

.02 Compliance with EDA Instructions: The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

.03 Exclusion from Certification and Disclosure requirements: An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101–121.

.04 Duplication of Work: The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

.05 Reimbursement of Costs Prior to Award: Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

.06 Other Funding Sources: Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

.07 Availability of Information: The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

.08 Procurement Standards & Use of Consultants/Contractors: The procurement standards and procedures set forth in 15 CFR Part 24, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' Section 24.36 or OMB Circular No. A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations,'' Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

.09 Program Performance Notification: The Recipient shall inform the Government as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

.10 Attorney and Consultant Fees: The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

.11 Suspension and Termination of Grant:

a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.

b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable

or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.

c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

d. In accordance with subsections (a) (b) and (c) above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following: (1) failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings; (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended; (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.

f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.

g. Other grant closeout procedures set forth in 15 CFR, Part 24, or OMB Circular No. A–110, or its implementing Department regulation, as applicable, shall also apply.

D. RLF Requirements for Recipients and Borrowers

.01 Prudent Lending Practices: The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and maintain security interests in RLF collateral.

.02 Inclusion of requirements in RLF Loan Documents: The Recipient agrees to incorporate applicable Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

.03 Annual RLF Plan Certifications: The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

.04 RLF Plan Modifications: The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

.05 Eligible Area: The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a *provision* in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

.06 Relocation: The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a *provision* in RLF loan documents to call loans if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area or (b) the economic activity financed is moved to another commuting area to the detriment of local workers.

.07 Grant Disbursement Schedule: The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are disbursed within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award. The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless (1) the funds are required to close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or (2) the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

.08 Capital Utilization Standard: Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

.09 Civil Rights: The Recipient agrees that RLF funds will be made available on a nondiscriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a *provision* in the RLF loan documents that prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

.10 Environment: The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91–190), as implemented by the ''Regulations'' of the President's Council on Environmental Quality (40 CFR Parts 1500–1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

a. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);

b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*);

c. The Coastal Zone Management Act of 1972, P.L. 92–583, as amended (16 U.S.C. 1451, *et seq.*);

d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;

e. Executive Order 11990, Protection of Wetlands (May 24, 1977);

f. The Endangered Species Act of 1973 P.L. 93–205, as amended (16 U.S.C.1531, *et seq.*);

g. The Safe Drinking Water Act, P.L. 93–523, as amended (42 U.S.C. 300f–300j–9);

h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, *et seq.*);

I. The Resource Conservation and Recovery Act of 1976, P.L. 94–580, as amended (42 U.S.C. 6901);

j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96–510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, *et seq.*) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a ''due diligence'' examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];

k. The National Historic Preservation Act P.L. 89–665 (16 U.S.C. 470, *et seq.*), (36 CFR Part 800);

l. Coastal Barriers Resources Act P.L. 97–348 (16 U.S.C. 3501, *et seq.*); and

m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.

.11 Earthquake Requirements: For use in new building construction projects: The Recipient is aware of and intends to comply with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.

.12 Flood Hazard Insurance: Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93–234, as amended (42 U.S.C. 4002, *et seq.*);

.13 Davis-Bacon: The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a–276a–5); 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds $2,000.

.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act: The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327–333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276(c); 18 U.S.C. 874);

.15 Access for the Handicapped: The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90–480, as amended (42 U.S. C. 4151, *et seq.*), and the regulations issued thereunder;

.16 Conflict of Interest:

a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as ''other Board'') which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.

b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.

c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

E. Financial Requirements

.01 Budget: The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

.02 Method of Payment: Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed. *Note:* When completing SF 270 for an ACH/EFT transfer of funds, *type* ''ACH/EFT'' in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

.03 Request For Budget Change: Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

.04 Matching and Cost Sharing: a. Local Share: In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

.05 Program Income: Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E.06 below). Program Income, with the *exception* of current RLF Income, may be used only for relending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

.06 RLF Income: RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees (1) to use RLF Income only for those administrative expenses incurred during the same twelve-month period in which it is earned, and (2) to add any RLF Income remaining unexpended at the end of each period to the RLF capital base. RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve-month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

.07 Indirect Costs: a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income *if* the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.

b. The Department's acceptance of negotiated rates as provided in this section is subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.

c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.

d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:

1. The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

2. When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

.08 Additional Funding and/or Extension of Award: The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

.09 Debts: a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 30 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:

1. Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the **Federal Register** by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;

2. A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and

3. An administrative charge to cover processing and handling of the amount due.

b. State and local governments are not subject to subparagraphs .11 a.2 and 3 above.

c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement *Only* by Treasury Check method of payment until the debt is paid.

d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment agreement by the due date will also result in the referral of the debt for collection action.

e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

.10 Interest-Bearing Accounts: All RLF grant funds disbursed to reimburse Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of $100 per year which may be retained for administrative expenses by states, local governments and Indian tribes per 15 CFR Part 24, and $250 for those subject to OMB Circular A–110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state ''EDA'' on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

.11 Bonding and Payment of Funds: Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

.12 Grant Violations and Ineligible Costs: The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

F. Reporting Requirements

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in (1) withholding payments under this award, (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s), (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount

disbursed, and/or, (4) suspending or terminating the grant in whole, or in part.

.01 Financial and Performance Reports: The Recipient shall submit financial and status reports to the EDA Regional Office semiannually unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, annual reporting format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. *Initial Semiannual Report:* Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. *Subsequent Semiannual Reports:* Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. *Annual Reports:* If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. *Performance Measures:* The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in F.01. (a.), (b.) and (c.) above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

A. Performance and Outcomes at the Completion of the Initial Round of Funding [1]

- Compliance with implementation schedule for disbursement of RLF dollars.
- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.

1. Private sector dollars.
2. Other dollars leveraged.

- RLF Capital Base (total RLF funding + program income − loan writeoffs).

[1] Full disbursement of the grant award.

B. Project Outcomes after Full Disbursement of Grant

- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.

1. Private sector dollars.
2. Other dollars leveraged.

- RLF Capital Base (total RLF funding + program income − loan writeoffs).

.02 Other Reports: The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

.03 Subcontracting Reports: Recipients of awards which involve both Federal financial assistance valued at $500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF–334, ''MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance.'' Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of $10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

G. Administrative Cost and Loan Records Retention

.01 Administrative Cost Records: Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

.02 Loan Records: Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

.03 General: If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (Administrative Cost and Loan Records Retention) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three years old, unless fraud is an issue.

H. Audit

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

.01 Requirements: a. Federal Audit: Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 *et seq.*, an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

b. Recipient Audit: 1. For awards to institutions of higher education, and other nonprofit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.

2. Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address: Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

c. For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

.02 Establishment and Collection of Audit-Related Debts: a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed and the Recipient has the opportunity to comment.

b. A Recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the *draft* audit report in which to submit written comments and documentary evidence.

2. The Recipient will be given 30 days from the transmittal of the *final* audit report in which to submit written comments and documentary evidence. There will be no

extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

3. The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

4. After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.

c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

I. Miscellaneous Items

.01 Programmatic Changes: All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

.02 Name Check Review:

a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations. b. The Department reserves the right to take any of the actions described in subparagraph H.02 c. below if one of the following occurs as a result of the name check review:

1. Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD–346 and, if required, the Form FD–258;

2. The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD–346 or Form FD–258; or

3. Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.

c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:

1. Terminate the award immediately for cause;

2. Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or

3. Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

.03 Prohibition Against Assignment: Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

.04 Covenant Against Contingent Fees: Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial, or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

.05 Officials Not To Benefit: No member of or delegate to Congress or resident Federal Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or nonprofit institution for its general benefit.

.06 Sub-Award and/or Contract to Other Federal Agencies: a. The Recipient, subrecipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.

b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

.07 Property Management: The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E.06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and (2) Nonexpendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

a. Disposition of Personal Property: In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLFs share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

b. Disposition of Expendable and Nonexpendable Property Under RLF Termination: If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions. Disposition may include one of the following:

1. If the total aggregate fair market value of unused personal property at the termination of the RLF is $1,000 or less for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.

2. If the total aggregate fair market value of personal property at the termination of the award exceeds $1,000 for awards subject to OMB Circular A–110 or any Department rule superseding such Circular, or $5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.

3. The following apply only to the disposition of nonexpendable personal property:

(a) The Recipient shall submit a completed form CD–281, ''Report of Government Property in Possession of Contractor'' along with the request for disposition instructions.

(b) The Government's disposition instructions may additionally include the following: (1) The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the nonfederal share of the market value plus shipping costs; or (2) for awards subject to the provisions of OMB Circular A–110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of $1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party

named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

c. Disposition of Real Property Under RLF Termination: If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

1. The Recipient shall retain title after it compensates the Federal Government for its share;

2. The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or

3. The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of participation in the cost of the project to the current fair market value of the property.

d. Debt Instruments Under RLF Termination: If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

.08 Rights to Inventions Made by Nonprofit Organizations and Small Business Firms: The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements, published in the **Federal Register** on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner.

To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer: U.S. Department of Commerce, Office of Chief Counsel for Technology, Patent Counsel, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The notification shall include the following information:

a. The award number.

b. The name of the Department awarding agency.

c. A copy of the patent.

d. A description of how the patented technology was used.

e. The name of the Recipient contact, including an address and telephone number.

.09 Executive Order 12432, Minority Business Enterprise: In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact: U.S. Department of Commerce, Minority Business Development Agency, Office of Program Development, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

.10 Internal Revenue Service (IRS) Information: a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W–9, ''Payer's Request for Taxpayer Identification Number.''

Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award.

The Department provides the Recipient's TIN to the IRS on Form 1099–G, ''Statement for Recipients of Certain Government Payments.'' Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

b. Privacy Act Statement—Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109–1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement): a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, ''Government wide Debarment and Suspension (Nonprocurement).'' A person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.

b. The Recipient shall provide immediate notification to the Grants Officer if at any time the Recipient learns that its certification, Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying,'' was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.

c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.

d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:

1. This lower tier covered transaction is subject to Executive Order 12549, ''Debarment and Suspension,'' and 15 CFR Part 26, ''Government wide Debarment and Suspension (Nonprocurement).'' Unless authorized by the Department in writing, a person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.

2. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR § 26.215.

f. The Recipient shall include the following provision in each application and in each bid for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the $100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

.12 Restrictions on Lobbying (applicable to awards exceeding $100,000 in Federal funding): a. This award is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding $100,000 of Federal funds at any tier under this award, to file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' without modification, and, if applicable, SF–LLL, ''Disclosure of Lobbying Activities,'' form regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.

c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101–121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding $100,000 of Federal funds at any tier under the Federal award must file Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying,'' and Standard Form–LLL, ''Disclosure of Lobbying Activities,'' regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.

Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual

OMB Approval No. 0610–0095
Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Administrative Manual:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Table of Contents

I. Purpose

This Manual describes the compliance, reporting, grant record keeping and other administrative requirements and procedures that apply to Revolving Loan Fund (RLF) grants funded by the Economic Development Administration (EDA) under Section 209 of the Public Works and Economic Development Act of 1965, as amended. These requirements apply to new RLFs and to the future actions of all RLFs funded prior to the Manual's effective date. The requirements apply to RLFs funded under the Sudden and Severe Economic Dislocation (SSED) and the Long-Term Economic Deterioration (LTED) components of Section 209. They also apply to the revolving phases of RLFs funded for the initial purpose of providing financing to one or more identified business firms.

II. Authority

A. *Grant Recipients as Trustees:* Recipients of EDA grants to operate RLFs hold RLF funds in trust to serve the purpose of the Economic Adjustment program for which the grant award was made. The grant recipient's obligation to the Federal Government continues as long as the Federal interest in EDA RLF assets, in the form of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds, continues to exist. If EDA determines that a grant recipient is failing to meet this obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA's nonassertion of its interest does not constitute a waiver thereof.

B. *Grantor Authority to Change Policies:* EDA, as the Federal agency charged with implementing the program, is obligated to promulgate policies and procedures applicable to all RLF grant recipients to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, grant terms and conditions require grant recipients to comply with changes in regulations and other requirements and policies that EDA may issue from time-to-time. Such changes apply to actions taken by all grant recipients, existing and prospective, after the effective date of the changes. Loans made by grant recipients prior to the effective date of the changes are not affected unless so required by law.

As a matter of policy, EDA will subject proposed RLF changes to public review when practicable.

EDA's policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic adjustment problems, requests for variances to the requirements of this Manual will be considered if they are consistent with the goals of the Section 209 program and with an RLF's strategy, make sound economic and financial sense, and do not conflict with applicable legal requirements.

C. *Precedence of Grant Documents and Published Regulations:* The Grant Award, executed by EDA and the recipient, together with the Budget, Special Terms and Conditions and the Standard Terms and Conditions, as may be amended, and the current regulations, published at 13 CFR Part 308, constitute the requirements, hereinafter referred to as ''Terms and Conditions,'' applicable to an EDA RLF grant. This Manual is designed to clarify and administratively implement those requirements. In the event of conflict, the aforementioned documents take precedence over this Manual.

III. Grantee Responsibilities

A. *Prudent Lending Practices:* RLF grant recipients are required to operate RLFs in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, servicing and administrative procedures, as outlined in the current RLF Plan Guidelines.

B. *Protection of RLF Assets:* RLF grant recipients are required (1) to obtain adequate and appropriate collateral from borrowers, and (2) to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

C. *Federal Requirements Applicable to Grant Recipients:* Grant recipients are responsible for complying with the Federal laws and regulations, Executive Orders and Office of Management and Budget (OMB) Circulars which are referenced in the Terms and Conditions, as may be amended, for RLF grants. These include administrative and audit requirements, cost principles, and other laws, regulations and Executive Orders pertaining to requirements from civil rights to lobbying restrictions.

D. *Federal Requirements Applicable to RLF Borrowers:* Grant recipients are responsible for ensuring that prospective borrowers are aware of, and comply with, the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The most common of these requirements relate to environmental protection, civil rights, Davis-Bacon wage rates and handicap access on construction projects, and the prohibited use of RLF funds for businesses that relocate jobs from one commuting area to another.

Grant recipients are responsible for developing an appropriate review process in accordance with the intent of the National Environmental Policy Act of 1969, (P.L. 91–190) as amended, as implemented by the ''Regulations'' of the President's Council on Environmental Quality. The process shall include disapproval of loan projects which would adversely (without mitigation) impact floodplains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. Grant recipients are also responsible for openly marketing the RLF to prospective minority and women borrowers, and monitoring borrower compliance with civil rights requirements that prohibit borrowers from discriminating against employees or applicants for employment, or providers of goods and services. These and the other Federal requirements described in the Terms and Conditions of each grant should be included, as applicable, in each RLF's standard loan agreement to ensure borrower compliance where necessary. Grant recipients are expected to act diligently to correct instances of noncompliance, including the recall of loans, if necessary.

IV. Revolving Loan Fund Restrictions

The following restrictions apply generally to RLFs:

A. Lending Area Restrictions

1. *Eligible Lending Area:* The economic activity and the benefits of RLF loans must be located within the eligible areas identified in the grant award.

2. *Modification of the Eligible Area:* Areas within the operational jurisdiction of the grant recipient that were not identified in the grant award, but that meet or may subsequently meet the Agency's criteria for eligibility under Section 209, may qualify to be added to an RLF's eligible lending area. To ascertain qualification, a grant recipient must make a written request to EDA to determine whether a new area is eligible for assistance under existing grant terms. Area eligibility data are updated quarterly and eligibility lists are maintained by EDA's Regional Offices. Unless stipulated otherwise in the grant award, once an area's eligibility is approved by EDA, that area retains its eligibility indefinitely.

3. *Recapitalization Rule:* If EDA funds are used to recapitalize an existing RLF, the new grant funds may be used only in areas eligible for assistance at the time the recapitalization grant is invited (and in areas that become eligible between the time of invitation and the grant award). Areas that were eligible under the previous EDA grant award but not under the new award may continue to receive RLF assistance under the previous grant award only. Areas which become eligible subsequent to the grant award require EDA approval as discussed above in Section IV.A.2.

If a grant recipient has received EDA funds to recapitalize an existing RLF and the respective grants serve different eligible lending areas, the grant recipient is responsible for maintaining adequate accounting records to substantiate that each grant is being used in the appropriate eligible lending area.

B. Borrower Restrictions

1. *Eligible Lending Area:* An RLF borrower must retain the activity financed in the eligible lending area for the term of the loan. The RLF's standard loan agreement should include a provision to call the loan if the activity financed is moved from the eligible lending area.

2. *Relocation:* RLF financing may not be used by a borrower for any activity that serves to relocate jobs from one commuting area to another. This applies both to a

business which uses RLF financing to relocate jobs into an eligible area from a different commuting area, and to a business which relocates jobs, created as a result of RLF financing, to a different commuting area. An RLF's standard loan agreement should include a provision for calling the loan if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area, or (b) the activity financed was subsequently moved to a different commuting area to the detriment of local workers. The commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.

3. *Credit Otherwise Available:* A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The grant recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up. A loan write-up must include a discussion of the particular features of the local capital market and/or of the individual borrower or project to be financed that result in the need for RLF financing. It should also briefly describe the key aspects of the business and the loan including a discussion of the prospective borrower's ability to repay.

The grant recipient is also responsible for obtaining supplemental evidence, as appropriate, to support the need for RLF financing. This may include the following:

a. A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the RLF's participation; and/or

b. Bank rejection letter(s), if obtainable, listing the proposed loan terms.

Exception to Credit Test: RLF financing may also be used as an incentive, through favorable loan terms, to attract a new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate in the area without RLF financing as an incentive. To undertake this type of project, the grant recipient must sufficiently document the need for RLF assistance and should obtain certification from the company, stating that it would not locate the proposed project at the intended location without RLF assistance. Grant recipients are cautioned that failure to document adequately the need for an RLF loan may be grounds for declaring a loan ineligible and requiring the grant recipient to repay any outstanding loan balance to the RLF, or return the Federal share to EDA.

4. *Public and Quasi-Public Borrowers:* A public or quasi-public organization is not eligible to receive RLF financial assistance unless (a) the activity financed directly benefits or will directly benefit identifiable business concerns, and (b) there is reasonable assurance that the activity financed will result in increased business activity in the near term.

5. *Private Developers:* Private developers are not eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending objectives of the RLF, and directly benefits or will directly benefit identifiable business concerns.

6. *Other:* A grant recipient shall not use its RLF to make a loan to itself or to a related organization.

C. Financing Restrictions

1. Loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF are prohibited. To preclude ineligible uses of RLF funds, the purpose of each RLF loan should be clearly stated in the RLF loan agreement.

2. For initial RLF grants, the total dollar amount of loans for working capital purposes may not exceed 50% of the total RLF capital prior to the full disbursement of grant funds, unless otherwise stipulated in the grant agreement. (''*RLF capital*'' consists of the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending.) For recapitalization grants and for initial grants after the grant funds are fully disbursed, the portfolio working capital percentage may, with EDA's prior written approval, exceed 50 percent. In reviewing requests to increase the 50 percent limit on working capital loans, EDA will consider, among other things, the grant recipient's experience with working capital loans and whether the request is consistent with the area's Economic Adjustment Strategy and the RLF Plan.

3. RLF capital may not be used to:

a. Acquire an equity position in a private business;

b. Subsidize interest payments on an existing loan;

c. Provide the equity contribution required of borrowers under other Federal loan programs;

d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up (referenced in IV.B.3 above). Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand it with increased investment. In any case, the resulting economic benefits should be demonstrably consistent with the strategic objectives of the RLF;

e. Refinance existing debt unless:

(1) There is sound economic justification and the grant recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lienholder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months) from the sale of assets sufficient to cover an RLF's expenses plus a reasonable portion of the outstanding loan obligation.

(Note: Since a grant recipient will be required to repay the amount of an ineligible loan, it is recommended that EDA be contacted for clarification or written confirmation if there is any question regarding either of the refinancing exceptions described above.)

4. Prior to full disbursement of grant funds, the grant recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The plan for any loan guarantee activities should include the following information:

a. The maximum guarantee percentage that will be offered;

b. A certification from the RLF attorney that the guarantee agreement is acceptable by local standards. At minimum, the guarantee agreement must include the following: the maximum reserve requirement; the rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults; foreclosures; bankruptcies; collateral disposition and the call provisions of the guarantee; and interest income and loan fees, if any, which will accrue to the RLF.

D. Interest Rates

A grant recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but in no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if to do so would compromise the ability of the RLF to implement its financing strategy.

E. Private Leveraging

Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include (1) capital invested by the borrower or others, (2) financing from private entities, and (3) 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans. Private investments do not include equity build-up in a borrower's assets or prior capital investments by the borrower unless made within nine months of the RLF loan and with the concurrence of the RLF Recipient. If a grant recipient can

demonstrate that the 2:1 leverage requirement is too restrictive for its lending area and that it impedes the purpose for which the grant was made, it may request EDA to waive or modify the grant agreement.

V. RLF Capital

A. RLF Capitalization

The original sources of capital for EDA RLFs are normally EDA grant funds and a nonfederal cash matching share. The EDA grant funds and the nonfederal matching funds can be used only for the purpose of making loans under an RLF, unless otherwise provided for in the grant agreement and grant budget, e.g., budgeted audit costs. Costs associated with the preparation of the grant application are not eligible expenses and are not reimbursable from the funds invested as RLF capital.

B. Nonfederal Matching Share

The grant agreement specifies the amount of nonfederal cash share required for an RLF grant. This is usually not less than 25% of the total RLF capital investment. The nonfederal share funds must be loaned either before or proportionately with EDA funds. Upon repayment, the nonfederal share funds are treated the same as EDA funds, repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The nonfederal matching share must be available when needed for lending and must be under the control of the grant recipient (or its designee) for the duration of the RLF for use in accordance with the terms of the grant.

C. Partial Termination and Deobligation

In the event that a portion of the EDA grant is terminated and deobligated (refer to Section XII. below) and is no longer available to a grant recipient due to its failure to meet the terms of a grant, the nonfederal matching share shall remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

VI. RLF Administrative Costs

A. General Requirements

Grant recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as ''RLF Income'' and defined in Section VII.A.), as distinguished from principal repayments, may be used to cover eligible, reasonable, and documented administrative costs necessary to operate the RLF. When RLF Income is used for RLF administrative expenses, rather than added to the RLF capital base for lending, grant recipients are required to complete an RLF Income and Expense Statement as discussed in Section VII.C.2.

B. Auditing Costs

The grant budget accompanying the grant award lists the maximum amount of grant funds that may be used to defray the costs of audits required under the terms of the grant. In addition to funds budgeted in the grant award, audit costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received. Grant funds budgeted for audit costs that are unused may be reallocated to the RLF capital base without EDA's permission. Additional information on grant audits is discussed in Section XI.B. and in EDA's Revolving Loan Funds Grants Audit Guidelines (RLF Audit Guidelines).

C. Other Eligible RLF Administrative Costs

Costs eligible for reimbursement from RLF Income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB A–21, A–87 or A–122) and with the RLF Audit Guidelines. The requirements for using RLF Income are discussed in detail in Section VII.

Some of the common administrative costs that may be charged against RLF Income include RLF staff salaries and fringe benefits, RLF-related training, travel, marketing, general administration, business counseling and management assistance, portfolio management, materials and supplies, equipment rental and acquisitions prorated based on RLF usage, building rent, outside professional services, insurance, loan closing costs and the costs to protect collateral subsequent to foreclosure.

RLF administrative costs may be separated into direct and indirect costs. Direct costs are those that can be identified specifically with a particular cost objective, such as an RLF program; indirect costs are those that are incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable. All costs charged against RLF Income must be supported by formal accounting records and source documentation. All indirect and joint costs charged against RLF Income must additionally be supported by a cost allocation plan approved by the cognizant Federal agency.

VII. RLF Income

A. Definition

RLF Income includes interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. (Note that the definition of RLF Income does not include repayments of loan principal because RLF principal repayments represent the return of capital and not ''income''. Consequently, RLF Income is a narrower definition of income than ''program income'' in the Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments in 15 CFR Part 24.25, which includes principal repayments).

In accounting for RLF Income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF Income.

B. Eligible Uses

While RLF Income can be used to pay for eligible and reasonable administrative costs as discussed above, RLF grant recipients are expected to add a reasonable percentage of RLF Income to the RLF capital base to compensate not only for loan losses and the effects of inflation over time, but also to maintain a minimum funding level for the future borrowing needs within the eligible lending area. To determine the appropriate amount of RLF Income to return to an RLF, RLF operators should consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(Note: RLF Income that is not used for administrative purposes during the twelve month period in which it is earned must be added to the RLF capital base for lending purposes by the end of the twelve month period (see Section VII.C.2. below for selection of the twelve month period). Only RLF Income earned during a current period may be used for current administrative expenses. RLF Income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.)

C. Administrative Requirements

Grant recipients electing to use RLF Income to cover all or part of a RLF's administrative costs must comply with the following provisions:

1. *Accounting Records:* Grant recipients must (a) maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs, and (b) comply with applicable OMB cost principles and with the RLF Audit Guidelines when charging costs against RLF Income. Records must be retained by grant recipients for at least three years. If fraud is an issue, records must be retained until the issue is resolved.

2. *RLF Income and Expense Statement:* The Recipient must complete the RLF Income and Expense Statement (RLF Income Statement) located in Exhibit A, within 90 days of the twelve month period ending either September 30 or the Recipient's fiscal year end, whichever period is selected by the Recipient. The Recipient shall notify EDA of its selection in its first report to EDA. Once the period is selected, it may not be changed without prior written permission of EDA.

In lieu of completing an RLF Income Statement, the grant recipient may substitute information contained in an independent audit report provided it is in substance and in detail comparable to that provided in the RLF Income Statement. Should an audit report be used, the grant recipient will have to provide additional information certifying certain employee information requested in the RLF Income Statement.

3. *Reporting Requirements:* Grant recipients using fifty (50) percent or more or $100,000 or more of RLF Income for RLF administrative expenses during the selected twelve month period must submit the completed RLF Income Statement to the EDA Regional Office within 90 days of the period ending date. Grant recipients whose RLF Income usage is under 50 percent and less than $100,000 shall retain the RLF Income Statement for three years. The grant recipient shall make it available to EDA personnel upon request.

4. *Ineligible Costs:* For any costs determined by EDA to have been an ineligible use of RLF Income, the grant recipient shall reimburse the RLF or EDA. EDA will notify the grant recipient of the time period allowed for, and the manner in which to make, reimbursement.

VIII. Revolving Loan Fund Plan

A. Purpose

Grant recipients are required by the terms and conditions of the grant agreement to manage RLFs in accordance with an RLF Plan (Plan) generally approved prior to the grant award. The Plan serves two purposes. First, it summarizes how the RLF will be used to support implementation of the area's economic adjustment strategy, a statutory prerequisite to award of a Section 209 Implementation grant. Second, it documents the operating procedures established by the grant recipient to ensure consistent administration of the RLF in accordance with the Terms and Conditions of the grant and prudent public lending practices.

B. Format and Content

The Plan has two distinct parts. Part I, ''The RLF Strategy,'' summarizes the area's economic adjustment strategy, including the business development objectives, and describes the RLF's financing strategy, policies and portfolio standards. Part II, ''RLF Operating Procedures,'' serves as the internal operating manual for the RLF. The grant recipient is required to address a number of topics specifically identified by EDA, but otherwise has considerable discretion in designing and documenting operating procedures appropriate to the relative scale and complexity of its financing function. The required format and content for the two parts of the Plan are described in EDA's RLF Plan Guidelines.

C. EDA Approval

Unless specifically otherwise permitted by EDA, the Plan must be approved by EDA prior to the grant award.

D. Annual Plan Certification

Grant recipients are required to certify annually with the submission of the program report for the period ending September 30 (see Section XI.A), that the RLF loan board and the grant recipient's governing board have reviewed the RLF's performance for the preceding year relative to the area's adjustment strategy and the RLF Plan and have determined that:

1. The RLF Plan is consistent with and supportive of the area's current economic adjustment strategy; and

2. The RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.

With the exception of States, the certification should normally be in the form of a resolution passed by the grant recipient's governing board. Certification by State grantees should be by an authorized State official.

E. Plan Modifications

Approval of modifications to Part I of the Plan may be requested at any time the grant recipient or EDA determines that the Plan is either outdated relative to the current adjustment needs and objectives of the area or specific lending policies and/or requirements are impeding effective use of the RLF as a strategic financing tool. Prerequisites for EDA's consideration of proposed modifications to Part I of the Plan include the following:

1. When the modification request is based on a significant redirection of an area's economic adjustment strategy, it must be accompanied by a copy of the current strategy. The strategy submitted must:

a. Have been prepared or reviewed and updated, as necessary and appropriate, within the last 12 months by the grant recipient or area organization responsible for its preparation and maintenance;

b. Address, for the purposes of EDA, the same geographic/jurisdictional area covered by the original strategy, unless the eligible area has been/is being expanded as provided for by the terms and conditions of the grant;

c. Include the information specified in EDA's current guidelines for preparing and documenting an economic adjustment strategy, including evidence of the continuing need for the RLF; and

d. Provide sufficient evidence that the proposed modifications are necessary and justified.

2. When the proposed modification is designed to permit more effective use of RLF financing in support of its unchanged strategic objectives, the grant recipient must submit adequate written justification for the proposed change(s). Submission of a current adjustment strategy is not required.

3. Certification that the proposed revisions are consistent with EDA policy and do not violate the terms and conditions of the grant.

4. Certification that the purpose and scope of the RLF as a financing tool for supporting implementation of the area's economic adjustment strategy remain unchanged.

5. Certification that prudent management of the RLF assets would not be compromised.

Grant recipients funded prior to the effective date of this Manual are encouraged but not required, unless determined otherwise by EDA, to comply with the new RLF Plan format when modifying any part of their plan.

Operational procedures, as documented in Part II of the Plan, so long as consistent with EDA requirements and the terms and conditions of the grant award, may be modified with the approval of the grant recipient's governing board. A copy of any revisions to Part II should be submitted for the EDA file within 30 days of approval. For grant recipients other than States, Plan modifications should be approved by resolution of the organization's governing board.

IX. Disbursement of Grant Funds

A. Pre-Disbursement Requirements

1. The grant recipient is required to provide evidence that it has fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the life of the RLF.

2. The grant recipient is required to provide a certification by an independent accountant familiar with the grant recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF Income.

3. The grant recipient is required to certify that the standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by legal counsel for adequacy and compliance with the terms and conditions of the grant. The standard loan documents must include at a minimum, the following: Loan Application, Loan Agreement, Promissory Note, Security Agreement(s), Deed of Trust or Mortgage, and Agreement of Prior Lien Holder.

B. Disbursement Procedures

The grant recipient is required to draw grant funds electronically by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system. A grant recipient may request disbursements only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. RLF grant funds are considered to be made available to grant recipients on a reimbursement basis (as an obligation is incurred by the grant recipient at the time of loan approval and loan announcement). Grant funds should be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt. If grant funds are requested and the loan disbursement is subsequently delayed, a grant recipient may hold the funds up to 30 days from the date of receipt, but should return the funds if disbursement of the grant funds is unlikely within the 30 day period. Returned funds will be normally available to the grant recipient for future drawdown. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—''EDA'' followed by the grant award number and the words ''Premature Draw.'' The grant recipient may also indicate, if a cover letter is sent, that a credit in the amount of the check is to be made to the grant award number for future drawdown. Checks should be submitted to: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

As stated above, the nonfederal matching share must be disbursed either proportionately with the EDA grant funds or at a faster rate. Interest earned on prematurely drawn grant funds must be returned to EDA at least quarterly for deposit in the U.S. Treasury. (Note: Grantees may deduct and retain a portion of such earned

interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable). Returned interest payments should indicate on the face of the check ''EDA'' followed by grant award number and the word ''Interest''. Checks for interest should be submitted to the same Atlanta, Georgia address as above.

To request a grant disbursement by the ACH/EFT method, a grant recipient must submit a completed Request For Advance or Reimbursement, Standard Form 270 to the EDA Regional Office using the attached Special Instructions (Exhibit B) which are specific to RLF grants. Grant recipients may generally expect to have funds available for subsequent disbursement from five to ten working days after the EDA Regional Office receives the SF 270.

C. Principal Repayments During Grant Disbursement Phase

Principal repayments from active RLF loans that are received by the grant recipient must be placed immediately in the loan fund to be available for relending only. As each new loan is made, the grant recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF Income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant (refer to Section V.B. for matching fund requirements). However, RLF Income received during the current period (as defined in Section VII.C.2.) may be held for the duration of the period to cover eligible administrative expenses, and need not be disbursed in order to draw additional grant funds.

D. Loan Closing/Disbursement Schedule

RLF loan activity must be sufficient to draw down grant funds in accordance with the prescribed time schedule for loan closings and disbursements to eligible RLF borrowers. Unless otherwise stated in the grant agreement, the time schedule requires that the initial round of lending (i.e., the grant disbursement phase) be completed within three (3) years of the grant award with no less than 50 percent of the grant funds, and of the nonfederal matching share, disbursed within eighteen months and 80 percent within two years.

Should the grant recipient substantially fail to meet any of the prescribed deadlines, additional grant funds will not be disbursed unless (1) funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline, (2) funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) EDA has approved a time schedule extension.

(Note: An approved loan is defined as a loan that has been approved by the RLF loan board but has not been closed. A loan is closed when the loan agreement and note have been signed by the borrower. The full amount of a loan may be disbursed to the borrower at the time of loan closing, or may be disbursed in installments and under conditions specified in the loan agreement.)

E. Time Schedule Extensions

Grant recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet any of the required disbursement deadlines. Except under the conditions described, a grant recipient is required to submit a written request for continued use of grant funds beyond the missed deadline. Extension requests must provide good reason for the delay and demonstrate that (1) the delay was unforeseen or generally beyond the control of the Recipient, (2) the need for the RLF still exists, (3) the current or planned use, and anticipated benefits of the RLF remain consistent with the current adjustment strategy and RLF Plan, and (4) achievement of a new proposed time schedule is reasonably possible and why no further delays are foreseen. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA will deobligate (terminate) all or part of the unused portion of grant.

By law, grant funds remain available to EDA for disbursement only until September 30 of the fifth year after the fiscal year of the grant award. No time extensions will be granted beyond that time and any undisbursed funds remaining will be deobligated.

X. Capital Utilization Standard

A. Definition

During the revolving phase, grant recipients are expected to manage their repayment and lending schedules to maximize the amount of capital loaned out or committed at all times. Under normal circumstances, at least 75 percent of an RLF's capital should be in use. [RLF Income earned during the current period (as defined in Section VII.C.2) is not included as RLF capital.] EDA may recognize exceptions for RLFs whose Plan calls for making loans that are large relative to the size of the capital base. RLFs with capital bases in excess of $4 million are expected to maintain a proportionately higher percentage of their funds loaned out. The percentage will be determined by EDA on a case-by-case basis.

When the percentage of capital loaned out falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as ''excess funds.''

B. Deviation

In the event that there are excess funds at the time a semiannual report is due, the grant recipient must submit an explanation of the situation with the report, and if there is a significant deviation from the standard, as determined by EDA, the grant recipient must describe the remedial action to be taken.

C. Sequestration of Excess Funds

At any time subsequent to a second consecutive report showing that the applicable standard has not been met, EDA may require the grant recipient to deposit excess funds in an interest bearing account; that portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval will be required to withdraw sequestered funds.

D. Persistent Noncompliance

EDA will normally give the grant recipient a reasonable period of time to loan the excess funds and achieve the standard. However, when a grant recipient fails to achieve the applicable standard after a reasonable period of time, as determined by EDA, the grant will be subject to sanctions for suspension and/or termination as described in Section XII of this Manual.

XI. Monitoring

EDA monitors grant recipients for compliance with the Terms and Conditions of the grant, for performance against national norms and individual portfolio standards, and for the contribution of the RLF to the area's economic adjustment process. Monitoring and performance assessments are based on periodic reports submitted by the grant recipients, organizational and Federal audits, and site visits by EDA staff.

A. Reports

1. *Grant Status Reports:* Grant recipients are required to submit standard Federal grant status reports to EDA during the grant disbursement phase as specified in the Terms and Conditions of the grant agreement. These include: (a) Standard Form 270, Request for Advance or Reimbursement, which is submitted each time a grantee needs to draw Federal funds (see Section IX.B. and Exhibit B); and (b) Standard Form 272, Federal Cash Transactions Report (Exhibit C), which is due within 15 days following the end of each calendar quarter and shows the status of grant funds. Failure to submit a Standard Form 272, when due, will prevent a grant recipient from obtaining funds until the form is submitted.

2. *Financial and Performance Reports:* All grant recipients are required to complete and submit Financial and Performance Reports (Exhibit D) semiannually unless otherwise notified by EDA.

a. Initial Report: For grants, other than recapitalizations, awarded between October 1, and March 31, the initial report due date is the following October 31. For grants awarded between April 1 and September 30, the initial report due date is the following April 30.

b. Subsequent Reports: After the initial report, the semiannual report is due on October 31, for the period of loan activity ending September 30, and April 30, for the period ending March 31.

Generally, RLF grant recipients will be required to submit reports to the EDA Regional Office every six months for a minimum of one year after disbursement of all grant funds, after which a grant recipient may be eligible for ''graduation'' to a shorter, annual reporting format (Exhibit E). Grant recipients must request this in writing. Recipients of recapitalization grants shall report on the full amount of their RLF funds in each subsequent semiannual or annual report submitted.

3. *Annual Reports:* For grant recipients graduated to an annual reporting schedule, the report covers the twelve month period ending September 30, and is due October 31. The annual reporting requirement continues through the life of an RLF unless EDA determines that more frequent or detailed reports are needed for closer monitoring of grant violations or other problems. Note that the annual report requires documentation of capital utilization at semiannual intervals pursuant to the requirements of Section X.

4. *Special Reports:* Special reports to enable EDA monitoring of compliance issues arising from audits, site visits, or other reviews may be requested from the grant recipient in writing on a case by case basis.

First time grant recipients may be required to submit periodic reports on their progress in initiating RLF activity, prior to the due date of the first semiannual report.

B. Audits

Grant recipients are subject to the following audit requirements for the duration of the RLF.

1. In accordance with the terms and conditions of the grant award, the grant recipient shall arrange for a Single Audit as referenced in the RLF Audit Guidelines and OMB Circular A–133. Such audits should be conducted by an independent auditor who meets the general standards specified in generally accepted government auditing standards. With the exception of newly awarded grants and limited circumstances described in the RLF Audit Guidelines, the majority of RLF grant recipients will require an annual audit.

Pursuant to the Single Audit Act Amendments of 1996 (P.L. 104–156), and OMB Circular A–133, as codified in DOC Regulations found at 15 CFR Part 29, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. The cost principles to be followed are contained in OMB Circulars A–21, A–87 or A–122, as applicable.

Audit requirements for RLF's are summarized in the EDA RLF Audit Guidelines which should be made available to the auditor prior to the audit engagement. Failure to comply with these requirements could result in an unacceptable audit.

2. The U.S. Department of Commerce Office of Inspector General (OIG) may audit, inspect, or investigate an RLF grant at any time.

C. Site Visits

EDA will periodically schedule site visits to review the grant recipient's operating procedures, monitor progress and evaluate the effectiveness of the RLF in supporting the area's economic adjustment process and strategic objectives.

XII. Noncompliance With the Grant Terms

A. Suspension

EDA may suspend RLF lending activity when EDA determines that a grant recipient has failed to comply with the grant terms. Before suspending a grant, EDA may give the grant recipient a reasonable period of time in which to take the necessary corrective action to comply with the grant terms. However, should it appear that the grant recipient had not taken or will not take the necessary action, and/or that continued operation of the RLF would place the assets at risk, EDA may suspend the grant immediately. Upon suspension, the grant recipient will be prohibited from any new lending activity, although normal loan servicing and collection efforts will continue. In addition, the grant recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets may be required.

In the event that the compliance problems are not resolved during the suspension period, EDA will attempt to resolve the issues through means including working with the Recipient to identify a successor to assume responsibility for administering the RLF in accordance with the terms of the original grant agreement. If issues cannot be resolved, EDA will initiate proceedings to terminate the grant for cause.

B. Termination for Cause

EDA may terminate an RLF grant for cause with or without prior suspension of lending activity.

C. Partial Termination

When EDA determines, after a reasonable period of time, that a grant recipient is unable or unwilling to use the full amount of the grant funds or of the RLF capital and RLF Income thereby generated, EDA may partially terminate the grant if EDA determines that the remaining capital is sufficient to support continuation of an effective RLF operation.

When a grant recipient fails to complete the initial round of lending in the time schedule provided in the grant agreement, the unused grant funds may be deobligated and the grant award amended to reflect the reduced grant amount. The nonfederal matching share will be expected to remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

Grant recipients in the revolving phase who persistently fail to make maximum use of the available RLF capital, as defined by the applicable capital utilization standard in Section X, will be required to return excess funds, in an amount determined by EDA, to the U.S. Treasury. This amount will not be greater than EDA's proportionate share of the excess funds sequestered at the time. The grant award will be amended to reflect the reduced amount of EDA's participation.

XIII. Termination for Convenience

A grant recipient has the right to request termination for convenience of the grant, in whole, or in part, at any time. Termination is undertaken without prejudice to the grant recipient upon agreement of both parties that the purpose of the grant would not be served by further expenditure of funds, and in the case of a partial termination, EDA determines that sufficient funds remain to permit an effective RLF operation. The Federal share of the funds must be returned to the U.S. Treasury as described below in Section XIV.

XIV. Recovery of EDA Interest in the RLF Assets

In case of termination, for cause or convenience, EDA has the responsibility, on behalf of the Federal Government, to recover its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EDA's fair share is the amount computed by applying the percentage of EDA participation in the total capitalization of the RLF to the current fair market value of the assets thereof; provided that with EDA's approval the Recipient may use for other economic development purposes that portion of such RLF property which EDA determines is attributable to the payment of interest on RLF loans and not used by the Recipient for administrative or other allowable expenses. In addition, EDA has the right to compensation, over and above its share of the current fair market value of the assets, when it is determined that the value of such assets has been reduced by the improper/illegal use of grant funds.

XV. Sale or Securitization of Loans

Grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or securitization of the loan portfolio to generate money to be used for additional loans as part of the RLF. A grant recipient contemplating such an action is advised to consult with EDA prior to development of a formal proposal.

In the event of the sale, collection, or liquidation of loans, any proceeds, net of repaid principal and reasonable administrative costs incurred, up to the amount of the outstanding loan principal, must be returned to the RLF for relending. Any net proceeds from loan sales above the outstanding loan principal is considered RLF Income and must either be added to the RLF capital base for lending or used to cover eligible costs for administering the RLF in accordance with the rules for use of RLF Income.

XVI. Appendix

The following reference materials and required or sample reporting formats are available from EDA:

OMB Circulars and CFR'S (List of Reprints)

15 CFR Part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

OMB Circular A–87, Cost Principles for State and Local Governments

15 CFR Part 29a, Audit Requirements for State and Local Governments

15 CFR Part 29b, Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

OMB Circular A–133, Audits of States, Local Governments and Nonprofit Organizations

OMB Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations Uniform Administrative Requirements
OMB Circular A–122, Cost Principles for Nonprofit Organizations
OMB Circular A–21, Cost Principles for Educational Institutions
48 CFR Part 31, Contract Cost Principles and Procedures
15 CFR Part 26, Governmentwide Debarment and Suspension and Governmentwide Requirements for Drug Free Workplace

EDA Reference Materials and Reporting Formats

EXHIBIT A: RLF Income and Expense Statement with Instructions
EXHIBIT B: Request for Advance or Reimbursement (SF–270) with EDA Special Instructions
EXHIBIT C: Federal Cash Transaction Report (SF–272)
EXHIBIT D: Semiannual Report for RLF Grants with Instructions
EXHIBIT E: Annual Report for RLF Grants with Instructions

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EXHIBIT A

RLF INCOME AND EXPENSE STATEMENT

For The (Most Recent) 12 Month
Period Ended:_____

	Most Recent Period	Prior Period
1. RLF INCOME	$	$
2. EXPENSES CHARGED TO RLF INCOME		
a. Employee Salaries	$	$
b. Employee Fringe Benefits	$	$
c. RLF-related Travel	$	$
d. Loan Processing/Closing Costs	$	$
e. Professional Services	$	$
f. Marketing	$	$
g. RLF Staff Training	$	$
h. Equipment - Rental	$	$
- Acquisition	$	$
I. Space (rent)	$	$
j. Audit	$	$
k. Indirect Costs	$	$
l. Other (Specify)	$	$
3. **TOTAL EXPENSES** (sum 2.a thru 2.l)	$	$
4. **NET RLF INCOME** (1 minus 3)	$	$
5. Cumulative **NET RLF INCOME**	$	$
6. EXPENSES as % of RLF INCOME (3/1)	%	%

7. For the current 12 month period, provide an estimate of projected RLF Income and the percentage expected to be used for RLF administrative expenses.
Projected RLF Income: $_____ % for Administration: _____ %

8. On a separate page, list all personnel positions which were funded partially or in full with RLF Income for the most recent period only; list the aggregate dollar amount for salaries and fringe benefits for each listed position, and the amount and percent which were funded by RLF Income.

CERTIFICATION OF AUTHORIZED REPRESENTATIVE (designated RLF Administrator or Chief Financial Officer): I certify that the above information and any attachments thereto are complete and accurate to the best of my knowledge.

By:_____ Date: _____

Name and Position: _____

BILLING CODE 3510–24–C

Exhibit A (back)—Instructions for RLF Income and Expense Statement

The RLF INCOME AND EXPENSE STATEMENT is to be used by recipients of revolving loan fund (RLF) grants provided by the Economic Development Administration (EDA), U.S. Department of Commerce. The Statement is to be completed for each year in which a grantee uses income generated from RLF activities to pay for RLF administrative expenses. It should be completed within 90 days of a grant recipient's fiscal year end or September 30. The period will be selected by the grant recipient; once selected, it may not be changed without the prior approval of EDA. Instructions for submitting the Statement are included in the EDA Administrative Manual, Section VII. Expenses charged to RLF income sources must be eligible under the terms of the grant and must comply with applicable OMB cost principles and the EDA RLF Audit Guide. For grantees completing the Statement for the first time, or which did not charge any expenses against RLF income sources in a prior period, complete only the second column marked ''Most Recent Period'' and answer questions 7. And 8.

Except for the items explained below, all items on the Statement are self-explanatory or are adequately addressed in the RLF Audit Guide and applicable OMB Cost Principles.

Item and Entry

1 ''RLF INCOME'' includes all interest earned on outstanding loan principal, interest earned on accounts holding idle RLF funds, and loan fees and other loan-related earnings.

2d Enter the amount of grantee out-of-pocket costs which were necessary to process and close RLF loans. These costs may include such costs for credit reports, title insurance, Uniform Commercial Code searches, filing fees, appraisals, etc., which are recorded in the grantee's accounting records. Any costs not recorded in the grantee's accounting records, e.g., those paid directly by a borrower to a third party, or those that were netted against loan fees (thereby reducing reported income), need not be reported here.

2g Enter the costs charged to RLF Income for RLF-related training for employees involved in RLF operations. These costs may include training materials, textbooks, tuition and registration fees. Any training-related travel costs should be reported in Item 2c.

5 ''Cumulative NET RLF INCOME'' includes all RLF Income earned during the life of the RLF that was not used for RLF administrative expenses. The amount reported should be inclusive of the NET RLF INCOME reported in Item 4. (The Cumulative NET RLF INCOME for the most recent period should equal the sum of the amounts in Item 5 for the prior period and in Item 4 for the most recent period.

BILLING CODE 3510–24–P

EXHIBIT B

REQUEST FOR ADVANCE OR REIMBURSEMENT (See Instructions on back)	OMB Approval NO. 0348-0004	Page	of Pages
1. TYPE OF PAYMENT REQUESTED	A. "X" ONE OR BOTH BOXES ☐ Advance ☐ Reimbursement b. "X" the applicable box ☐ Final ☐ Partial	2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL	
3. FEDERAL SPONSORING AGENCY AND ORGANIZATION ELEMENT TO WHICH THIS REPORT IS SUBMITTED	4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY	5. PARTIAL PAYMENT REQUEST NUMBER FOR THIS REQUEST	
6. EMPLOYER IDENTIFICATION NUMBER	7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER	8. PERIOD COVERED BY THIS REQUEST FROM *(mont, day, year)*	TO *(month, day, year)*
9. RECIPIENT ORGANIZATION NAME NUMBER AND STREET CITY, STATE and ZIP CODE		10. PAYEE (where check is sent is different than item 9) NAME NUMBER AND STREET CITY, STATE and ZIP CODE	

11. COMPUTATION OF AMOUNT OF REIMBURSEMENTS/ADVANCES REQUESTED

PROGRAMS/FUNCTIONS/ACTIVITIES		(a)	(b)	(c)	TOTAL
a. Total Program - Outlays to Date *(as of date)*		$	$	$	$
b. *Less:* Cumulative program income					
c. Net program outlays (*Line* **a** *minus line* **b**)					
d. Estimated net cash outlays for advance period					
e. Total *(Sums of lines c & d)*					
f. Non-Federal share of amount on line **e.**					
g. Federal share of amount on line **e.**					
h. Federal payments previously requested					
I. Federal share now requested (*Line* **g** *minus line* **h**)					
j. Advances required by month, when requested by Federal grantor Agency for use in Making prescheduled advances	1st month				
	2nd month				
	3rd month				

12. ALTERNATE COMPUTATION FOR ADVANCES ONLY

a. Estimated Federal cash outlays that will be made during period covered by the advance	$
b. *Less:* Estimated balance of Federal cash on hand as of beginning of advance period	
c. Amount requested (*Line* **a** *minus line* **b**)	$

AUTHORIZED FOR LOCAL REPRODUCTION *(Continued on Reverse)*

STANDARD FORM 270 (REV. 2-92)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET
Cir. NO. A-102 AND a-110

EXHIBIT B

CERTIFICATION

I certify that to the best of my knowledge and belief the data on the reverse are correct and that all outlays were made in accordance with the grant conditions or other agreement and that payment is due and has not been previously requested.

Signature of Authorized Certifying Official	Date Request Submitted
Typed or Printed Name and Title	Telephone (Area Code, Number, Extension

This Space for Agency Use

Public reporting burden for this collection of information is estimated to average 60 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the OFFICE of Management and Budget, Paperwork Reduction Project (0348-0004), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

INSTRUCTIONS

Please type or print legibly. Items 1, 3, 5, 9, 10, 11c, 11e, 11f, 11g, 11i, 12 and 13 are self explanatory; specific instructions for other items are as follows:

Item	Entry
2.	Indicate whether request is prepared on cash or accrued expenditure basis. All requests for advances shall be prepared on a cash basis.
4	Enter the Federal grant number, or other identifying number assigned by the Federal sponsoring agency. If the advance or reimbursement is for more than one grant or other agreement, insert N/A; then, show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.
6	Enter the employer identification number assigned by the U.S. Internal Revenue Service, or the FICE (institution) code if requested by the Federal agency.
7	This space is reserved for an account number or other identifying number that may be assigned by the recipient.
8	Enter the month, day and year for the beginning and ending of the period covered in this request. If the request is for an advance or for both an advance and reimbursement, show the period that the advance will cover. If the request is for reimbursement, show the period for which the reimbursement is requested.
Note:	The Federal sponsoring agencies have the option of requiring recipients to complete items 11 or 12, bu not both. Item 12 should be used when only a minimum amount of information is needed to make an advance and outlay information contained in item 11 can be obtained in a timely manner from other reports.
11	The purpose of the vertical columns (a), (b), and (c), is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right: however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page.
11a	Enter in "as of date", the month, day, and year of the ending of the accounting period to which this amount applies. Enter program outlays to date (net of refunds, rebates, and discounts), in the appropriate columns. For requests prepared on a cash basis, outlays are the sum of actual cash disbursements for goods and services, the amount of indirect expenses charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subcontractors and subrecipients. For requests prepared on an accrued expenditure basis, outlays are the sum of the actual cash disbursements, the amount of indirect expenses incurred, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received and for services performed by employees, contracts, subgrantees and other payees.
11b	Enter the cumulative cash income received to date, if requests are prepared on a cash basis. For requests prepared on an accrued expenditure basis, enter the cumulative income earned to date. Under either basis, enter only the amount applicable to program income that was required to be used for the project or program by the terms of the grant or other agreement.
11d	Only when making requests for advance payments, enter the total estimated amount of cash outlays that will be made during the period covered by the advance.
13	Complete the certification before submitting this request.

STANDARD FORM 270 BACK (Rev. 2-92)

BILLING CODE 3510–24–P

Exhibit B (Revised 12/98)—Special Instructions for Completion of Standard Form 270 for EDA Revolving Loan Fund Grants

These instructions apply to revolving loan fund (RLF) grants funded by the Economic Development Administration (EDA). U.S. Department of Commerce, under Section 209 of the Public Works and Economic Development Act of 1965, as amended. RLF grant recipients are required to use Standard Form 270 to draw grant funds when needed to disburse to RLF borrowers. Funds may be drawn only for immediate use (i.e., when the intent is to disburse the funds within 14 days of receipt), and only to the extent that the recipient does not have funds on hand from loan repayments and certain RLF income sources to cover the proposed disbursement request. (See below and EDA's RLF Administrative Manual, Section IX, for further details.) Grant funds not disbursed within 30 days of receipt must be returned to EDA. Items 1b, 3, 9, 11c, 11e, and 11i are self-explanatory; specific instructions for other items follow:

Item and Entry

1a Indicate whether the request is for a reimbursement or an advance. (Note the RLF disbursements are normally considered reimbursement as a reimbursable obligation is created at the time of loan approval. A request for an advance may be requested under special circumstances.

2 Disregard.

4 Enter the Federal grant number or other identifying number assigned by EDA. If the reimbursement or advance is for more than one grant or other agreement, insert N/A; then show the aggregate amounts. On a separate sheet, list each grant or agreement number and the Federal share of outlays made against the grant or agreement.

5 Enter in numerical order the number of this disbursement request. Begin with the number ''1'' for each new grant.

6 Enter the employer identification number assigned by the US Internal Revenue Service, or the FICE (institution) code if requested by EDA.

7 This space is reserved for an account number or other identifying number that may be assigned by the grant recipient.

8 Disregard.

10 Enter ''ACH/EFT'' for funds disbursement by the Automated Clearing House Electronic Funds Transfer System. For further details, refer to Section E.02 of the RLF Standard Terms and Conditions.

11 The purpose of the vertical columns (a), (b), and (c) is to provide space for separate cost breakdowns when a project has been planned and budgeted by program, function, or activity. If additional columns are needed, use as many additional forms as needed and indicate the page number in the space provided in upper right; if more than one column is used, the summary totals of all programs, functions, or activities should be shown in the ''total'' column on the first page.

11a Enter in ''as of date'', the month, day and year of the ending of the accounting period to which this amount applies. Enter the amount of cumulative outlays for RLF loans from the following sources: EDA RLF grant funds, matching funds, and program income (defined in Section VII.A of the RLF Administrative Manual).

Include actual, pending (previous outlays requests that have not yet been disbursed) and proposed (those proposed under this request) outlays. For recapitalized RLF's—those where a subsequent EDA RLF grant was made to the same recipient—treat cumulative outlays as beginning with the inception of the RLF.

11b Cumulative Program Income, as defined below, must be used before or concurrent with the disbursement of new grant funds (pursuant to Section IX of the RLF Administrative Manual). Cumulative Program Income is a net figure computed, as follows:

+Cumulative Principal Repaid*
+Cumulative RLF Income Received**
−*Cumulative Administrative Cost Expensed to RLF Income****

Footnotes:

*This is the cumulative RLF loan principal that has been repaid from inception of the RLF.

**This includes all RLF Income earned and received from inception of the RLF. Current period RLF Income on hand may be excluded from this amount if any portion of it is anticipated to be used during the remainder of the current period. Note that failure to exclude these funds here will increase Cumulative Program Income (line 11b) which will lower the amount of grant funds to be requested for disbursement (line 11i). Any RLF Income available at the end of a period is required to be added to the RLF capital base for lending.

***Enter all administrative costs Expensed to RLF Income from Inception of the RLF.

Definitions

Program Income—is the sum of all RLF principal repayments plus RLF Income (defined below).

RLF Income—includes all RLF-generated income from loan fees, interest earned on loans and on accounts holding idle RLF funds, and other loan-related earnings.

Period—refers to the 12-month reporting period by each grant recipient; it may end on either September 30 or the grantee's fiscal year-end date. (Refer to Section VII.C.2. of RLF Administrative Manual.

11d Enter ''0'' unless an advance of grant funds is being requested—see Item 1a above.

11f Enter the total amount of the matching funds previously expended plus matching funds to be disbursed as part of this request (and any previous pending request, if applicable). When calculating this amount, note that the matching funds amount in 11f as a percent of the amount on line 11c may not be less than the percentage relationship between the aggregate of matching funds and of total project costs indicated in the grant award(s). Matching funds must be expended either before or at least proportionately with EDA grant funds.

11g Enter the EDA share of the amount on line 11e. This should be the difference between the amounts on lines 11e and 11f.

11h Enter the amount of EDA funds previously requested. This should be equal to the amount reported in Item 11g of the previous SF 270 submitted by the recipient.

12 Disregard.

13 In the space indicated for ''agency use'' or on a separate page, provide the following disbursement information:

a. Indicate whether the RLF identified in Section 4 is an ''initial'' or ''recapitalization'' RLF grant. If an initial grant, show the EDA grant funds expended as a percent of total expenditures by dividing the amount reported in Item 11g by the amount reported in Item 11e. If a recapitalization grant, show both the EDA and the matching fund dollar outlays (including actual and proposed outlays) for the grant disbursement; also show the percentage of EDA dollar outlays to total dollar outlays for the grant under disbursement.

b. If any previously requested grant funds have been received but not disbursed, list the date of receipt and the amount remaining to be disbursed. If not applicable, type ''NA''.

c. List the RLF borrowers and the respective RLF dollar amounts anticipated to be disbursed under this request.

BILLING CODE 3510–24–P

EXHIBIT C

FEDERAL CASH TRANSACTIONS REPORT *(See instructions on the back. If report is for more than one grant or assistance agreement, attach completed Standard Form 272-A.)*	**OMB APPROVAL NO. 0348-0003**	
	1. Federal sponsoring agency and organizational element to which this report is submitted.	
2. **RECIPIENT ORGANIZATION** *Name:* *Number and Street:* *City, State and Zip Code:*	4. Federal grant or other identification number.	5. Recipient's account number or identifying number.
	6. Letter of credit number	7. Last payment voucher number
	Give total number for this period.	
	8. Payment Vouchers credited to your account.	9. Treasury checks received *(whether or not deposited).*
	10. **PERIOD COVERED BY THIS REPORT**	
3. **FEDERAL EMPLOYER IDENTIFICATION NO.** ▶	From *(month, day, year)*	TO: *(month, day, year)*

11. STATUS OF FEDERAL CASH *(See Specific Instructions On Back)*	a. Cash on hand beginning of reporting period	$
	b. Letter of credit withdrawals	
	c. Treasury check payments	
	d. Total receipts *(Sum of lines* **b** *and* **c)**	
	e. Total cash available *(Sum of lines* **a** *and* **d)**	
	f. Gross disbursements	
	g. Federal share of program income	
	h. Net disbursements *(Line* **f** *minus line* **g)**	
	I. Adjustments of prior periods	
	j. Cash on hand end of period	$
12. The AMOUNT SHOWN ON LINE 11j. ABOVE. REPRESENTS CASH REQUIREMENTS FOR THE ENSUING DAYS	13. **OTHER INFORMATION**	
	a. Interest income	$
	b. Advances to subgrantees or subcontractors	$

14. REMARKS *(Attach additional sheets of plain paper, if more space is required.)*

15. **CERTIFICATION**

I certify to the best of my knowledge and belief that this report is true in all aspects and that all disbursements have been made for the purpose and conditions of the grant or agreement	**AUTHORIZED CERTIFYING OFFICIAL**	SIGNATURE	DATE REPORT SUBMITTED
		TYPED OR PRINTED NAME AND TITLE	TELEPHONE *(Area Code, Number, Extension)*

THIS SPACE FOR AGENCY USE

NSN 7540-01-016-5435

STANDARD FORM 272 (REV. 2-92)
PRESCRIBED BY OFFICE OF MANAGEMENT AND BUDGET

BILLING CODE 3510–24–C

Instructions

Public reporting burden for this collection of information is estimated to average 120 minutes per response, including timer for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0003), Washington, DC 20503.

Please *do not* return your completed form to the Office of Management and Budget, send it to the address provided by the sponsoring agency.

Please type of print legibly, Items 1, 2, 8, 9, 10, 11d, 11e, 11h, and 15 are self explanatory, specific instructions for other items are as follows:

Item and Entry

3 Enter employer identification number assigned by the U.S. Internal Revenue Service or the FIC (institution) code.
If this report covers more than one grant or other agreement, leave items 4 and 5 blank and provide the information on Standard Form 272–A, Report of federal Cash Transactions—Continued; otherwise;

4 Enter Federal grant number, agreement number, or other identifying numbers if requested by sponsoring agency.

5 This space reserved for an account number or other identifying number that may be assigned by the recipient.

6 Enter the letter of credit number that applies to this report. If all advances were made by Treasury check, enter ''NA'' for not applicable and leave items 7 and 8 blank.

7 Enter the voucher number of the last letter-of-credit payment voucher (Form TUS 5401) that was credited to your account.

11a Enter the total amount of Federal cash on hand at the beginning of the reporting period including all of the Federal funds on deposit, imprest funds, and undeposited Treasury checks.

11b Enter total amount of Federal funds received through payment vouchers (Form TUS 5401) that were credited to your account during the reporting period.

11c Enter the total amount of all Federal funds received during the reporting period through Treasury checks, whether or not deposited.

11f Enter the total Federal cash disbursements, made during the reporting period, including cash received as program income. Disbursements as used here also include the amount of advances and payments less refunds to subgrantees or contractors, the gross amount of direct salaries and wages, including the employee's Share of benefits if treated as a direct cost, interdepartmental charges for supplies and services, and the amount to which the recipient is entitled for indirect costs.

11g Enter the Federal share of program income that was required to be used on the project or program by the terms of the grant or agreement.

11i Enter the amount of all adjustments pertaining to prior periods affecting the ending balance that have not been included in any lines above. Identify each grant or agreement for which adjustment was made, and enter an explanation for each adjustment under ''Remarks''. Use plain sheets of paper if additional space is required.

11j Enter the total amount of Federal cash on hand at the end of the reporting period. This amount should include all funds on deposit, imprest funds, and undeposited funds (line 3, less line h, plus or minus line I).

12 Enter the estimated number of days until the cash on hand, shown on line 11j, will be expended. If more than three days cash requirements are on hand, provide an explanation under ''Remarks'' as to why the drawdown was made prematurely, or other reasons for the excess cash. The requirement for the explanation does not apply to prescheduled or automatic advances.

13a Enter the amount of interest earned on advances of Federal funds but not remitted to the Federal agency. If this includes any amount earned and not remitted to the Federal sponsoring agency for over 60 days, explain under ''Remarks''. Do not report interest earned on advances to States.

13b Enter amount of advance to secondary recipients included in item 11h.

14 In addition to providing explanations as required above, give additional explanation deemed necessary by the recipient and for information required by the Federal sponsoring agency in compliance with governing legislation. Use plain sheets of paper if additional space is required.

BILLING CODE 3510–24–P

EXHIBIT D (Rev. 12/98) Page 1 of 7

SEMIANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name:	Period Ending:
Project No.:	Contact Person:
	Phone:

PART I: PORTFOLIO STATUS (000'S)

A. Status of Direct Loans

	(1)	(2)	(3)	
	#	RLF $ Loaned	RLF Principal Outstanding	
1. Total Loans Made		$	$	
2. Fully Repaid		$	$	
3. Current		$	$	
4. Delinquent (<60 Days)		$	$	
5. In Default (>60 Days)		$	$	
6. Total Active Loans (Add lines 3. 4 & 5)		$	$	
7. Total Written Off		$	$	(Amount Lost)

B. Status of Loan Guarantees:

	#	RLF$ Reserved	Total Amount Guaranteed	Current Exposure
1. Total Loans Guaranteed		$	$	
2. Fully Repaid		$	$	
3. Current		$	$	$
4. Delinquent (<60 Days)		$	$	$
5. In Default (>60 Days)		$	$	$
6. Total Active Guarantees (Add lines 3. 4 & 5)		$	$	$
7. Total Written Off		$	$	$
				(Amount Lost)

EXHIBIT D (Rev. 12/98)

PART II: PORTFOLIO SUMMARY

A. Summary of Loan Activities: Provide information below on **Total Loans** and **Active Loans** closed to date. This section provides an overview of the RLF's Progress in Meeting program and grant objectives as well as identifying results of **Core Performance Measures** outlined in Section F.01. of the RLF Standard Terms and Conditions. It also shows trends by comparing the total and active loan portfolios.

	Total Loans	Active Loans
1. # RLF Loans:		
2. RLF $$ Loaned:	$	$
3. Non-RLF $$ Leveraged by RLF:		
a. Private	$	$
b. Other	$	$
c. Total Leveraged $$ (a + b)	$	$
4. Total Project Financing (2 + 3c)	$	$
5. Private Sector Jobs:		
a. Created (Actual)		
b. Saved		
c. Actual + Saved (a + b)		
6. RLF $$ Loaned for Fixed Assets:	$	$
7. RLF $$ Loaned for Working Capital:	$	$
8. RLF $$ Loaned for:		
a. Start-up	$	$
b. Expansion	$	$
c. Retention	$	$
9. RLF $$ Loaned for:		
a. Industrial	$	$
b. Commercial	$	$
c. Service	$	$
10. RLF $$ Loaned to Minority Businesses:	$	$
11. RLF $$ Loaned to Women-Owned Businesses:	$	$
12. Other Targets (Specify):	$	$

EXHIBIT D (Rev. 12/98)

B. Comparison of RLF Portfolio to RLF Plan: In column one below, fill in the spaces by providing information from the "Targeting", "Standards" and "Financing" sections of the RLF Plan. If an item is not included in the RLF Plan, and therefore not applicable, indicate this by placing N/A in column one. In columns two and three, use the figures obtained in Part II.A. above to compute the ratios and percentages for Total and Active Loans, respectively. Formulas for the computations are indicated in the brackets next to each item. Discuss any significant deviations between columns one and two.

	RLF Plan	Total Loans	Active Loans
1. Cost per Job (A2/A5c)	$	$	$
2. Non-RLF Leverage Ratios:			
a. Private (A3a/A2)	:	:	:
b. Private & Other (A3c/A2)		:	:
3. % Working Capital Loans (A7/A2)	%	%	%
4. % Loans in Eligible Target Area	100 %	%	%
5. RLF Portfolio Targeting			
a. % Start-ups (A8a/A2)	%	%	%
b. % Industrial (A9a/A2)	%	%	%
c. % Minority Owned (A10/A2)	%	%	%
d. % Women-Owned (A11/A2)	%	%	%
e. % Other (A12/A2)	%	%	%

PART III: PORTFOLIO FINANCIAL STATUS

A. RLF Funding Sources

1. EDA	$
2. Grantee	$
3. Other - Specify:	$
4. Total RLF Funding (sum of 1-3)	$

B. Program Income Earned to Date:

5. Interest Earned on Loans:	$
6. Earnings from Accounts:	$
7. Fees Charged:	$
8. Total Program Income (sum of 5-7)	$
9. How much of Total Program Income (line 8) has been used to cover administration costs to date?	$
10. How much of Total Program Income has been added to the RLF for lending (line 8 minus line 9)?	$

EXHIBIT D (Rev. 12/98)

C. Status of RLF Capital:		
11. Total RLF Funding (line 4):	$	
12. Program Income Added to RLF for lending (line 10):	$	
13. Losses on Loans & Guarantees (amount lost from Part I.A.7 & b.7):	$	
14. Current level or RLF Base Capital (sum of lines 11 & 12, less line 13):	$	
D. Current Balance Available for New Loans:		
15. RLF Principal Outstanding on Loans (from Part I.A.6):	$	
16. RLF $$ Reserved for Loan Guarantees (from Part I.B.6):	$	
17. Current Balance Available (deduct amounts shown on lines 15 & 16 from Current level of Base Capital (line 14):	$	
18. RLF $$ committed but not disbursed:	$	
19. Current Balance Available (deduct amount on line 18 from line 17):	$	
20. Current Balance Available (line 19) as a Percent of RLF Base Capital (line 14) - applies only to fully disbursed RLFs, otherwise enter N/A:		%
21. Same calculation as in line 20 above, but for preceding six month period (see prior Semiannual Report):		%
Note: If lines 20 and 21 both exceed 25%, see instructions.		

EXHIBIT D (Rev. 12/98)

PART IV: PORTFOLIO LOAN LIST

Provide the following information for each RLF loan closed:

Loan Recipient	Loan Type & Description	Financing By Source (Specify)
1. Borrower Name 2. Location (include city, county & state) 3. SIC Code - 4 Digit 4. Minority Owned 5. Woman Owned	1. Direct/Guaranty 2. Fixed Asset/Working Capital 3. Start-up, Expansion or Retention	1. RLF $ 2. Other Public $ 3. Private $ 4. New Equity $ 5. Total $ 6. Amount Guaranteed $

Closing Date & Loan Terms	Loan Status	Repayment Status
1. Date Close 2. Term: Years 3. Interest Rate 4. Total Fees	1. Fully Repaid: Date 2. Current as of: Date 3. Delinquent: Days 4. Default: Days 5. Write-Off: Date	1. Principal Repaid 2. Interest Paid 3. Amount Delinquent 4. Amount Default 5. Amount Written-Off

Job Impact	
1. Pre-Loan jobs 2. Jobs Created 3. Jobs Saved 4. Minority jobs (Created/saved) 5. Women jobs (Created/Saved)	

PART V: MISCELLANEOUS INFORMATION & CERTIFICATION

A. Recent Loan Activity (Last 12 Months Only)

1. # Applications Received:	
2. # Applications Received from minority-owned firms:	
and Women-owned firms:	
3. # Loans closed:	
4. # Loans closed from Minority-owned firms:	
and Women-owned firms:	

EXHIBIT D (Rev. 12/98)

B. Capital Utilization (Section X. of RLF Administrative Manual)			
	Complete as appropriate		
5. On page 4 of this Semiannual Report, if the percentages calculated in **both** D.20 and D.21 are greater than 25%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand? *(Check one)*		YES	NO
6. If both D.20 and D.21 on page 4 of this Semiannual Report are greater than 25%, list the amount of excess funds subject to sequestration.	$		
7. List any amount in #6 that has been sequestered in a separate account.	$		

C. RLF Income and Expenses (Section VII of RLF Administrative Plan)			
	Complete as appropriate		
8. Enter the month and day of the accounting period which has been selected for reporting of RLF Income and Expenses in accordance with Section VII.C. of the RLF Administrative Manual.			
9 Enter the amount of RLF Income earned during the most recent 12 month period, which was designated in #8.	$		
10. Enter the amount of RLF Income that was used for administrative costs during the most recent 12-month period, which was designated in #8.	$		
11. Divide the administrative costs reported in #10 by the RLF Income reported in #9 and enter the percentage figure.			%
12. If the percentage in #11 is larger than 50%, or the amount in #10 is greater than $100,000, was an Income and Expense Statement submitted to EDA as required in Section VII.C.2. of the RLF Administrative Manual. *(Check One)* (If applicable and not sent, submit an Income and Expense Statement with this report.)	YES	NO	N/A

D. Administration			
	Complete as appropriate		
13. Any key Staff Turnover in the last 12 months? *(Check One)* List position(s):		YES	NO
14. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender.			
15. Enter the ending date of the most recent independent Audit covering the recipient and indicate type of Audit, i.e., "Single" or "Program Specific".			

EXHIBIT D (Rev. 12/98) Page 7 of 7

16. Attach the Audit referenced in #15 if it was not previously submitted to EDA.			
17. If the Audit referenced in #15 did not cover either the most recent or prior fiscal year end period, is an explanation attached? *(Check One)*		YES	NO
E. ANNUAL RLF PLAN CERTIFICATION (Section VIII of the RLF Administrative Manual and Section D.03 of the Standard Terms and Conditions)			
18. Is the required ANNUAL RLF Plan Certification attached? *(Check One)* If "no," indicate the date it will be submitted:		YES	NO
F. COMPLIANCE WITH IMPLEMENTATION SCHEDULE (To be completed only if grant is not fully disbursed)			
19. Is the actual grant implementation/disbursement progress in accordance with the schedule set forth by the Implementation Special Condition (or an EDA approved amendment thereto) required as a part of this grant award? *(Check One)* if "no," attach explanation.		YES	NO

CERTIFICATION: I hereby certify on this ____ day of _____, 19 ___, that the information provided in this Semiannual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

_____ Capital Utilization (#5 above)

_____ Current Loan Board Membership (#14)

_____ Copy of Audit (#16)

_____ Audit Explanation (#17)

_____ Annual RLF Plan Certification (#18)

BILLING CODE 3510-24-C

Instructions for Completion of EDA's Semiannual Reports for Revolving Loan Fund Grants

The instructions below are in outline form and correspond to identical items in the Semiannual Report. Complete the Semiannual Report by filling in the spaces and responding to the questions. On page one of the Report, indicate the reporting period in the upper right hand corner. The reporting periods end on September 30 and March 31, and all data entries are to be effective with these ending dates. Submit completed Reports to the EDA regional office by November 1 and May 1, respectively. DO NOT INCLUDE IN PARTS 1–3 OF THE REPORT ANY DATA ON INITIAL LOANS UNDER A SECTION 209 SSED GRANT/LOAN; LIST THESE ITEMS SEPARATELY IN PART 4 ONLY.

Part I: Portfolio Status

A. *Status of Direct Loans:* Show the current status of all direct RLF loans that have been closed. DO NOT include approved loans that have not been closed. In column two, ''RLF $ Loaned,'' include only the funds loaned by the RLF, including EDA and grantee matching funds, NOT the financing provided by other lenders.

1. *Total Loans Made:* Enter the total number and dollar amount of all RLF loans closed to date. Under column two, ''RLF $ Loaned,'' the amount should always represent the original loan amount.

2. *Fully Repaid:* Enter the number and original dollar amount of RLF loans that have been fully repaid.

3. *Current Loans:* Enter the number and original dollar amount of RLF loans that are current on RLF loan payments. In column three, ''RLF Principal Outstanding,'' enter the principal balance outstanding for current RLF loans.

4. *Delinquent:* Enter the number and original dollar amount of RLF loans that are delinquent. For this report, a ''delinquent'' loan is defined as one that is up to 60 days past due. Enter also the principal balance outstanding on the delinquent loans. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

5. *In Default:* Enter the number and original dollar amount of RLF loans that are in default. For this report, a ''default'' is defined as any loan that is over 60 days past due but not written off. (An RLF grantee may, at its option, classify a loan as defaulted if it is under 60 days past due. If a previously defaulted loan has been rewritten and/or the borrower is now current, the loan should be shown as current). Enter the principal balance outstanding on defaulted loans.

6. *Total Active Loans:* On line 6, enter the sum of lines 3, 4, and 5 to obtain the number, amount and principal outstanding for Total Active Loans. (Total Active Loans are defined as loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

7. *Total Written Off:* Enter the aggregate number and original amounts of defaulted loans that have been written off. Enter also the principal balance outstanding on loans written off or the actual amount lost, whichever is smaller.

B. *Status of Loan Guarantees:* The same criteria as above apply to the Status of Loan Guarantees. In column two, note that the ''RLF $ Reserved'' are the RLF dollars that are actually set aside and held in reserve to cover any losses on guaranteed loans. In column three, ''Total Amount Guaranteed'' is the amount of the original loan that is/was guaranteed by the RLF. In column four, ''Current Exposure'' is the dollar amount of the RLF's contingent liability as of the date of the current report; this amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

Part II: Portfolio Summary

A. *Summary of Loan Activities:* For each listed item, provide information on both Total and Active RLF loans closed to date. Total Loans include loans that are current, delinquent and in default, as well as those that have been fully repaid and written off. Active Loans include only current delinquent and defaulted loans, specifically those included in A.3–5. and B.3–5., Part I, page one, of the Semiannual Report.

1. *# RLF Loans:* Enter the number of RLF loans closed for both Total Loan (I.A.6. and I.B.6., page one) categories. Be sure to include the number of both direct and guaranteed loans closed.

2. *RLF $$ Loaned:* Enter the amount of RLF dollars loaned for both Total Loan (I.A.1. and I.B.1., page one) and Active Loan (I.A.6. and I.B.6., page one) categories. For loan guarantees, use column three, ''Total Amount Guaranteed,'' for the RLF dollar amount loaned.

3. *Non-RLF $$ Leveraged by RLF:*

a. *Private:* Enter the Private Dollars Leveraged for both Total and Active Loan categories. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the ''project'' in which the RLF is an integral component. A ''project'' is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered ''leveraged dollars''.

b. *Other:* Enter any Other investments Leveraged for both Total and Active Loan categories by the RLF loan in the ''project'', including other public financing (e.g., HUD–CDBG, USDA–IRP loans, etc.).

4. *Total Project Financing:* Enter the sum of RLF dollars loaned and non-RLF dollars leveraged by the RLF, items II.A.2. plus II.A.3.c.

5. *Private Sector Jobs:* Enter the number of jobs created and the number of saved jobs for both Total and Active loan categories. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a. *Actual Created Jobs:* A job is counted as ''created (actual)'' if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) as actually created. Jobs are usually verified by requesting the borrower to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. Other job data should also be requested from the borrowers in order to complete Part IV of the Report. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months. Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next semiannual reporting period.

b. *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Semiannual Report only if they were maintained for a minimum of 18 months prior to the loss.

6. *RLF $$ Loaned for Fixed Assets:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for the purchase, installation or construction of fixed assets. If a single RLF loan was used jointly for fixed asset and working capital purposes, only the fixed asset amount should be reported on this line. For a guaranteed loan that was used jointly for fixed assets and working capital, multiply the percent of the original loan that is/was guaranteed by the amount of the loan that was used for fixed assets.

7. *RLF $$ Loaned for Working Capital:* Enter for both Total and Active loan categories, the amount of closed RLF loans that were used for working capital purposes as defined by generally accepted accounting principles. Consistent with item II.A.6. above, include on this line only the amount or portion of a RLF loan that was actually used for working capital purposes. (The amounts on this line plus the amounts in II.A.6. should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively).

8. *RLF $$ Loaned for Start-up, Expansion & Retention:* Enter for both Total and Active loan categories, the amount of RLF loans that were used for Start-up loans, Expansion loans and Retention loans. Each loan in the RLF portfolio is to be categorized as either a Start-up, an Expansion or a Retention loan. A Start-up loan is one to a new business that has limited or no prior operating history. An Expansion loan involves an existing operating company that will expand operations and create jobs. A Retention loan is where the existing jobs of the company are ''saved'' as a direct result of the RLF assistance. [The sums of these loan categories (8.a. + 8.b. + 8.c.) should equal the total RLF dollars loaned in item II.A.2. for both Total and Active loans, respectively].

9. *RLF $$ Loaned for Industrial, Commercial & Service:* Enter for both Total and Active loan categories, the dollar amount of closed RLF loans that went to Industrial, Commercial and Service projects. All RLF loans should be placed in one of these three categories, which are defined below and which utilized the Standard Industrial Classification (SIC) Manual as a guide:

Industrial projects include manufacturing, agriculture, forestry, fishing, mining, and construction businesses—essentially businesses engaged in the production of a product.

Commercial projects include retail and wholesale trade businesses.

Service projects include businesses which provide a service to individuals or businesses, i.e., those not engaged in the production of a product or the sale of merchandise.

10. *RLF $$ Loaned for Minority Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to minority-owned businesses. To be considered minority-owned, a company must be at least 51 percent owned by African-Americans, Hispanics, Asians and/or Indians.

11. *RLF $$ Loaned for Women-owned Businesses:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to women-owned businesses. Include only firms with at least 51 percent ownership by women.

12. *Other:* Enter for both Total and Active loan categories, the amount of closed RLF loans that went to a targeted use identified in the RLF Plan but not included above.

B. *Comparison of RLF Portfolio to RLF Plan:* As indicated in the narrative in the Semiannual Report, use the RLF Plan to obtain the applicable ratios and percentages for completing the first column. For column two (Total Loans) and column three (Active Loans), use the appropriate figures from Part II.A. to compute the ratios and percentages requested. The formula for each item is listed in the brackets next to that item. [As an example, item #1—Cost per Job, is computed by dividing the figures on line A.2. by those on line A.5.d. (from Part II) for both Total and Active loans, respectively].

Part III: Portfolio Financial Status

A. *RLF Funding Sources:*

1.–3. Enter on lines one through three the total funds committed to the RLF by funding source, regardless of whether the funds have been drawn into the RLF. Outside of the EDA funds, the funding categories will include either funds provided solely by the grantee or from ''other'' sources, e.g., CDBG, state, or private donations for the specific use of the RLF. Specify the funding source if ''other''.

4. Enter the sum of all funding sources, items III.A.1. through III.A.3. inclusive.

B. *Program Income Earned to Date:*

5. Enter the total interest earned directly from RLF loans. This amount should equal the aggregate interest earned from individual loans which are listed in Part IV.

6. Enter interest earned from deposits and investments of:

a. RLF loan payments, including principal and interest;

b. RLF loan fees, including origination, servicing and processing fees, late fees and penalties; and

c. Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned thereon must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable).

7. Enter the aggregate of all fees earned from RLF loans from processing, servicing, closing, late fees and any other loan-related earnings.

8. Enter the sum of III.B.5. through III.B.7., inclusive.

9. Enter the amount from III.B.8. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). Inasmuch as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

10. Subtract the amount on line III.B.9. from III.B.8. and enter the difference here. Do not deduct amounts set aside for future administrative expenses. Lines III.B.8 less line III.B.9. should equal the amount of line III.B.10; if not, explain on separate page. Note that if the grant recipient anticipates using any of the available RLF income earned in the current period during the remainder of the period, it may deduct this from the amount otherwise reported in the space. Conversely, if the recipient is certain that it will not need any of the available RLF income during the remainder of the period, it should include this amount in the figure reported as RLF Income added to the RLF for Lending. Any RLF income on hand at the end of a period must be added to the RLF Capital Base for lending purposes.

(Note: References to Program Income in B.8. through B.10. should be interpreted to mean RLF Income as used in the RLF Administrative Manual).

C. *Status of RLF Capital:*

11. Self-explanatory (enter the amount from III.A.4.).

12. Self-explanatory (enter the amount from III.B.10.).

13. Self-explanatory (enter the sum of the amounts lost from direct loans and guaranteed loans, from I.A.7. and I.B.7., page 1 respectively).

14. Self-explanatory (enter the sum of III.C.11. and III.C.12., less III.C.13).

D. *Current Balance Available for New Loans:*

15. Self-explanatory (enter the RLF principal outstanding from I.A.6., page 1).

16. Self-explanatory (enter the total RLF dollars reserved for loan guarantees, which are not available for lending, from I.B.6., page 1).

17. Self-explanatory (deduct amounts shown in III.D.15. and III.D.16. from III.C.14.).

18. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

19. Self-explanatory (enter the amount in III.D.17. less III.D.18.).

20. Current Balance Available Percentage—applies only to RLF's that have been fully disbursed. Enter the percent that is obtained by dividing the amount in III.D.19. by the amount in III.C.14.

21. Insert the Current Balance Available Percentage (same calculation as in #20 above), but for the preceding six month period obtained from the previous Semiannual Report.

(Note: The percentages obtained in III.D.20. and III.D.21. are used to evaluate compliance with EDA's Excess Retention Policy established in 1988. If the percentages in III.D.22. and in III.D.23. both exceed 25 percent, the grantee is in violation of the policy and is required to submit an addendum to the report explaining the reasons for the violation and the steps it proposes to take to reduce the percentage below 25 percent. Subsequently, the grantee may be required to submit the EDA share of any amount over 25 percent, which normally will be made available to the grantee for a time period established by EDA. Funds not used during this time period may become permanently unavailable to the grantee).

Part IV: Portfolio Loan List

Self-explanatory.

Part V: Miscellaneous Information & Certification

A. *Recent Loan Activity:*

1.–4. Self-explanatory.

B. *Capital Utilization:* (Section X. of RLF Administrative Manual)

5.–7. Self-explanatory.

C. *RLF Income & Expenses:* (Section VII. of RLF Administrative Plan)

8.–12. Self-explanatory.

D. *Administration:*

13.–17. Self-explanatory.

E. *Annual RLF Plan Certification:* (Section VIII. of the RLF Administrative Manual and Section D.03. of the Standard Terms and Conditions)

18. Self-explanatory (Required only once a year).

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EXHIBIT E (Rev. 12/98)

ANNUAL REPORT FOR EDA-FUNDED RLF GRANTS

Grantee Name:_____ **Period Ending**_____

Project No._____ **Contact Person:**_____

Phone:_____

A. PORTFOLIO FINANCIAL STATUS		
1. Total RLF Funding (EDA + Matching funds)	$	
2. Total RLF Income Earned	$	
3. Total RLF Income Expended for Administrative Costs	$	
4. RLF Income in #2 that is set aside for Current Period Expenses	$	
5. Total Losses on Direct and Guaranteed Loans	$	
6. RLF Capital Base [(1+2) less (3+4+5)]	$	
7. RLF Loan Principal Outstanding	$	
8. RLF $$ Reserved for Guarantees	$	
9. RLF Loan Commitments Not Disbursed	$	
10. RLF Capital Utilized [7+8+9]	$	
11. RLF Capital Utilization Rate [10 / 6]		%
12. Same as #11 but for Preceding 6-Month Period		%

B. RECENT LOAN ACTIVITY (Last 12 Months Only)	
13. # Applications Received	
14. a. # Applications Received from Minority-owned firms	
b. # Applications Received from Women-owned firms	
15. # Loans Closed	
16. a. # Loans Closed from Minority-owned Firms	
b. # Loans Closed from Women-owned Firms	

EXHIBIT E (Rev. 12/98)

C. Portfolio Status		
DIRECT LOANS:		
17. a. Total RLF $$ Loaned	$	
b. Total # Loans made by the RLF		
18. Total Active Loans	$	
19. Principal Outstanding		
a. Current Loans	$	
b. Delinquent Loans (<60 days)	$	
c. Delinquent Loans (>60 days)	$	
20. Total Written-Off	$	
21. Total Non-RLF $$ Leveraged by RLF & Leverage Ratios		
a. Private	$	
b. Other	$	
c. Total Leveraged (Private + Other)	$	
GUARANTEED LOANS:		
22. Current RLF $$ Exposed (*active loans only*)	$	
23. RLF $$ Reserved (*active loans only*)	$	
24. Total # of Actual Jobs Created and Saved		

D. ADMINISTRATION **complete as appropriate**	**circle or**
25. Any key Staff Turnover last 12 Months? List position(s):	Yes No
26. Attach a list of the current RLF Loan Board membership by name, occupation, race and gender.	
27. Indicate the ending period of the most recent independent Audit covering the recipient and whether Single or Program Specific Audit.	
28. Attach the Audit in #27 if it was not previously submitted to EDA	
29. If the Audit in #27 did not cover either the most recent or the prior fiscal-year period, is an explanation attached? *(Circle One)*	Yes No Not Applicable

EXHIBIT E (Rev. 12/98) Page 3 of 3

D. ADMINISTRATION	**circle or complete as appropriate**
30. Enter the ending date of the accounting period which has been selected to determine the amount reported in #4 above in accordance with Section VII.C. of the RLF Administrative Manual.	

E. CAPITAL UTILIZATION (Section X of RLF Administrative Manual)	**circle or complete as appropriate**	
31. If the percentages in both #11 and #12 above are less than 75%, is an explanation attached discussing proposed actions (including target dates and goals) to reduce the amount of excess funds on hand?	Yes No	
32. If both #11 and #12 are less than 75%, list the amount of excess funds subject to sequestration.	$	
33. List any amount in #31 that has been sequestered in a separate account.	$	

F. ANNUAL RLF PLAN CERTIFICATION (Section VIII of RLF Administrative Manual and Section D.03 of Standard Terms and Conditions)	**circle or complete as appropriate**
34. Is the required *ANNUAL* RLF Plan Certification attached? If "no," indicate the date it will be submitted: _____	Yes No

CERTIFICATION: I hereby certify on this ____ day of _____, 19___, that the information provided in this Annual Report is true and correct to the best of my knowledge.

_____

NAME AND TITLE OF AUTHORIZED OFFICIAL

_____

SIGNATURE (Authorized Official)

Check Attachments Submitted:

____ Capital Utilization (#31 above)

____ Current Loan Board Membership (#26)

____ Copy of Audit (#28)

____ Audit Explanation (#29)

____ Annual RLF Plan Certification (#34)

BILLING CODE 3510–24–P

Instructions For Completion of EDA's Annual Reports For Revolving Loan Fund Grants

These instructions are for completion of the Annual Report form for EDA revolving loan fund (RLF) grants. The Annual Report is an abbreviated version of the Semiannual Report. RLF grantees that are reporting on a semiannual basis are eligible to apply for graduation to this streamlined report one year after full disbursement of the initial round of RLF capital.

A. Portfolio Financial Status and Capital Utilization

1. Enter the total funds committed to the RLF. Outside of EDA funds, matching funds may include funds provided solely by the grantee or from other sources, e.g., CDBG, state or private donations for the specific use of the RLF. Exclude any funding commitments that may have been removed from the RLF, as approved by EDA.

2. Enter the Total RLF Income earned by the RLF to date. RLF Income, as defined in Section VII. of the RLF Administrative Manual, includes:

a. Total interest earned directly from RLF loans.

b. Interest earned from deposits and investments of:

- RLF loan payments, including principal and interest;
- RLF loan fees, including origination, servicing and processing fees. late fees and penalties; and
- Advances of local matching funds and EDA funds. EDA funds must be timed to meet the actual, immediate disbursement needs of the RLF borrowers. Otherwise, grant funds plus any interest earned therein must be returned to EDA. (Note that grantees may deduct and retain a portion of such earned interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A–110 or its implementing Department regulation, as applicable.

3. Enter the amount from A.2. that has been used to cover eligible RLF administrative expenses to date. (Time cards are to be maintained for all direct labor costs charged against RLF Program Income. If indirect costs are charged against the RLF, the grantee must have an indirect cost allocation plan). In as much as RLF administrative costs can only be reimbursed from RLF income earned in the same accounting period, available RLF income earned in a current period may be set aside for administrative costs which will be incurred over the remainder of the period (Refer to Section VII. of the Administrative Manual for additional information).

4. Enter the amount of any available RLF Income earned in a current period which may be set aside for future administrative costs incurred over the remainder of the period. If, however, the selected period ends on September 30, funds can not be set aside without EDA approval since any RLF Income that is not used for administrative costs during the period in which it is earned must be added to the RLF Capital Base at the end of the period.

5. Enter the cumulative Losses on Direct and Guaranteed Loans for those loans written-off.

6. Calculate the current level of the RLF's Capital Base by adding the amounts entered in #1 and #2, and subtracting from this sum the amounts in #3, #4 and #5. The RLF Capital Base represents the aggregate amount of capital potentially available for lending.

7. Enter the amount of Loan Principal Outstanding on Direct RLF Loans.

8. Enter the amount of RLF dollars that are required to be set aside or reserved for RLF guarantees of other loans. If not applicable, enter N/A.

9. Enter the aggregate amount of RLF funds that have been approved and committed but not closed nor disbursed.

10. Calculate the amount of RLF Capital Utilized, i.e., RLF capital outstanding and committed, by summing the amounts in #7, #8 and #9.

11. Calculate the RLF Utilization Rate by dividing #10 (RLF Capital Utilized) by #6 (RLF Capital Base). This indicates the percentage of RLF capital in use for comparison with the Capital Utilization Standard as discussed in Section X. of the Administrative Manual. Persistent noncompliance with the Standard could require sequestration of excess funds, remittance of interest earned on sequestered funds, and eventual loss of excess funds if not placed in use within a reasonable period of time.

12. The RLF Capital Utilization Rate is calculated every six months for the periods ending March 31 and September 30, in accordance with Section X.C. of the RLF Administrative Manual.

B. Recent Loan Activity

13–16. As appropriate, enter the number of applications received and loans closed for the last 12 month period. Also enter the number of applications received and the number of loans closed from Minority-owned and Women-owned firms. Ownership is defined as controlling interest of 51% or more. A loan is considered closed when all loan documents have been signed.

C. Portfolio Status

17. Enter the total number and original dollar amount of all RLF loans made to date.

18. Enter the amount of principal outstanding for Total Active Loans. (Total Active Loans are defined as direct loans that are either current, delinquent or in default—exclusive of loans that have been fully repaid or written off).

19. For active loans only, enter the principal outstanding on direct loans that are current and those that are delinquent. Segregate delinquent loans into two categories, those less than or equal to 60 days past due and those more than 60 days past due. For this report, a ''delinquent'' loan is defined as one that is up to 60 days past due. (If a previously delinquent borrower is now current, or making payments in accordance with an amended note and payment schedule, show this loan as current).

20. Enter the total principal balance outstanding on direct loans written-off or the actual amount lost, whichever is smaller.

21. Enter the total non-RLF dollars leveraged (Private & Other) and corresponding leverage ratios in conjunction with the RLF direct loans. Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. Private dollars leveraged include private financing and private investments provided to the ''project'' in which the RLF is an integral component. A project is defined as an activity consisting of interrelated components which share a common goal. Private investments include both cash provided to the project and donated assets which come from outside the borrowing enterprise. For donated assets, only the equity in the assets (defined as the assets' market value less any security interest) may be counted in the leverage ratio. For purposes of calculating private dollars invested, 90 percent of the guaranteed portions of SBA 7 (a) and SBA 504 debenture loans may be included. As a reminder, the RLF must fill a legitimate financing gap in the project for the private funds to be considered ''leveraged dollars'.

Other investments leveraged by the RLF in the project may include other non-RLF dollars such as HUD–CDBG, USDA–IRP loans, etc.

22. For active loans provided by other lenders and guaranteed by the RLF, enter the contingent liability of the RLF on outstanding loan principal, i.e., the current RLF exposure on all active RLF guarantees. This amount is usually computed by multiplying the percent of the original guarantee by the outstanding loan balance.

23. For active loans provided by other lenders and guaranteed by the RLF, enter any amounts of RLF funds that are actually set aside and held in reserve to cover any losses on guaranteed loans.

24. Enter the total number of jobs created and saved over the life of the RLF. In tallying jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35–40 hours). Job information data should be collected at least annually. For seasonal businesses, more frequent collection of job data is usually necessary to obtain realistic employment figures for an annualized average.

Grantees should use the following definitions in completing the job information section of this report:

a: *Actual Created Jobs:* A job is counted as ''created (actual)'' if it was created as a result of and attributable to the RLF loan project, and has been verified by the borrower (or grantee) to complete a questionnaire at least on an annual basis indicating the number of jobs actually created and attributable to the RLF project, or by the grantee performing an on-site job count. The documentation for job counts should be placed in the project files.

Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion. All jobs credited must be attributable to the RLF project. A created job must be removed from the credited created jobs if the job fails to last at least 18 months.

Any job which meets the creditable job created criteria is counted as part of the total actual jobs created permanently, regardless of the status of the loan.

For loans that have been paid in full, grantees may use the job information data that is on file provided there is adequate confidence in the reliability of the data. If there is a question on the reliability, the data should be verified by the next annual reporting period.

b: *Saved Jobs* are existing jobs where it can be documented that without the RLF assistance the jobs would have been lost.

Exception—*Created/Saved Jobs Subsequently Lost:* If an RLF borrower subsequently ceases business (or closes a segment of its business) thereby eliminating previously created or saved jobs, these jobs may continue to be counted in the Annual Report only if they were maintained for a minimum of 18 months prior to the loss.

D. Administration

25–30. Self-explanatory.

E. Capital Utilization

31–33. Self-explanatory (Refer to Section X. of the RLF Administrative Manual).

F. RLF Plan Certification

34. Self-explanatory (See Section VIII. of the RLF Administrative Manual and Section D.03. of the RLF Standard Terms and Conditions for additional details).

Appendix D to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

OMB Approval No. 0610–0095 Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Audit Manual

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. The reason for collecting this information is to enable the Economic Development Administration to monitor revolving loan fund projects for compliance with Federal and other requirements. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Table of Contents

Section 209 Economic Adjustment Program Revolving Loan Fund Grants Audit Guidelines

I. Purpose

This document describes the audit requirements for revolving loan fund (RLF) grants funded under the Section 209 Economic Adjustment Program of the Economic Development Administration (EDA). It provides an overview of relevant Office of Management and Budget (OMB) circulars and other Federal regulations as they relate to administrative and audit requirements for EDA RLF grants. It also discusses costs that may be eligible under an RLF grant program and requirements for records retention. It is intended to supplement applicable OMB circulars and Federal regulations. If there is a conflict between information contained in this document and the OMB circulars or Federal regulations, the latter shall prevail. In the absence of a conflict, EDA reserves the right to limit Federal standards.

This document is intended for grant recipients and for independent auditors as an aid in understanding the audit and compliance requirements for EDA RLF grants. Each recipient of an EDA RLF grant is responsible for reading this document and providing it to the independent auditor prior to the start of an audit. Failure to make this information available to the independent auditor could result in an unacceptable audit report.

II. Program Objectives

RLF grants are administered under EDA's Section 209 Program, which was created in 1974 by an amendment to the Public Works and Economic Development Act of 1965 (PWEDA), to provide grant assistance to help communities adjust to sudden and severe economic dislocations (SSED) and long-term economic deterioration (LTED). EDA Section 209 grants may be used for business development assistance, planning, research, technical assistance, training, infrastructure, and other development activities which meet the purpose of the program.

RLF grants provide capital for loan pools which finance business development activities consistent with local economic development strategies. Loan repayments, plus interest and other related income, create a revolving source of capital to finance other business enterprises. RLF loans are used to stimulate economic activity and to provide financing to businesses when private credit is unavailable to complete a project.

III. Program Procedures

Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress. Proposals are evaluated based on conformance with statutory and regulatory requirements, the economic adjustment needs of the area, the merits of the proposed project in addressing those needs, and the applicant's ability to manage the grant effectively. Each approved RLF grant is operated in accordance with an RLF Plan which is part of the grant agreement. The RLF Plan summarizes the RLF's strategic objectives and the operational procedures to carry out the purpose of the grant.

IV. Program History

EDA awarded its first RLF grant in 1975. To date, the Agency has awarded more than 700 grants aggregating in excess of $500 million for the establishment or recapitalization of RLFs nationwide. In turn, RLF grantees have made more than 7,200 loans to private sector businesses, which loans have either leveraged or have the potential for leveraging in excess of $1.9 billion private capital based on a private investment to total RLF monies loaned ratio of 3.83:1. There are generally two types of RLF grants, those established as RLFs from the initial disbursement of grant funds, and those established only after repayments are received from business loans originally funded from grants. Most RLF grants are of the first type.

RLF programs are operated by local governments, regional development corporations, States and other non-profit organizations. EDA RLF grants normally require a matching contribution from local sources. Historically, the local match contribution has averaged 25% of an RLF's capitalization, but waivers have been extended in special situations such as natural disasters. The average EDA RLF grant was

capitalized at just over $1 million in total assets. While the size of individual loans extended by these grant recipients vary markedly, the typical RLF loan has averaged $70,000 over time.

V. Frequency of Audits

Each RLF grant recipient shall have an audit performed annually for the duration of the RLF program except in the following limited circumstances which may permit biennial audits:

—A state or local government recipient that adopted a mandatory, constitutional or statutory requirement for less frequent audits prior to January 1, 1987, which requirement still remains in effect; or

—A non-profit recipient that had biennial audits for all biennial periods ending between July 1, 1992 and January 1, 1995.

VI. When an Audit Is Required

Pursuant to the Single Audit Act Amendments of 1996 (P.L 104–156) and OMB Circular A–133, audits are required of all State, local government and non-profit corporation RLF grant recipients that expended total Federal awards of at least $300,000 in a given fiscal year. For all RLF grants, the calculation of RLF expenditures will include the beginning balance of all outstanding loans plus the current year's loan and loan-related expenditures. With the exception of newly awarded grants and limited circumstances listed in Paragraph V. herein, the majority of RLF grant recipients will require an annual audit.

To calculate the total RLF expended, follow the information provided in the box below. Note that only the Federal share (exclude the matching fund share) of the amount calculated should be used for the determination of an audit. Audit procedures, however, must encompass both the Federal and any matching funds which comprise an RLF.

—The year's beginning balance of outstanding RLF loans; plus

—RLF loan expenditures during the fiscal year; plus

—The amount of RLF Income [1] earned and expended on eligible administrative expenses during the fiscal year.

VII. Types of Audits

Entities which spend $300,000 or more in Federal awards will be required to have either (I) a program-specific audit or (ii) a single audit. An entity can elect a program-specific audit if all funds expended come from only one Federal program. An entity must have a single audit in a fiscal year in which it spends funds from more than one Federal program. These guidelines are not intended to be a complete manual of procedures, nor are they intended to supplant the auditor's judgment of the work required for either the program-specific audit or a single audit which includes coverage of an EDA RLF. The auditor should refer to OMB Circular A–133 for a detailed listing of requirements for these types of audits. These guidelines are designed to discuss special considerations for audits of RLFs.

A. Program Specific Audit

A program-specific audit is an audit of one program performed in accordance with Federal laws and regulations and any audit guides available for that program. There is not a program-specific audit guide written for the RLF program. Since a program-specific audit guide is not available, the auditee and auditor shall have basically the same responsibilities for the RLF program as they would have for an audit of a major program in a single audit. Section VIII of these guidelines describes some special considerations for auditing an EDA RLF. OMB Circular A–133, Section 235 provides instructions for completing a program-specific audit.

B. Single Audit

A single audit covers all Federal awards received and expended during an organization's fiscal year. Unlike the program specific audit, this type of audit requires a financial statement audit of the grant recipient. A single audit is performed by an independent auditor who meets the general standards specified in generally accepted government auditing standards.

Attachment I provides a current list of applicable audit-related documents with which the auditor should become familiar. Since accounting requirements and reference materials are subject to periodic revisions, grant recipients and auditors are responsible for utilizing the most current reference information available.

VIII. Special Considerations for Single Audits of RLFs

A. Schedule of Expenditures of Federal Awards

The auditee is required to report certain information in this schedule including: (1) the identity of all Federal award programs by program title and by catalogue number listed in the Catalog of Federal Domestic Assistance (CFDA) and (2) the total expenditures for each Federal award program by grantor agency. For EDA RLF grants, the program title is ''Special Economic Development and Assistance Programs—[either Sudden and Severe Economic Dislocation (SSED) or Long-Term Economic Deterioration (LTED)] Revolving Loan Fund.'' The CFDA number is ''11.307'' for both SSED and LTED grants. To assist program officials, it is helpful to include the number of each EDA RLF grant in the schedule. The method for calculating the total Federal expenditure amount to be reported on the schedule is shown in Section VIII.C. below.

Note that in the third and fourth digits of each grant number, an SSED grant is denoted by the number ''19'', and an LTED grant by the number ''39''. Exceptions include numerical identification of defense or disaster-related RLFs which may have several variations as determined by fiscal year or specific disaster program appropriations.

B. Criteria for Determining Major Programs

Federal award programs must be identified as Major Programs through a risk-based approach described in OMB Circular A–133. Prior to the issuance of the revised OMB Circular A–133, a Major Program was defined solely in monetary terms. The new risk-based approach also requires that the auditor consider the current and prior audit results and the inherent risk of the program in making a determination of Major Programs subject to audit. Major Programs require more extensive audit procedures than Other Federal Programs.

C. Calculating ''Total Federal Expenditures'' For RLF Grants

For RLF grants, ''Total Federal expenditures'' normally includes only the Federal share of an RLF's expenditures. It is calculated as shown in the box below using only the Federal share of each component.

Determining Total Federal Expenditures [2]:

—The year's beginning balance of outstanding RLF loans; plus

—RLF loan expenditures during the fiscal year; plus

—The amount of RLF Income [3] earned and expended on eligible administrative expenses during the fiscal year.

D. Footnote Disclosure (Schedule)

In addition to reporting the Federal expenditures for an RLF program on the schedule of expenditures of Federal awards, a footnote to the schedule should disclose the value of the loans outstanding at the end of the year.

IX. Use of Another Entity for Program Administration

A grant recipient may employ the services of another organization to perform certain duties and responsibilities under a grant. In delegating responsibilities, the grant recipient may be responsible for ensuring that the other entity is audited in accordance with OMB Circular A–133 and complies with the grant terms and conditions. The degree of responsibility delegated is the key factor in determining whether another entity is a subrecipient or vendor (and whether an audit is required). Subrecipients are normally required to have an audit performed while vendors would not usually be audited unless program compliance requirements apply to the vendor.

An organization is a subrecipient if it receives or is responsible for RLF funds, and some or all of the following characteristics exist. It is responsible for (I) applicable grant compliance requirements; (ii) programmatic decisions including, but not limited to, approving RLF lending policies, final lending decisions including eligibility determinations, major amendments to loans, and/or foreclosure actions; and/or (iii) its performance is measured against meeting objectives of the program.

[1] RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] If the Federal share of an RLF's total expenditures cannot be readily determined, the total RLF expenditures (including both Federal and matching funds) may be used in lieu of ''total Federal expenditures'' provided the inclusion of matching funds is disclosed.

[3] Defined in footnote 1, page 3.

An organization is a vendor if it provides services in support of an RLF grant and has the following distinguishing characteristics. It provides agreed services within its normal business operations and provides similar services to other purchasers, it operates in a competitive environment, and program compliance requirements usually do not directly pertain to the services provided. If grant compliance requirements apply to the vendor's activities, the grant recipient is responsible for ensuring compliance by the vendor. This may require monitoring the vendor's activities or requiring an audit of vendor activities as may be appropriate under the circumstances. A vendor is normally responsible only for compliance within the terms of its contract.

An example of a vendor would be a bank or collection company which provides services to the grant recipient merely for the collection of loan payments. This would be considered a vendor relationship because the entity under contract would not be involved with any major program decisions. However, if this entity had expanded responsibilities, such as the final approval authority for loans and foreclosure actions, it would be considered a subrecipient due to the nature and degree of its responsibilities. It would be required to be audited in accordance with OMB Circular A–133, and to comply with the terms and conditions of the grant.

X. Reporting Entity

The definition of a financial reporting entity is based upon the concept of accountability. A reporting entity may consist of a primary unit and component units. The decision to include a component unit in the reporting entity is based on whether (1) the primary unit is financially accountable for the component unit, and (2) the nature and significance of the relationship between the primary unit and the component unit is such that exclusion would cause the reporting entity's financial statements to be misleading or incomplete.

While it is management's responsibility to define the reporting entity, one of the initial tasks performed by the auditor is to independently determine whether management has properly defined the reporting entity, pursuant to the Government Accounting Standards Board's (GASB) Statement No. 14, The Financial Reporting Entity.

XI. Audit Report Due Dates

The audit must be completed and the report package submitted within 9 months following the end of the period audited, unless a longer period has been agreed to in advance. However, for fiscal years ending on or before June 30, 1998, auditees shall have 13 months after the end of the audit period to submit the reporting package. In either case, the required reporting package shall be submitted within 30 days after issuance of the auditor's report to the auditee.

XII. Distribution of the Audit Report

The reporting package should be submitted to the Federal Clearinghouse in accordance with the requirements of OMB Circular A–133, Section 320. In addition, an auditee shall submit the reporting package, leaving out the data collection form which is strictly for the Clearinghouse's use, to the EDA regional office responsible for monitoring the RLF.

XIII. Auditor Selection

In arranging for audit services, grant recipients are required to follow the administrative requirements and procurement standards prescribed in the applicable Federal administrative document found at 15 CFR, Part 24, or OMB Circular A–110. In addition, guidance in selection of an auditor is available in a document entitled ''How to Avoid a Substandard Audit: Suggestions for Procuring an Audit.'' This document was developed by the National Intergovernmental Audit Forum and is available from the General Accounting Office at telephone number (202) 512–6000.

XIV. Compliance Guidelines

For both program specific audits and single audits, the auditor is required to determine whether the grant recipient has complied with applicable laws and regulations. Compliance testing involves (1) the testing of specific requirements for individual Federal programs, as available, and (2) the testing of general requirements which are applicable to all Federal programs. In addition, there may be other laws and regulations listed in the grant terms which may apply to both the grant recipient and to the RLF loan recipients.

OMB has issued a provisional compliance supplement for use with the revised OMB Circular A–133. The provisional compliance supplement addresses 14 types of compliance areas that are generic to all programs. It also addresses specific requirements for about 100 programs. It is not clear whether the RLF program will be included in the compliance supplement.

A. Specific Compliance Requirements

DOC's proposed compliance requirements and suggested audit procedures for EDA Section 209 RLF grants are provided in Attachment 2. Independent auditors should follow these procedures in testing for specific compliance requirements for RLF grants. Comments and suggestions on this material are welcome and should be submitted to the U.S. Department of Commerce, Office of Inspector General, 401 W. Peachtree Street, N.W., Suite 2342, Atlanta, GA 30308.

B. General Compliance Requirements—Supplemental Information

The OMB Compliance Supplements list fourteen general requirements and suggested auditing procedures which are applicable to all Federal assistance awards. For the general requirement listed as ''Allowable Costs And Cost Principles,'' supplemental information is provided below. This information should be considered when testing general compliance requirements.

1. Background

Eligible Costs For RLF Grants: EDA grant funds and matching funds for an RLF must be used in accordance with the purposes specified in the grant agreement. Eligible uses generally include RLF loans and any specified costs listed in the grant agreement (e.g., budgeted audit costs). Unless specifically stated in the grant, the costs to administer an RLF program are not eligible for reimbursement from either the EDA grant or the matching funds.

RLF Income: RLF Income includes interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees and other income generated from RLF activities. RLF Income may be used only for RLF loans or for eligible expenses necessary to operate an RLF program. RLF Income that is used for RLF administrative expenses is subject to applicable OMB cost principles and to the requirements described below.

Only current period expenses may be expensed against current period RLF Income. Any exceptions to this require EDA approval. The accounting period for determining compliance with this requirement is selected by the grant recipient and may be either the recipient's or the Federal fiscal year. The accounting period selected is submitted to EDA in the annual or semiannual reports. (Refer to Section VII. of the prevailing EDA RLF Administrative Manual for additional details.)

RLF program funds (including initial grant and matching funds and the repayments of loan principle and RLF Income) should be separately accounted for in the accounting system of each grant recipient. When possible, expenses charged to an RLF program should be categorized in detail at least at the level indicated in the RLF Income and Expense Statement (see Exhibit A of EDA's prevailing RLF Administrative Manual).

Cost Principles: The applicable OMB Cost Principles are found in either OMB Circular A–21, A–87, or A–122. Administrative costs that may be charged against RLF Income will be classified as either direct or indirect costs. Direct costs include those that can be identified specifically with a particular cost objective, such as an RLF program. Indirect costs are those incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable.

Cost Allocation Plans: Costs may be allocated against RLF Income only to the extent that they can be distributed in reasonable proportion to the benefits received, and are supported by a cost allocation plan and formal accounting records which will substantiate the propriety of charges. Indirect costs may not exceed 100% of allowable direct costs as reflected in the cost allocation plan.

Cost allocation plans, which include indirect cost rate proposals, normally must be approved by the cognizant Federal agency. Local governments (OMB Circular A–87 organizations) are required to retain cost allocation plans and/or indirect cost rate proposals at the local level unless the cognizant agency requests submittal for negotiation and approval. All cost allocation plans and/or indirect cost rate proposals must be approved at the local level and must be available to the cognizant agency, if requested. The independent auditor is responsible for reviewing cost allocation plans and/or indirect cost rate proposals to

determine the reasonableness and validity of costs charged against different cost objectives or programs.

The Office of Inspector General, U.S. Department of Commerce (OIG), is designated the cognizant agency responsible for the audit, approval and negotiation of cost allocation plans and/or indirect cost rate proposals for most EDA economic development districts, as defined in Title IV of PWEDA. When an EDA district organization allocates costs requiring a cost allocation plan and/or an indirect cost rate proposal, the organization is not required to submit either of these to the OIG unless the OIG is the cognizant agency and requests submittal, or the cost allocation plan and/or the indirect cost rate proposal is the initial one for the organization. Cost allocation plans and indirect cost rate proposals must be available for review upon demand, if requested.

2. Common RLF Administrative Costs

A description of common administrative costs that may be charged against RLF Income include, but are not limited to, the following:

Advertising/Marketing: Allowable costs for advertising and marketing include costs for media services to recruit RLF personnel, market the RLF program, solicit RLF loan prospects, procure RLF-related goods and services, and sell RLF assets. Eligible costs may also include the cost of printing RLF brochures and travel and other expenses directly related to the promotion of an RLF program.

Audits: The costs of audits conducted in accordance with the grant audit requirements are allowable. The charges may be treated as either direct or indirect costs consistent with the applicable OMB cost principles. Grant and matching funds may be used for audit costs only to the extent listed in the approved grant budget or grant terms. In addition, auditing costs charged against an RLF program may not exceed an RLF's equitable share of the cost.

Bonding: The costs of premiums for fidelity bonds covering employees who handle RLF funds are allowable to the extent that such costs are reasonable and distributed equitably in proportion to the RLF's share of the costs.

Building Space: Rent for building space or the utilization of depreciation or use allowances is an allowable expense subject to the provisions of the applicable OMB cost principles. Maintenance costs are eligible expenses to the extent that they are not otherwise included in rental or other charges for space. See also ''Lease Transactions'' below.

Capital Expenditures: In accordance with current OMB cost principles, capital expenditures for equipment and other capital assets require prior EDA approval. For state and local governments (OMB Circular A–87), equipment is defined as tangible, personal property having a useful life of more than one year and an acquisition cost which equals the lesser of the capitalization level established by the organization or $5,000. For nonprofits (OMB Circular A–122 organizations), equipment is defined as tangible, personal property having a useful life of more than two years and an acquisition cost of more than $500 per unit. The dollar amount for nonprofits is expected to increase when OMB Circular A–122 is revised. In the interim, nonprofits may request EDA to approve an amendment to the grant terms to allow for purchases of capital equipment up to the lesser of the capitalization level established by the organization or $5,000.[4]

Where appropriate, an analysis should be made of lease vs. purchase alternatives to determine which would be the most economical and practical procurement method. To be an allowable charge against RLF Income, a capital expenditure must be reasonable and essential for the operation and administration of an RLF program. Such charges must reflect an RLF's use of the equipment based upon an equitable allocation method.

Alternatively, grant recipients may be compensated for the use of equipment and other nonexpendable personal property through depreciation or use allowances subject to the provisions of the applicable OMB cost principles and the requirements herein.

Procurement transactions must be conducted in a manner which provides, to the maximum extent practical, open and free competition consistent with the procurement standards published at 15 CFR Part 24 or in OMB Circular A–110, as applicable. When acquired personal property is no longer needed for RLF activities or is disposed of for upgrading purposes, the RLF should be compensated for its share of the disposition proceeds. Procedures should be established and followed to provide for the highest possible return on property disposition.

Employee Salaries & Fringe: Allowable employee salaries and fringe includes the compensation for personal services including, but not limited to salaries, wages and fringe benefits. Payrolls must be supportable by time and attendance or equivalent records for individual employees. Salaries, wages and fringe benefits of employees chargeable to more than one grant program or other cost objective must be supportable by appropriate time distribution records, or a cost allocation plan, and distributed equitably in reasonable proportion to the benefits received. Compensation for employee services may include only those services performed during the grant period.

The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivisions thereof, are considered a cost of general government and are unallowable as an expense against RLF Income. The salary and expenses of an executive director of an EDA economic development district are allowable, provided such costs are allocated equitably relative to the benefits derived and the total costs charged against all grant programs does not exceed 100% of the cost item being allocated. Compensation of members of an RLF loan board is discussed under ''RLF Loan Board Compensation'' below.

Leasing Transactions: The accounting and financial reporting treatment for lease agreements depend on whether the lease is classified as a capital lease or an operating lease.

An *operating lease* is a rental agreement requiring periodic payments for the use of an asset during a given period of time. An operating lease does not transfer a material equity in the property leased. The rent payments under an operating lease are allowable to the extent that the lease rate is reasonable when compared with area market conditions.

A *capital lease* is a rental agreement where the lessee acquires a substantial portion of the rights to an asset. In substance, a capital lease represents the purchase of the asset. Financial Accounting Standards Board (FASB) Statement Number 13, Accounting for Leases, as amended, provides guidelines for capital lease transactions. The periodic payments under a capital lease are reimbursable up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed. For example, reimbursable expenses could include depreciation or use allowances, maintenance, taxes and insurance, but excluding any unallowable costs.

For lease agreements between *related parties,* a determination must be made whether the related parties are required to prepare financial reports as a single reporting entity. If reporting as a single entity is required for financial reporting purposes, the assets of the organizations shall be combined, and any reimbursable expenses between the parties shall be computed based upon the cost of ownership. Specific financial statement disclosures pertaining to related parties are required by FASB 57, Related Party Disclosures.

Materials & Supplies: The costs of materials and supplies used during the accounting period for RLF-related activities are allowable expenses.

Outside Professional Services: The costs of RLF-related services necessary and appropriate to prudently administer and protect RLF assets are allowable. Examples of professional service providers include independent accountants, attorneys, appraisers and others who advise RLF operators and who are not officers or employees of the grantee organization or part of the grantee's department (if the grantee is a governmental entity). Professional service providers generally include those who provide loan packaging, underwriting, closing, monitoring, collections, recovery, sale, and/or protection of collateral services. Costs for professional services are eligible for reimbursement provided they are consistent with the purpose of the grant and allocated equitably based on the benefits derived. (See applicable OMB cost principles for additional information on professional services.)

RLF Loan Board Compensation: RLF loan board members, including advisory board members, who are not employees of the grant

[4] A request for a grant amendment would allow the use of current period RLF Income for current purchases (up to $5,000 per unit) for equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets and which are essential for the operations and administration of the grantee's RLF program.

recipient, are not eligible for compensation from RLF Income except as may be provided for in the reimbursement of travel costs consistent with the grant recipient's travel policies or in accordance with Federal Travel Regulations (see ''Travel'' below). Since RLF loan board members usually serve as representatives of their profession or employer organizations, compensation for other than travel-related expenses is not normally allowed. However, if there are exceptional circumstances that warrant consideration of a waiver, EDA approval may be requested.

Training: The costs of training materials, textbooks, fees charged by educational institutions, and travel costs for part-time education of employees to improve their skills and performance in the management, administration and operation of an RLF are allowable. Extended or full-time training is unallowable except when specifically authorized by EDA in advance. Travel costs to attend meetings and professional conferences are allowable when the primary purpose of the meeting or conference is the dissemination of technical information relating to the grant program.

Travel: The costs for transportation, lodging, subsistence and related items incurred by employees who are on travel status for official business related to RLF activities are allowable. Typical travel expenses might include the costs associated with visiting or meeting potential borrowers, servicing and monitoring loan projects, and meeting with bankers, accountants, attorneys and others affiliated with existing or potential RLF borrowers. It may also include the travel costs associated with marketing the RLF program or hiring RLF program personnel.

Travel costs expensed to RLF Income must be applied consistent with the travel provisions established by the grant recipient in its regular operations and with the applicable OMB cost circular. Organizational travel provisions should be documented in a policy manual. In the absence of formal travel policies, the ''Federal Travel Regulations'' as published in the Code of Federal Regulations shall apply.

For additional information on allowable costs, refer to applicable OMB cost principles or contact the Office of Inspector General, U.S. Department of Commerce, or EDA's Regional or Headquarter's Office.

XV. Securitization

RLF grant recipients may, with EDA's prior written consent, further the objectives of the RLF through the sale of loans or Securitization [5] of its loan portfolio. Auditors should determine whether Securitization has occurred, and if so, whether EDA consent was obtained.

XVI. Administrative Cost and Loan Records Retention

A. Administrative Cost Records

Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three (3) years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five (5) years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three (3) years from the date of disposition, replacement or transfer of the equipment.

B. Loan Records

Loan files and related documents and records shall be retained over the life of the loan and for a three (3) year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

C. General

If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year or five-year period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year or five-year period, whichever is later.

The record retention periods described in this section are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not question administrative costs claimed more than three (3) years old. However, if fraud is an issue, records must be retained until the issue is resolved.

Attachment 1—Circulars, Regulations & Other Documents For Audits of EDA RLF Grants

The OMB circulars and Federal regulations relevant to RLF grant recipients are listed in the table below for the different types of RLF grant recipients, i.e., governments, nonprofits or universities. Since these and the other documents listed on page ii are updated periodically, users must be careful to utilize the most current version available.

Circular or regulation	Government	Nonprofit	University
Administrative Requirements			
15 CFR Part 24	X		
OMB Circular A–110		X	X
Cost Principles			
OMB Circular A–21			X
OMB Circular A–87	X		
OMB Circular A–122		X	
Audit Requirements			
OMB Circular A–133	X	X	X

The regulations for EDA Section 209 (RLF) grants are found in Title 13 of the Code of Federal Regulations (CFR), Part 308. The Department of Commerce regulations implementing the OMB audit requirements are found in 15 CFR, Part 29.

Other duties and responsibilities of grant recipients are defined in the Special Terms and the Standard Terms and Conditions of each EDA RLF grant. Each RLF should have an RLF Plan which is included as part of the Special Terms and Conditions. The RLF Plan summarizes the RLF's lending strategy, the loan standards and the operational procedures under which an RLF will be administered.

In addition, all RLF grant recipients are required to follow policies and procedures as prescribed by EDA. The most recent are included in the prevailing EDA RLF

[5] Securitization is a financing technique of securing the investment of new capital with the stream of income generated by one or more (usually a large group of) existing loans. For EDA's purposes, the term intentionally encompasses a wide variety of techniques to access investor capital by securing those investments with the value of an existing RLF economic development loan portfolio. This deliberately broad definition covers a number of actual and potential schemes to access investor capital that appear to deviate from the more traditional definition and yet provide flexible alternatives to RLF operators for raising additional funds.

Administrative Manual and in the RLF Standard Terms and Conditions. Both documents apply to all EDA RLF grants.

Additional Guidance for State and Local Governmental Entities Audits

American Institute of Certified Public Accountants (AICPA) Audit and Accounting Guide, Audits of State and Local Governmental Units, issued May 1, 1996.

AICPA Audit and Accounting Guide, The Not-for-Profit Organizations, issued June 1, 1996.

Government Auditing Standards, issued by the Comptroller General of the United States, 1994 revision (Yellow Book).

OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations, issued June 30, 1997.

OMB Provisional Compliance Supplement for Single Audits (expected to be issued in late 1997).

Additional Guidance for Non-Profit Entities Audits

AICPA, Statement of Position 92–9, Audits of Not-for-Profit Organizations Receiving Federal Awards, issued December 1992. (Note: Because of significant changes to Government Auditing Standards and OMB Circular A–133, much of this is outdated. AICPA is developing a new SOP to supersede SOP 92–9).

AICPA Statement of Auditing Standards No. 74, Compliance Auditing Applicable to Governmental Entities and Other Recipients of Governmental Financial Assistance, issued February 1995.

Attachment 2—Economic Development Administration Section 209 Revolving Loan Fund Grants (CFDA 11.307)

I. Program Objectives

Revolving loan fund (RLF) grants for business development assistance are available under Section 209 of the Public Works and Economic Development Act of 1965 (PWEDA). These grants are administered by the Economic Development Administration (EDA) to help communities adjust to sudden and severe economic dislocations and long-term economic deterioration. RLF grants provide capital to establish loan pools which finance business activities and stimulate economic development in accordance with local development strategies. RLFs typically provide financing that is not otherwise available. Loan repayments plus interest and other income replenish RLF capital to provide a revolving resource for additional loans.

II. Program Procedures

RLF grants are made to EDA designated economic development districts established under Title IV of PWEDA, Indian tribes, states, cities or other political subdivisions, consortia of political subdivisions, Community Development Corporations defined in 42 U.S.C. 9802, nonprofit organizations determined to be representative of a redevelopment area, and certain specified governments. Priority consideration for RLF funding is given to those proposals which have the greatest potential to benefit areas experiencing or threatened with substantial economic distress.

III. Compliance Requirements and Suggested Audit Procedures

A. Types of Services Allowed or Unallowed

Compliance Requirement

Allowed Services: RLF grant and matching funds may be used only for purposes specified in the grant budget and grant agreement. Eligible uses normally include disbursements for RLF loans and the audit costs of RLF activities. Unlike grant and matching funds, RLF Income [1] may be used for RLF loans as well as for eligible RLF administrative expenses (see Section C. Earmarking below for additional details).

Suggested Audit Procedure

Review grant budget and grant agreement, and determine whether RLF funds were used for specified purposes.

B. Eligibility

Compliance Requirement

Eligibility: Eligibility for RLF assistance is based upon the following: (1) the activity financed being located in an eligible lending area (usually defined in the Special Terms and Conditions of the grant, as may be amended); and (2) the borrower being unable to obtain credit in the private capital market on terms and conditions which would permit the completion and/or successful operation of the project to be financed.

Ineligible Recipients: The RLF grant recipient cannot make a loan to itself, to related parties, or to entities that would violate the conflict of interest provisions of the grant agreement (see Section D.16. of the Standard Terms and Conditions).

Suggested Audit Procedure

Review the Special Terms and Conditions and any amendments thereto, and scan the current addresses of selected RLF borrowers to determine whether borrowers are located within the eligible lending area.

On selected borrowers, test for borrower's inability to obtain private credit by verifying the existence of a loan write-up [2] in the grant recipient's files. If there is a potential violation, check the RLF Administrative Manual, Section IV.B.3., for exceptions; this Section also discusses the loan write-up. No other tests are necessary.

Review the conflict of interest provisions in the Standard Terms and Conditions, review any procedures that the grant recipient may have to avoid conflicts of interest, scan loan documentation, and determine whether RLF loans were made to ineligible recipients as defined above.

C. Matching, Level of Effort, and/or Earmarking Requirements

Matching

Compliance Requirements

A matching share of nonfederal funds required is specified in the grant agreement. Matching funds must be loaned either before or proportionately with EDA grant funds. When loans are repaid, both the matching and the EDA funds must remain in the control of the grant recipient (or subrecipient) for the duration of the RLF.

Suggested Audit Procedures

Determine through the grant documents and recipient accounting records that required levels of matching were met.

Determine that the funds used for matching have been retained in the RLF.

Level of Effort (Capital Utilization)

Compliance Requirements

During the revolving phase [3] of an RLF grant, the grant recipient is expected to manage its RLF so at least 75 percent of the RLF's capital is in use. The size of the RLF may justify a variation from this standard percentage. Variations require EDA approval.

Suggested Audit Procedures

Determine that the percentage of outstanding loan dollars to total RLF capital complies with the prescribed usage level in the revolving phase. If the resultant percentage does not comply with the requirement, determine the duration or number of consecutive reporting periods of noncompliance. (See Section X., Capital Utilization Standard, of the EDA RLF Administrative Manual for details, and note that the reporting periods end on September 30 and March 31 of each year.)

Earmarking

Compliance Requirements

Pursuant to the prevailing EDA RLF Administrative Manual, RLF Income [4] earned in a period may be used for lending or for RLF administrative expenses of the same period only. Any RLF Income remaining at the end of a period must be permanently added to the RLF's capital base to be used for lending. Any exceptions require EDA approval.

(Note: Prior to March 15, 1993, RLF Income was not required to be added to the RLF capital base at the end of a period. The accounting period is selected by the grant recipient and ends on either its fiscal year end or the Federal fiscal year end. Repayments of loan principal may be used only for re-lending.)

Suggested Audit Procedures

Verify that any RLF Income earned within the period has been used for such period's RLF administrative expenses, for loans, or that any unexpended RLF Income earned in the period has been added to the RLF capital base.

[1] RLF Income includes the interest earned on loans, interest earned on accounts holding RLF funds not needed for immediate lending, loan fees received from borrowers, and other income generated from RLF activities.

[2] A loan write-up is a written record prepared by the RLF administrator which discusses, at a minimum, the need for providing RLF financing to a borrower. It may be supported by third party supplemental evidence as applicable and obtainable.

[3] The revolving phase begins after all available grant and matching funds have been initially disbursed.

[4] Defined in Footnote 1, Page ii.

D. Special Reporting Requirements

Compliance Requirements

Grant recipients electing to use RLF Income to cover all or part of an RLF's administrative expense must annually complete an ''RLF Income and Expense Statement.'' (If the grant recipient uses more than fifty percent or more than $100,000 of a period's RLF Income for RLF administrative expenses, the statement is submitted to EDA within 90 days of the period ending date.)

Suggested Audit Procedures

Review the procedures for preparing the report (See Section VII. of EDA RLF Administrative Manual) and evaluate for adequacy.

E. Special Tests and Provisions

Compliance Requirements

RLF grant recipients are expected to follow lending practices generally accepted as prudent for public lending programs.

Suggested Audit Procedures

Review the grant recipient's RLF Plan for loan disbursement and collection procedures. Determine whether these procedures are being followed.

During the Disbursement Phase [5] of an RLF grant, a grant recipient must demonstrate there is sufficient RLF loan activity to draw grant funds within the approved period allotted. This usually is in accordance with the following schedule: 50% of grant and matching funds disbursed within 18 months of the grant award, 80% within two (2) years, and 100% within three (3) years. Any time extensions require EDA's approval. By law, grant funds remain available for disbursement by EDA only until September 30 of the fifth year after the fiscal year of the grant award.

F. Preservation of Government's Interest in Assets

Compliance Requirements

In instances where RLF grant recipients elect to Securitize their loan portfolios, EDA's prior written consent must be obtained and the value of the Federal Government's reversionary interest in assets retained.

Suggested Audit Procedures

Review grant recipients records where Securitization may have occurred and determine whether grantee obtained EDA's written consent as required.

PARTS 309–313—[RESERVED]

PART 314—PROPERTY

Subpart A—In General

[5] The Disbursement Phase is defined as the approved time period for drawing all EDA grant funds.

Subpart B—Real Property

Subpart C—Personal Property

Subpart D—Release of EDA's Property Interest

Authority: 42 U.S.C. 3211; 19 U.S.C. 2341–2355; 42 U.S.C. 6701; 42 U.S.C. 184; Department of Commerce Organization Order 10–4.

Subpart A—In General

§ 314.1 Federal interest, applicability.

(a) Property that is acquired or improved with EDA grant assistance shall be held in trust by the recipient for the benefit of the purposes of the project under which the property was acquired or improved. Limited exceptions to this requirement are listed in § 314.7(c).

(b) During the estimated useful life of the project, EDA retains an undivided equitable reversionary interest in property acquired or improved with EDA grant assistance, except for the exceptions listed in § 314.7(c).

(c) EDA may approve the substitution of an eligible entity for a recipient. The original recipient remains responsible for the period it was the recipient, and the successor recipient holds the project property with the responsibilities of an original recipient under the award.

§ 314.2 Definitions.

As used in this part 314 of this chapter:

Dispose includes sell, lease, abandon, or use for a purpose or purposes not authorized under the grant award or this part.

Estimated useful life means that period of years, determined by EDA as the expected lifespan of the project.

Owner includes fee owner, transferee, lessee, or optionee of real property upon which project facilities or improvements are or will be located, or real property improved under a project which has as its purpose that the property be sold or leased.

Personal Property means all property other than real property.

Project means the activity and property acquired or improved for which a grant is awarded. When property is used in other programs as provided in § 314.3(b), ''project'' includes such programs.

Property includes all forms of property, real, personal (tangible and intangible), and mixed.

Real property means any land, improved land, structures, appurtenances thereto, or other improvements, excluding movable machinery and equipment. Improved land also includes land which is improved by the construction of such project facilities as roads, sewers, and water lines which are not situated directly on the land but which contribute to the value of such land as a specific part of the project purpose.

Recipient includes any recipient of grant assistance under the Public Works and Economic Development Act of 1965, as amended, prior to or as amended by Public Law 105–393, or under Title II, Chapters 3 and 5 of the Trade Act of 1974, Title I of the Public Works Employment Act of 1976, the Public Works Employment Act of 1977, or the Community Emergency Drought Relief Act of 1977, and any EDA-approved successor to such recipient.

§ 314.3 Use of property.

(a) The recipient or owner must use any property acquired or improved in whole or in part with grant assistance only for the authorized purpose of the project and such property must not be leased, sold, disposed of or encumbered without the written authorization of EDA.

(b) However, in the event that EDA and the recipient determine that property acquired or improved in whole or in part with grant assistance is no longer needed for the original grant purpose, it may be used in other Federal grant programs, or programs that have purposes consistent with those authorized for support by EDA, but only if EDA approves such use.

(c) When the authorized purpose of the EDA grant is to develop real property to be leased or sold, as determined by EDA, such sale or lease is permitted provided it is for adequate consideration and the sale is consistent with the authorized purpose of the grant and with applicable EDA requirements concerning, but not limited to, nondiscrimination and environmental compliance. The term ''adequate consideration'' means consideration that is fair and reasonable under the circumstances of the sale or lease, and may include money, services, property exchanges, contractual commitments, or acts of forbearance.

(d) When acquiring replacement personal property of equal or greater value, the recipient may, with EDA's approval, trade-in the property originally acquired or sell the original property and use the proceeds in the acquisition of the replacement property, provided that the replacement property shall be used for the project and be

subject to the same requirements as the original property.

§ 314.4 Unauthorized use.

(a) Except as provided in §§ 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Federal Government must be compensated by the recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 CFR parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.

(b) If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal share of the value of the property for the Federal Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.

§ 314.5 Federal share.

(a) For purposes of this part, the Federal share of the value of property is that percentage of the current fair market value of the property attributable to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

(b) Where the recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

(c) If property is transferred from the recipient to another eligible entity, as provided in § 314.1(c), the Federal Government must be compensated the Federal share of any money or money equivalent paid by or on behalf of the successor recipient to or for the benefit of the original recipient, provided that EDA may first permit the recovery by the original recipient of an amount not exceeding its investment in the project nor exceeding that percentage of the value of the property that is not attributable to the EDA participation in the project.

(d) When the Federal Government is fully compensated for the Federal share of the value of property acquired or improved in whole or in part with grant assistance, EDA has no further interest in the ownership, use, or disposition of the property.

§ 314.6 Encumbrances.

(a) Except as provided in § 314.6(c), recipient-owned property acquired or improved in whole or in part with grant assistance may not be used to secure a mortgage or deed of trust or otherwise be used as collateral or encumbered except to secure a grant or loan made by a State or Federal agency or other public body participating in the same project. This provision does not prevent projects from being developed on previously encumbered property, if the requirements of § 314.7(b) are met.

(b) Encumbering project property other than as permitted in this section is an unauthorized use of the property requiring compensation to the Federal Government as provided in §§ 314.4 and 314.5.

(c) EDA may waive the provisions of § 314.6(a) for good cause when EDA determines all of the following:

(1) All proceeds from the grant/loan to be secured by the encumbrance on the property shall be available only to the recipient, and all proceeds from such secured grant/loan shall be used only on the project for which the EDA grant was awarded or on related activities of which the project is an essential part;

(2) The grantor/lender would not provide funds without the security of a lien on the project property; and

(3) There is a reasonable expectation that the borrower/recipient will not default on its obligation.

(d) EDA may waive the provisions of § 314.6(a) as to an encumbrance on property which is acquired and/or improved by an EDA grant when EDA determines that the encumbrance arises solely from the requirements of a pre-existing water or sewer facility or other utility encumbrance which by its terms extends to additional property connected to such facilities.

Subpart B—Real Property

§ 314.7 Title.

(a) The recipient must hold title to the real property required for a project, except in limited cases as provided in paragraph 314.7(c) of this section. Except in those limited cases, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property required for a project (other than property of the United States) is vested in the recipient, and that such easements, rights-of-way, State permits, or long-term leases as are required for the project have been or will be obtained by the recipient within an acceptable time as determined by EDA.

(b)(1) The recipient must disclose to EDA all:

(i) Liens,

(ii) Mortgages,

(iii) Other encumbrances,

(iv) Reservations,

(v) Reversionary interests, or

(vi) Other restrictions on title or the recipient's interest in the property.

(2) No such encumbrance or restriction will be acceptable if, as determined by EDA, the encumbrance or restriction will interfere with the construction, use, operation or maintenance of the project during its estimated useful life.

(c) EDA may determine that a long-term leasehold interest for a period not less than the estimated useful life of the project, or an agreement for the recipient to purchase the property, will be acceptable, but only if fee title is not obtainable and the lease or purchase agreement provisions adequately safeguard the Federal Government's interest in the project. Also, EDA may permit the following exceptions to the requirement that the recipient hold title to the real property required for a project.

(1) When a project includes construction within a railroad's right-of-way or over a railroad crossing, it may be acceptable for the work to be completed by the railroad and for the railroad to continue to own, operate and maintain that portion of the project, if required by the railroad, and provided that this is a minor but essential component of the project.

(2) When a project includes construction on a State-owned or local government-owned highway, it may be acceptable for the State or local government to own, operate and maintain that portion of the project, if required by the State or local government, provided that this is a minor but essential component of the project, the construction is completed in accordance with EDA requirements, and the State or local government provides assurances to EDA:

(i) That the State or local government will operate and maintain the improvements for the useful life of the project as determined by EDA;

(ii) That the State or local government will not sell the improvements for the useful life of the project, as determined by EDA; and

(iii) That the use of the property will be consistent with the authorized purpose of the project.

(3) When the authorized purpose of the project is to construct facilities to

serve industrial or commercial parks or sites owned by the recipient for sale or lease to private parties, such sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the recipient has title to the park or site prior to such sale or lease.

(4) When the authorized purpose of the project is to construct facilities to serve privately owned industrial or commercial parks or sites for sale or lease, such ownership, sale or lease is permitted so long as EDA requirements continue to be met. EDA may require evidence that the private party has title to the park or site prior to such sale or lease, and may condition the award of project assistance upon assurances by the private party relating to the sale or lease that EDA determines are necessary to assure consistency with the project purposes.

§ 314.8 Recorded statement.

(a) For all projects involving the acquisition, construction or improvement of a building, as determined by EDA, the recipient shall execute a lien, covenant or other statement of EDA's interest in the property acquired or improved in whole or in part with the funds made available under the award. The statement shall specify in years the estimated useful life of the project and shall include, but not be limited to disposition, encumbrance, and compensation of Federal share requirements of this part 314. The statement shall be satisfactory in form and substance to EDA.

(b) The statement of EDA's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with local law.

(c) Facilities in which the EDA investment is only a small part of a large project, as determined by EDA, may be exempted from the requirements of this section.

Subpart C—Personal Property

§ 314.9 Recorded statement—Title.

For all projects which EDA determines involve the acquisition or improvement of significant items of tangible personal property, including but not limited to ships, machinery, equipment, removable fixtures or structural components of buildings, the recipient shall execute a security interest or other statement of EDA's interest in the property, acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with local law, with continuances refiled as appropriate. Whether or not a statement is required by EDA to be recorded, the recipient must hold title to the personal property acquired or improved as part of the project, except as otherwise provided in this part.

§ 314.10 Revolving loan funds.

(a) With EDA's consent, recipients holding revolving loan fund (RLF) property (including but not limited to money, notes, and security interests) may sell such property or encumber such property as part of a securitization of the RLF portfolio. The net transaction proceeds must be used for additional loans as part of the RLF project;

(b) When a recipient determines that it is no longer necessary or desirable to operate an RLF, the RLF may be terminated; provided that, unless otherwise stated in the award, the recipient must compensate the Federal Government for the Federal share of the value of the RLF property. The Federal share is that percentage of the capitalized RLF contributed by EDA applied to all RLF property, including the present value of all outstanding loans. However, with EDA's prior approval, upon termination the recipient may use for other economic development purposes that portion of such RLF property that EDA determines is attributable to the payment of interest.

Subpart D—Release of EDA's Property Interest

§ 314.11 Procedures for Release of EDA's Property Interest.

(a) Before the expiration of the estimated useful life of the grant project, EDA may release, in whole or in part, any real property interest, or tangible personal property interest, in connection with a grant after the date that is 20 years after the date on which the grant was awarded. (The term ''tangible personal property'' excludes debt instruments, currency, and accounts in financial institutions.) Except as provided in paragraph (b) of this section, such release is not automatic; it requires EDA's approval, which will not be withheld except for good cause. The release may be unconditional, or may be conditioned upon some activity of the recipient intended to be pursued as a consequence of the release.

(b) EDA hereby releases all of its real and tangible personal property interests in projects awarded under the Public Works Employment Act of 1976 (Pub. L. 94–369) and under that act as amended by the Public Works Employment Act of 1977 (Pub. L. 95–28).

(c)(1) Notwithstanding §§ 314.11(a) and (b), in no event, either before or after the release of EDA's interest, may project property be used:

(i) In violation of the nondiscrimination requirements of the project award, or

(ii) For religious purposes prohibited by the holding of the U.S. Supreme Court in *Tilton* v. *Richardson*, 403 U.S. 672 (1971).

(2) Such use voids the release, and is an unauthorized use of the property, as provided in § 314.4.

PART 315—CERTIFICATION AND ADJUSTMENT ASSISTANCE FOR FIRMS

Subpart A—General Provisions

Subpart B—Trade Adjustment Assistance Centers

Subpart C—Certification of Firms

Subpart D—Assistance to Industries

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; 42 U.S.C. 5141; E.O. 12372; Department of Commerce Organization Order 10–4.

Subpart A—General provisions

§ 315.1 Purpose and scope.

The regulations in this part implement certain changes to responsibilities of the Secretary of Commerce under Chapter 3 of Title II of the Trade Act of 1974, as amended (19 U.S.C. 2341 *et. seq.*) (Trade Act), concerning adjustment assistance for firms. The statutory authority and responsibilities of the Secretary of Commerce relating to adjustment assistance are delegated to EDA. EDA has the duties of certifying firms as eligible to apply for adjustment assistance, providing technical adjustment assistance to eligible recipients, and providing assistance to organizations representing trade injured industries.

§ 315.2 Definitions.

As used in this part 315 of this chapter:

Adjustment assistance is technical assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

Adjustment proposal means a certified firm's plan for improving its economic situation.

Certified firm means a firm which has been determined by EDA to be eligible to apply for adjustment assistance.

Confidential business information means information submitted to EDA or TAACs by firms that concerns or relates to trade secrets for commercial or financial purposes which is exempt from public disclosure under 5 U.S.C. 552(b)(4), 5 U.S.C. 552b(c)(4) and 15 CFR part 4.

Decreased absolutely means a firm's sales or production has declined:

(1) Irrespective of industry or market fluctuations; and

(2) Relative only to the previous performance of the firm.

Directly competitive means:

(1) Articles which are substantially equivalent for commercial purposes, i.e., are adapted to the same function or use and are essentially interchangeable; and

(2) Oil or natural gas (exploration, drilling or otherwise produced).

Firm means an individual proprietorship, partnership, joint venture, association, corporation (including a development corporation), business trust, cooperative, trustee in bankruptcy or receiver under court decree and including fishing, agricultural entities and those which explore, drill or otherwise produce oil or natural gas. When a firm owns or controls other firms as described below, for purposes of receiving benefits under this part, the firm and such other firms may be considered a single firm when they produce like or directly competitive articles or are exerting essential economic control over one or more production facilities. Such other firms include:

(1) Predecessor;

(2) Successor;

(3) Affiliate; or

(4) Subsidiary.

A group of workers threatened with total or partial separation means there is reasonable evidence that such total or partial separation is imminent.

Like articles means articles which are substantially identical in their intrinsic characteristics.

Partial separation means either:

(1) A reduction in an employee's work hours to 80 percent or less of the employee's average weekly hours during the year of such reductions as compared to the preceding year; or

(2) A reduction in the employee's weekly wage to 80 percent or less of his/her average weekly wage during the year of such reduction as compared to the preceding year.

Person means individual, organization or group.

The record means:

(1) A petition for certification of eligibility to qualify for adjustment assistance;

(2) Any supporting information submitted by the petitioner;

(3) Report of the EDA investigation in regard to the petition; and

(4) Any information developed during the investigation or in connection with any public hearing held on the petition.

Recipient means a firm, Trade Adjustment Assistance Center or other party receiving adjustment assistance or through which adjustment assistance is provided under the Trade Act.

A significant number or proportion of workers means 5 percent of the firm's work force or 50 workers, whichever is less. An individual farmer is considered a significant number or proportion of workers.

Substantial interest means a direct, material, economic interest in the certification or noncertification of the petitioner.

Technical Assistance means assistance provided to firms or industries under Chapter 3 of Title II of the Trade Act.

A totally separated worker means an employee who has been laid off or whose employment has been terminated by his/her employer for lack of work.

§ 315.3 Confidential business information.

EDA will follow the procedures set forth in 15 CFR § 4.7, and submitters should so designate any information they believe confidential.

§ 315.4 Eligible applicants.

(a) Trade Adjustment Assistance Centers (TAACs) are eligible applicants. A TAAC can be:

(1) A university affiliate;

(2) State or local government affiliate;

(3) Non-profit organization.

(b) Firms;

(c) Organizations assisting or representing industries in which a substantial number of firms or workers have been certified as eligible to apply for adjustment assistance under sections 223 or 251 of the Trade Act including the following:

(1) Existing agencies;

(2) Private individuals;

(3) Firms;

(4) Universities;

(5) Institutions;

(6) Associations;

(7) Unions; or

(8) Other non-profit industry organizations.

§ 315.5 Selection process.

(a) TAACs are selected in accordance with the following:

(1) Currently funded TAACs are invited by EDA to submit either new or amended applications, provided they have performed in a satisfactory manner and complied with previous and/or current conditions in their cooperative agreements with EDA and contingent upon availability of funds. Such TAACs shall submit an application on a form approved by OMB, as well as a proposed budget, narrative scope of work, and such other information as requested by EDA. Acceptance of an application or amended application for a cooperative agreement does not assure funding by EDA; and

(2) New TAACs will be invited to submit proposals, and if they are acceptable, EDA will invite an application on a form approved by OMB. An application will be accompanied by a narrative scope of work, proposed budget and such other information as requested by EDA. Acceptance of an application does not assure funding by EDA.

(b) Firms are selected in accordance with the following:

(1) Firms may apply for certification generally through a TAAC by filling out a petition for certification. The TAAC will provide technical assistance to firms wishing to fill out such petitions;

(2) Once firms are certified in accordance with the procedures described in §§ 315.9 and 315.10, an adjustment proposal is usually prepared with technical assistance from a party independent of the firm, usually the TAAC, and submitted to EDA;

(3) Certified firms which have submitted acceptable adjustment proposals within the time limits described in § 315.13 below, may begin implementation of such proposal, generally through the TAAC and often with Technical Assistance from the TAAC, by submitting a request to the TAAC to provide assistance in implementing an accepted adjustment proposal; and

(4) EDA determines whether or not to provide assistance for adjustment proposals based upon § 315.6(c)(2).

(c) Organizations representing trade injured industries must meet with an EDA representative to discuss the industry problems, opportunities and assistance needs, and if invited by EDA may then submit an application as

approved by OMB, as well as a scope of work and proposed budget.

§ 315.6 Evaluation criteria.

(a) Currently funded TAACs are generally evaluated based on the following:

(1) How well they have performed under cooperative agreements with EDA and if they are in compliance with the terms and conditions of such cooperative agreements;

(2) Proposed scope of work, budget and application or amended application; and

(3) The availability of funds.

(b) New TAACs are generally evaluated on the following:

(1) Demonstrates competence in administering business assistance programs;

(2) Background and experience of staff;

(3) Proposed scope of work, budget and application; and

(4) The availability of funding.

(c) Firms are generally evaluated based on the following:

(1) For certification, firms' petitions are selected strictly on the basis of conformance with requirements set forth in § 315.9 below;

(2) An adjustment proposal is evaluated on the basis of the following:

(i) The proposal must be submitted to EDA within 2 years after the date of the certification of the firm; and

(ii) The adjustment proposal must include a description of any technical assistance requested to implement such proposal including financial and other supporting documentation as EDA determines is necessary, based upon either:

(A) An analysis of the firm's problems, strengths and weaknesses and an assessment of its prospects for recovery; or

(B) If EDA so determines, an acceptable adjustment proposal can be prepared on the basis of other available information.

(iii) The adjustment proposal must be evaluated to determine that it:

(A) Is reasonably calculated to contribute materially to the economic adjustment of the firm, i.e., that such proposal will be a constructive aid to the firm in establishing a competitive position in the same or a different industry;

(B) Gives adequate consideration to the interests of a sufficient number of separated workers of the firm, by providing for example that the firm will:

(*1*) Give a rehiring preference to such workers;

(*2*) Make efforts to find new work for a number of such workers; and

(*3*) Assist such workers in obtaining benefits under available programs.

(C) Demonstrates that the firm will make all reasonable efforts to use its own resources for economic development, though under certain circumstances, resources of related firms or major stockholders will also be considered.

(d) Organizations representing trade injured industries must demonstrate that the industry is injured by increased imports and that the activities to be funded will yield some short-term actions that the industry itself (and individual firms) can and will take toward the restoration of the industry's international competitiveness.

(1) The emphasis is on practical results that can be implemented in the near term, and long-term research and development activities are given low priority.

(2) It is also expected that the industry will continue activities on its own without the need for continued Federal assistance.

§ 315.7 Award requirements.

(a) Award periods are as follows:

(1) TAACs are generally funded for 12 months;

(2) Firms are generally provided assistance over a 2-year period; and

(3) Organizations representing trade injured industries are generally funded for 12 months.

(b) Matching requirements are as follows:

(1) There are no matching requirements for certification assistance provided by the TAACs to firms or for administrative expenses for the TAACs;

(2) All adjustment proposals and implementation assistance must include not less than 25% nonfederal match, provided to the extent practicable, by firms being assisted; and

(3) Contributions of at least 50% of the total project cash cost, in addition to appropriate in kind contributions, are expected from organizations representing trade injured industries.

Subpart B—Trade Adjustment Assistance Centers

§ 315.8 Purpose and scope.

(a) Trade Adjustment Assistance Centers (TAACs) are available to assist firms in all fifty states, the District of Columbia and the Commonwealth of Puerto Rico in obtaining adjustment assistance. TAACs provide technical assistance in accordance with this subpart either through their own staffs or by arrangements with outside consultants. Information concerning TAACs serving particular areas can be obtained from EDA. See the annual FY NOFA for the appropriate point of contact and address.

(b) Prior to submitting a request for technical assistance to EDA, a firm should determine the extent to which the required technical assistance can be provided through a TAAC. EDA will provide technical assistance through TAACs whenever EDA determines that such assistance can be provided most effectively in this manner. Requests for technical assistance will normally be made through TAACs.

(c) TAACs generally provide technical assistance to a firm by providing the following:

(1) Assistance to a firm in preparing its petition for certification;

(2) Assistance to a certified firm in diagnosing its strengths and weaknesses and developing an adjustment proposal for the firm; and

(3) Assistance to a certified firm in the implementation of the adjustment proposal for the firm.

Subpart C—Certification of Firms

§ 315.9 Certification requirements.

A firm will be certified eligible to apply for adjustment assistance based upon the petition for certification if EDA determines, under section 251(c) of the Trade Act, that:

(a) A significant number or proportion of workers in such firm have become totally or partially separated, or are threatened to become totally or partially separated;

(b) Either sales or production, or both of the firm have decreased absolutely; or sales or production, or both of any article that accounted for not less than 25 percent of the total production or sales of the firm during the 12-month period preceding the most recent 12-month period for which data are available have decreased absolutely; and

(c) Increases of imports (absolute or relative to domestic production) of articles like or directly competitive with articles produced by such firm contributed importantly to such total or partial separation or threat thereof, and to such decline in sales or production; provided that imports will not be considered to have contributed importantly if other factors were so dominant, acting singly or in combination, that the worker separation or threat thereof, or decline in sales or production would have been essentially the same irrespective of the influence of imports.

§ 315.10 Processing petitions for certification.

(a) Firms are encouraged to consult with a TAAC or EDA for guidance and

assistance in the preparation of their petitions for certification.

(b) A firm seeking certification shall complete a petition (OMB Control Number 0610–0091) in the form prescribed by EDA with the following information about such firm:

(1) Identification and description of the firm, including legal form of organization, economic history, major ownership interests, officers, directors, management, parent company, subsidiaries or affiliates, and production and sales facilities;

(2) Description of goods and services produced and sold;

(3) Description of imported articles like or directly competitive with those produced;

(4) Data on its sales, production and employment for the two most recent years;

(5) Copies of its audited financial statements, or if not available, unaudited financial statements and Federal income tax returns for the two most recent years;

(6) Copies of unemployment insurance reports for the two most recent years;

(7) Information concerning its major customers and their purchases; and

(8) Such other information as EDA may consider material.

(c) EDA shall determine whether the petition has been properly prepared and can be accepted. Immediately thereafter, EDA shall notify the petitioner that the petition has been accepted or advise the petitioner that the petition has not been accepted, but may be resubmitted at any time without prejudice when the specified deficiencies have been corrected and the resubmission will be treated as a new petition.

(d) A notice of acceptance of a petition shall be published in the **Federal Register**.

(e) An investigation shall be initiated by EDA to determine whether the petitioner meets requirements set forth in section 251(c) of the Trade Act and § 315.9 above. The investigation can be terminated at any time for failure to meet such requirements. A report of this investigation shall become part of the record upon which a determination of the petitioner's eligibility to apply for adjustment assistance shall be made.

(f) A petitioner may withdraw a petition for certification if a request for withdrawal is received by EDA before a certification determination or denial is made. Such firm may submit a new petition at any time thereafter in accordance with the requirements of this section and § 315.9.

(g) Following acceptance, EDA shall decide what action to take on petitions for certification as follows:

(1) Make a determination based on the record as soon as possible after all material has been submitted. In no event may the period exceed 60 days from the date on which the petition was accepted; and

(2) Either certify the petitioner eligible to apply for adjustment assistance or deny the petition, and in either event EDA shall promptly give notice of the action in writing to the petitioner. A notice to the petitioner or any parties requesting notice as specified in § 315.10(d) of a denial of a petition shall specify the reasons upon which the denial is based. If a petition is denied, the petitioner shall not be entitled to resubmit its petition within one year from the date of the denial. At the time of the denial of a petition EDA may waive the 1-year limitation for good cause.

§ 315.11 Hearings, appeals and final determinations.

(a) Any petitioner may appeal to EDA from a denial of certification provided that the appeal is received by EDA in writing by personal delivery or by registered mail within 60 days from the date of notice of denial under § 315.10(g). The appeal shall state the grounds on which the appeal is based, including a concise statement of the supporting facts and law. The decision of EDA on the appeal shall be the final determination within the Department of Commerce. In the absence of an appeal by the petitioner under this paragraph, such final determination shall be determined under § 315.10(g).

(b) A firm, its representative or any other interested domestic party aggrieved by a final determination under paragraph (a) of this section may, within 60 days after notice of such determination, begin a civil action in the United States Court of International Trade for review of such determination in accordance with section 284 of the Trade Act (19 U.S.C. 2395).

(c) EDA will hold a public hearing on an accepted petition not later than 10 days after the date of publication of the Notice of Acceptance in the **Federal Register** if requested by either the petitioner or any other person found by EDA to have a substantial interest in the proceedings, under procedures, as follows:

(1) The petitioner and other interested persons shall have an opportunity to be present, to produce evidence, and to be heard;

(2) A request for public hearing must be delivered by hand or by registered mail to EDA. A request by a person other than the petitioner shall contain:

(i) The name, address, and telephone number of the person requesting the hearing; and

(ii) A complete statement of the relationship of the person requesting the hearing to the petitioner and the subject matter of the petition, and a statement of the nature of its interest in the proceedings.

(3) If EDA determines that the requesting party does not have a substantial interest in the proceedings, a written notice of denial shall be sent to the requesting party. The notice shall specify the reasons for the denial;

(4) EDA shall publish a notice of a public hearing in the **Federal Register**, containing the subject matter, name of petitioner, and date, time and place of hearing;

(5) EDA shall appoint the presiding officer of the hearing who shall determine all procedural questions;

(6) Procedures for requests to appear are as follows:

(i) Within 5 days after publication of the Notice of Public Hearing in the **Federal Register**, each party wishing to be heard must file a request to appear with EDA. Such request may be filed by:

(A) The party requesting such hearing;

(B) Any other party with substantial interest; or

(C) Any other party demonstrating to the satisfaction of the presiding officer that it should be allowed to be heard.

(ii) The party filing the request shall submit the names of the witnesses and a summary of the evidence it wishes to present; and

(iii) Such requests to appear may be approved as deemed appropriate by the presiding officer.

(7) Witnesses will testify in the order and for the time designated by the presiding officer, except that the petitioner shall have the opportunity to make its presentation first. After testifying, a witness may be questioned by the presiding officer or his/her designee. The presiding officer may allow any person who has been granted permission to appear to question the witnesses for the purpose of assisting him/her in obtaining relevant and material facts on the subject matter of the hearing;

(8) The presiding officer may exclude evidence which s/he deems improper or irrelevant. Formal rules of evidence shall not be applicable. Documentary material must be of a size consistent with ease of handling, transportation, and filing. Large exhibits may be used during the hearing, but copies of such exhibits must be provided in reduced size for submission as evidence. Two

copies of all documentary evidence must be furnished to the presiding officer during the hearing;

(9) Briefs may be presented to the presiding officer by parties who have entered an appearance. Three copies of such briefs shall be filed with the presiding officer within 10 days of the completion of the hearing; and

(10) Procedures for transcripts are as follows:

(i) All hearings will be transcribed. Persons interested in transcripts of the hearings may inspect them at the U.S. Department of Commerce in Washington, D.C., or purchase copies as provided in 15 CFR part 4, Public Information; and

(ii) Confidential business information as determined by EDA shall not be a part of the transcripts. Any confidential business information may be submitted directly to the presiding officer prior to the hearing. Such information shall be labeled Confidential Business Information. For the purpose of the public record, a brief description of the nature of the information shall be submitted to the presiding officer during the hearing.

§ 315.12 Termination of certification and procedure.

(a) Whenever EDA determines that a certified firm no longer requires adjustment assistance or for other good cause, EDA will terminate the certification and promptly publish notice of such termination in the **Federal Register**. The termination will take effect on the date specified in the Notice.

(b) EDA shall immediately notify the petitioner and shall state the reasons for such termination.

§ 315.13 Loss of certification benefits.

A firm may fail to obtain benefits of certification, regardless of whether its certification is terminated for any of the following reasons:

(a) Failure to submit an acceptable adjustment proposal within 2 years after date of certification. While approval of an adjustment proposal may occur after the expiration of such 2-year period, an acceptable adjustment proposal must be submitted before such expiration;

(b) Failure to submit documentation necessary to start implementation or modify its request for adjustment assistance consistent with its adjustment proposal within 6 months after approval of the adjustment proposal and 2 years have elapsed since the date of certification. If the firm anticipates that a longer period will be required to submit documentation, such longer period should be indicated in its adjustment proposal. If the firm becomes unable to submit its documentation within the allowed time, it should notify EDA in writing of the reasons for the delay and submit a new schedule. EDA has the discretion to accept or refuse a new schedule;

(c) If the firm's request for adjustment assistance has been denied, the time period allowed for the submission of any documentation in support of such request has expired, and 2 years have elapsed since the date of certification; or

(d) Failure to diligently pursue an approved adjustment proposal, and 2 years have elapsed since the date of certification.

Subpart D—Assistance to Industries

§ 315.14 Assistance to firms in import-impacted industries.

(a) Whenever the International Trade Commission makes an affirmative finding under section 202(B) of the Trade Act that increased imports are a substantial cause of serious injury or threat thereof with respect to an industry, EDA shall provide to the firms in such industry, assistance in the preparation and processing of petitions and applications for benefits under programs which may facilitate the orderly adjustment to import competition of such firms.

(b) EDA may provide technical assistance, on such terms and conditions as EDA deems appropriate for the establishment of industry wide programs for new product development, new process development, export development or other uses consistent with the purposes of this part.

(c) Expenditures for technical assistance under this section may be up to $10,000,000 annually per industry and shall be made under such terms and conditions as EDA deems appropriate.

PART 316—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Sec.

Authority: 42 U.S.C. 3211; 19 U.S.C. 2391, *et seq.*; Department of Commerce Organization Order 10–4.

§ 316.1 Environment.

(a) The purpose of this section is to ensure proper environmental review of EDA's actions under PWEDA and the Trade Act and to comply with the Federal environmental statutes and regulations in making a determination that balances economic development and environmental enhancement and mitigates adverse environmental impacts to the extent possible.

(b) Environmental assessments of EDA actions will be conducted in accordance with the statutes, regulations, and Executive Orders listed below. This list will be supplemented and modified, as applicable, in EDA's annual FY NOFA.

(1) Requirements under the National Environmental Policy Act of 1969 (NEPA), Pub. L. 91–190, as amended, 42 U.S.C. 4321 *et seq.* as implemented under 40 CFR parts 1500 *et seq.* including the following:

(i) The implementing regulations of NEPA require EDA to provide public notice of the availability of project specific environmental documents such as environmental impact statements, environmental assessments, findings of no significant impact, records of decision etc., to the affected public as specified in 40 CFR 1506.6(b); and

(ii) Depending on the project location, environmental information concerning specific projects can be obtained from the Environmental Officer in the appropriate Washington, D.C. or regional office listed in the NOFA;

(2) Clean Air Act, Pub. L. 88–206 as amended, 42 U.S.C. 7401 et. seq.;

(3) Clean Water Act (Federal Water Pollution Control Act), c. 758, 62 Stat. 1152 as amended, 33 U.S.C. 1251 et. seq.;

(4) Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), Pub. L. 96–510, as amended, 42 U.S.C. 9601 et. seq. and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99–499, as amended;

(5) Floodplain Management Executive Order 11988 (May 24, 1977);

(6) Protection of Wetlands Executive Order 11990 (May 24, 1977);

(7) Resource Conservation and Recovery Act of 1976, Pub.L. 94–580 as amended, 42 U.S.C. 6901 *et seq.*;

(8) Historical and Archeological Data Preservation Act, Pub. L. 86–523, as amended, 16 U.S.C. § 469a–1 et. seq.;

(9) National Historic Preservation Act of 1966, Pub. L. 89–665, as amended, 16 U.S.C. § 470 et. seq.;

(10) Endangered Species Act of 1973, Pub. L. 93–205, as amended, 16 U.S.C. § 1531 et. seq.;

(11) Coastal Zone Management Act of 1972, Pub. L. 92–583, as amended, 16 U.S.C. § 1451 et. seq.;

(12) Flood Disaster Protection Act of 1973, Pub. L. 93–234, as amended, 42 U.S.C. § 4002 et seq.;

(13) Safe Drinking Water Act of 1974, Pub. L. 92–523, as amended, 42 U.S.C. § 300f-j26;

(14) Wild and Scenic Rivers Act, Pub. L. 90–542, as amended, 16 U.S.C. § 1271 et seq.;

(15) Environmental Justice in Minority Populations and Low-Income Populations Executive Order 12898 (February 11, 1994);

(16) Farmland Protection Policy Act, Pub. L. 97–98, as amended, 7 U.S.C. § 4201 et seq.; and

(17) Other Federal Environmental Statutes and Executive Orders as applicable.

§ 316.2 Excess capacity.

(a) *Definitions.* For purposes of this section only the following definitions apply:

Beneficiary means a firm or group of firms, enterprise or organization (public or private) that provides a commercial product or service and that benefits from an EDA-assisted project.

Capacity means the maximum amount of a product or service that can be supplied to the market area over a sustained period by existing enterprises through the use of present facilities and customary work schedules for the industry.

Commercial product or service means a product or service that competes with other providers of the same kinds of product or service.

Demand means the actual quantity of a commercial product or service that users are willing to purchase in the market area served by the intended beneficiary of the EDA assisted project.

Efficient capacity means that part of capacity derived from the use of contemporary structures, machinery and equipment, designs, and technologies.

Existing competitive enterprise means an established operation which either produces or delivers the same kind of commercial product or service to all or a substantial part of the market area served by the intended beneficiary of the EDA assisted project.

Firm means any enterprise which produces or sells a commercial product or service.

Market Area means the geographic area within which commercial products or services compete for purchase by customers.

Product or service means a good, material, or commodity, or the availability of a service or facility.

Section 208 means section 208 of PWEDA.

(1) A section 208 study is a detailed economic analysis/evaluation of competitive impact.

(2) A section 208 report is a summary of supply/demand factors.

(3) A section 208 exemption may apply to a project having one or more of the characteristics listed in paragraph (e) of this section.

(b) Under section 208:

(1) No financial assistance under PWEDA shall be extended to any project when the result would be to increase the production of products or services when there is not sufficient demand for such products or services, to employ the efficient capacity of existing competitive commercial or industrial enterprises; and

(2) When EDA considers extending assistance for a project that benefits a firm or industry that provides a commercial product or service, the beneficiary is subject to a 208 report, study, or exemption, resulting in a finding that the project will or will not violate section 208. A section 208 study or report is required, except as provided in paragraph (e) of this section.

(c) The following procedures shall be followed to the extent necessary to provide EDA with sufficient information to prepare a 208 study or report:

(1) The beneficiary shall submit, as early as possible, the following information with regard to each commercial product or service affected by the project:

(i) A detailed description of the commercial product or service;

(ii) Current and projected amount and value of annual sales or receipts;

(iii) Market area; and

(iv) Name of other suppliers and amount of commercial product or service presently available in the market area.

(2) If the beneficiary has conducted or commissioned a relevant market study, it shall be made available to EDA as early as possible, for possible use by EDA in the 208 study or report.

(d) A section 208 report will form an acceptable basis on which to make a section 208 compliance finding when the beneficiary's projected new or additional annual output is less than one percent of the last recorded annual output in the market area, or when it is otherwise apparent that a 208 study is not required to determine that the project will not violate section 208.

(e) Unless EDA determines that circumstances require a section 208 study or report, EDA will make a finding of compliance with section 208 without doing a section 208 report or study for those projects which have one or more of the following characteristics:

(1) The project is primarily for the use and benefit of the community as a whole without contributing to a new or significantly expanded output of commercial products or services;

(2) The project will not contribute directly to the production or distribution of new or expanded output of commercial products or services, to any significant degree;

(3) The project will replace or restore capacity recently destroyed by flood, fire, wind, or other natural disaster, without contributing to significant expansion of the previously existing supply of the same kinds of commercial products or services;

(4) The project will assure the retention of physical capacity and/or employment without significantly expanding the existing supply of commercial products or services;

(5) The project will assure the reopening of facilities closed within two years of the date of reopening, if the facility will provide the same kinds of products or services as previously provided, without a significant increase in output;

(6) The project will replace, rebuild or modernize, within the same labor market area, facilities which within the previous two years have been, or are to be, displaced by official governmental action, without a change in the kind or significant increase in output of the commercial product or service previously provided;

(7) The project assures completion of a project previously assisted by EDA, where further funding is required because of revised project cost estimates, rather than for additional productive capacity;

(8) The project is wholly or primarily for planning, technical assistance, research, evaluation, other studies, or for the training of workers, and not for the benefit of a firm or industry that produces a commercial product or service; or

(9) No firm benefitted by the project will use 50 percent or more of any EDA-financed service or facility.

§ 316.3 Nonrelocation.

(a) General requirements for nonrelocation for funding under PWEDA are as follows:

(1) EDA financial assistance will not be used to assist employers who transfer jobs from one commuting area to another. A commuting area (''area'') is that area defined by the distance people travel to work in the locality of the project receiving EDA financial assistance;

(2) Every applicant for EDA financial assistance has an affirmative duty to inform EDA of any employer who will benefit from such assistance who will transfer jobs (not persons) in connection with the EDA grant;

(3) EDA will determine compliance with this requirement prior to grant award based upon information provided by the applicant during the project selection process; and

(4) Each applicant and identified primary beneficiary of EDA assistance, which for purposes of this section means an entity providing economic justification for the project, must submit its certification of compliance with this section, and other applicable information as determined by EDA.

(b) The nonrelocation requirements stated in paragraph (a) of this section shall not apply to businesses which:

(1) Relocated to the area prior to the date of the applicant's request for EDA assistance;

(2) Have moved or will move into the area primarily for reasons which have no connection to the EDA assistance;

(3) Will expand employment in the area where the project is to be located substantially beyond employment in the area in which the business had originally been located;

(4) Are relocating from technologically obsolete facilities to be competitive;

(5) Are expanding into the new area by adding a branch, affiliate, or subsidiary while maintaining employment levels in the old area or areas; or

(6) Are determined by EDA to be exempt.

§ 316.4 Procedures in Disaster Areas.

When non-statutory EDA administrative or procedural conditions for financial assistance awards cannot be met by applicants under PWEDA as the result of a disaster, EDA may waive such conditions.

§ 316.5 Project servicing for loans and loan guarantees.

EDA will provide project servicing to borrowers and lenders who received EDA loans and/or guaranteed loans under any programs administered by EDA. This includes but is not limited to loans under PWEDA prior to the effective date of Public Law 105–393, the Trade Act and the Community Emergency Drought Relief Act of 1977.

(a) EDA will continue to monitor such loans and guarantees in accordance with the loan or guarantee program.

(b) Borrowers/lenders shall submit to EDA any requests for modifications of their agreements with EDA. EDA shall, in accordance with applicable laws and policies, including the Federal Credit Reform Act of 1990 (2 U.S.C. 661c(e)), consider and respond to such modification requests.

(c) In the event that EDA determines it necessary or desirable to take actions to protect or further the interests of EDA in connection with loans or guarantees made or evidences of indebtedness purchased, EDA may:

(1) Assign or sell at public or private sale, or otherwise dispose of for cash or credit, in its discretion and upon such terms and conditions as it shall determine to be reasonable, any evidence of debt, contract, claim, personal or real property, or security assigned to or held by it in connection with financial assistance extended;

(2) Collect or compromise all obligations assigned to or held by it in connection with EDA financial assistance projects until such time as such obligations may be referred to the Attorney General for suit or collection; and

(3) Take any and all other actions determined by it to be necessary or desirable in purchasing, servicing, compromising, modifying, liquidating, or otherwise administratively dealing with or realizing on loans or guaranties made or evidences of indebtedness purchased.

§ 316.6 Public information.

The rules and procedures regarding public access to the records of the Economic Development Administration are found at 15 CFR part 4.

§ 316.7 Relocation assistance and land acquisition policies.

Recipients of EDA financial assistance under PWEDA and the Trade Act (States and political subdivisions of States and non-profits as applicable) are subject to requirements set forth at 15 CFR part 11.

§ 316.8 Additional requirements; Federal policies and procedures.

Recipients, as defined under § 314.2 of this chapter, are subject to all Federal laws and to Federal, Department of Commerce, and EDA policies, regulations, and procedures applicable to Federal financial assistance awards, including 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, or 15 CFR part 14, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Other Non-Profit and Commercial Organizations, whichever is applicable.

§ 316.9 Amendments and changes.

(a) Requests by recipients for amendments to a grant shall be submitted in writing to EDA for approval, and shall contain such information and documentation necessary to justify the request.

(b) Any changes made without approval by EDA are made at grantee's own risk of suspension or termination of the project.

(c) Changes of project scope after the time the project grant funds could be obligated will not be approved by EDA. In most cases, project grant funds cannot be obligated after September 30 of the fiscal year the grant is awarded.

§ 316.10 Preapproval award costs.

Project activities carried out before approval of an application by EDA are carried out at the sole risk of the applicant. Such activity could result in rejection of such project application, the disallowance of costs, or other adverse consequences as a result of non-compliance with Federal requirements, including, but not limited to, civil rights requirements, Federal labor standards, or Federal environmental, historic preservation or related requirements.

§ 316.11 Intergovernmental review of projects under EDA's public works, economic adjustment, planning, local technical assistance, and university center programs.

(a) When the applicant is not a State, Indian tribe or other general-purpose governmental authority, the applicant must afford the appropriate general purpose local governmental authority of the area a minimum of 15 days in which to review and comment on the proposed project. The applicant shall furnish with the application a copy of such comments, or a statement of the efforts made to obtain them together with an explanation of the actions taken to address any comments received.

(b) Applicants as appropriate, must also give State and local governments a reasonable opportunity to review and comment on the proposed project if the State has a Single Point of Contact review process, including comments from areawide planning organizations in

metropolitan areas as provided for in 15 CFR part 13.

§ 316.12 Fees for paying attorneys and consultants.

Grant funds must not be used directly or indirectly to pay for attorney's or consultant's fees in connection with obtaining grants and contracts for projects funded under PWEDA.

§ 316.13 Economic development information clearinghouse.

EDA will provide assistance and information as follows:

(a) Maintain a central information clearinghouse on matters relating to economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment programs and activities of the Federal and State governments, including political subdivisions of States;

(b) Assist potential and actual applicants for economic development, economic adjustment, disaster recovery, defense conversion, and trade adjustment assistance under Federal, State, and local laws in locating and applying for the assistance; and

(c) Assist areas described in § 301.2(b) and other areas by providing to interested persons, communities, industries, and businesses in the areas any technical information, market research, or other forms of assistance, information, or advice that would be useful in alleviating or preventing conditions of excessive unemployment or underemployment in the areas.

§ 316.14 Project administration, operation, and maintenance.

EDA shall approve Federal assistance under PWEDA only if satisfied that the project for which Federal assistance is granted will be properly and efficiently administered, operated, and maintained.

§ 316.15 Maintenance of standards.

In accordance with sec. 602 of PWEDA all laborers and mechanics employed by contractors or subcontractors on public projects assisted by EDA under PWEDA shall be paid in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a–276a–5).

§ 316.16 Records and audits.

(a) Each recipient of Federal assistance under PWEDA shall keep such records as the Secretary shall require, including records that fully disclose—

(1) The amount and the disposition by the recipient of the proceeds of the assistance;

(2) The total cost of the project in connection with which the assistance is given or used;

(3) The amount and nature of the portion of the cost of the project provided by other sources; and

(4) Such other records as will facilitate an effective audit.

(b) Access to books for examination and audit—The Secretary, the Inspector General of the Department, and the Comptroller General of the United States, or any duly authorized representative, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient that relate to assistance received under PWEDA.

§ 316.17 Acceptance of certifications by applicants.

EDA will accept an applicant's certifications, accompanied by evidence satisfactory to EDA, that the applicant meets the requirements of PWEDA. Each applicant must include in such evidence satisfactory information that any non-Federal funds (or eligible Federal funds) required to match the EDA share of project costs are committed to the project and will be available as needed.

§ 316.18 Reports by recipients.

(a) In general, each recipient of assistance under PWEDA must submit reports to EDA at such intervals and in such manner as EDA shall require, except that no report shall be required to be submitted more than 10 years after the date of closeout of the assistance award.

(b) Each report must contain an evaluation of the effectiveness of the economic assistance provided in meeting the need that the assistance was designed to address and in meeting the objectives of PWEDA

§ 316.19 Project administration by District organization.

When an Economic Development District is not a recipient or co-recipient of an award for a project involving construction, the District organization may administer the project for such recipient if the following conditions are met, as determined by EDA:

(a) The recipient has requested (either in the application or by separate written request) that the district organization for the area in which the project is located perform the project administration;

(b) The recipient certifies and EDA finds that:

(1) Administration of the project is beyond the capacity of the recipient's current staff to perform and would require hiring additional staff or contracting for such services,

(2) No local organization/business exists that would be able to administer the project in a more efficient or cost-effective manner than the staff of the district, and

(3) The staff of the district would administer the project themselves, without subcontracting the work out;

(c) EDA approves the request either by approving the application in which the request is made, or by separate specific written approval; and

(d) The allowable costs for the administration of the project by the district organization staff will not exceed the customary and reasonable amount that would be allowable if the district were the recipient.

PART 317—CIVIL RIGHTS

Sec.
317.1 Civil rights.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 317.1 Civil rights.

(a) Discrimination is prohibited in programs receiving federal financial assistance from EDA in accordance with the following authorities:

(1) Section 601 of Title VI of the Civil Rights Act of 1964, codified at 42 U.S.C. 2000d *et seq.* (proscribing discrimination on the basis of race, color, or national origin), and the Department of Commerce's implementing regulations found at 15 CFR part 8;

(2) 42 U.S.C. 3123 (proscribing discrimination on the basis of sex);

(3) 29 U.S.C. 794, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 8b (proscribing discrimination on the basis of disabilities);

(4) 42 U.S.C. 6101, as amended, and the Department of Commerce's implementing regulations found at 15 CFR part 20; and

(5) Other Federal statutes, regulations and Executive Orders as applicable.

(b) Definitions:

(1) Other Parties means, as an elaboration of the definition in 15 CFR part 8, entities which, or which are intended to create and/or save 15 or more permanent jobs as a result of EDA assistance provided that they are also either specifically named in the application as benefitting from the project, or are or will be located in an EDA building, port, facility, or industrial, commercial or business park prior to EDA's final disbursement of funds awarded for the project.

(2) Additional definitions are provided in EDA's Civil Rights Guidelines and 15 CFR part 8.

(c) All recipients of EDA financial assistance under PWEDA and the Trade Act, and Other Parties are required to submit the following to EDA:

(1) Written assurances that they will comply with Department of Commerce and EDA regulations, and such other requirements as may be applicable, prohibiting discrimination;

(2) Employment data in such form and manner as determined by EDA;

(3) Information on civil rights status and involvement in charges of discrimination in employment or the provision of services during the 2 years previous to the date of submission of such data as follows:

(i) Description of the status of any lawsuits, complaints or the results of compliance reviews; and

(ii) Statement indicating any administrative findings by a Federal or State agency.

(4) Whenever deemed necessary by EDA to determine that applicants and other parties are in compliance with civil rights regulations, such applicants and other parties shall submit additional information in the form and manner requested by EDA; and

(5) In addition to employment record requirements found in 15 CFR 8.7, complete records on all employees and applicants for employment, including information on race, sex, national origin, age, education and job-related criteria must be retained by employers.

(d) To enable EDA to determine that there is no discrimination in the distribution of benefits in projects which provide service benefits, in addition to requirements listed in paragraph (c) of this section, applicants are required to submit any other information EDA may deem necessary for such determination.

(e) EDA assisted planning organizations must meet the following requirements:

(1) For the selection of representatives, EDA expects planning organizations and OEDP Committees to take appropriate steps to ensure that there is adequate representation of minority and low-income populations, women, people with disabilities and Federal and State recognized American Indian tribes and that such representation is accomplished in a nondiscriminatory manner; and

(2) EDA assisted planning organizations and OEDP Committees shall take appropriate steps to ensure that no individual will be subject to discrimination in employment because of their race, color, national origin, sex, age or disability.

(f) Reporting and other procedural matters are set forth in 15 CFR parts 8, 8(b), 8(c), and 20 and the Civil Rights Guidelines which are available from EDA's Regional Offices. See part 300 of this chapter.

PART 318—EVALUATIONS OF UNIVERSITY CENTERS AND ECONOMIC DEVELOPMENT DISTRICTS

Sec.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10–4.

§ 318.1 University Center performance evaluations.

(a) EDA will evaluate the performance of each University Center. EDA will:

(1) Evaluate each University Center at least once every three years;

(2) Assess the University Center's contribution to providing technical assistance, conducting applied research, and disseminating project results, in accordance with the scope(s) of work funded during the evaluation period; and

(3) For peer review, ensure the participation of at least one other University Center, as appropriate, in the evaluation.

(b) The purpose of the evaluations of University Centers is to determine which centers are performing well and are worthy of continued grant assistance from EDA, and which should not receive continued assistance, so that university centers that have not previously received assistance may receive EDA assistance.

§ 318.2 Economic Development District performance evaluations.

EDA will evaluate the performance of each Economic Development District. EDA will:

(a) Evaluate each Economic Development District at least once every three years;

(b) Assess the Economic Development District's management standards, financial accountability, and program performance in accordance with the current instructions for Economic Development District performance appraisals; and

(c) For peer review, ensure the participation of at least one other Economic Development District organization, as appropriate, in the evaluation.

Dated: January 20, 1999.

Phillip A. Singerman,

Assistant Secretary, Economic Development Administration.

[FR Doc. 99–1983 Filed 1–26–99; 12:31 pm]

BILLING CODE 3510–24–P

Federal Register

Wednesday
February 3, 1999

Part III

Environmental Protection Agency

40 CFR Part 435

Effluent Limitations Guidelines and New Source Performance Standards for Synthetic-Based and Other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 435

[FRL–6215–1]

RIN 2040–AD14

Effluent Limitations Guidelines and New Source Performance Standards for Synthetic-Based and Other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the technology-based effluent limitations guidelines for the discharge of certain pollutants into waters of the United States by existing and new facilities in portions of the offshore and coastal subcategories of the oil and gas extraction point source category.

This proposed rule would establish effluent limitations guidelines and new source performance standards (NSPS) for direct dischargers based on ''best practicable control technology currently available'' (BPT), ''best conventional pollutant control technology'' (BCT), ''best available technology economically achievable'' (BAT), and for new sources ''best available demonstrated control technology'' (BADCT). EPA is proposing to amend the regulation by providing specific requirements for the discharge of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids. The wastestreams that would be limited are drilling fluids and drill cuttings.

This rule would not amend the current regulations for water-based drilling fluids. Also, this rule would not amend the zero discharge requirement for drilling wastes in the coastal subcategory (except Cook Inlet, Alaska) and in the offshore subcategory within three miles from shore.

Controlling the discharge of SBFs as proposed today would reduce the discharge of SBFs by 11.7 million pounds annually. Further, allowing rather than prohibiting the discharge of SBFs would substantially reduce non-water quality environmental impacts. Compared to the zero discharge option, EPA estimates that allowing discharge will reduce air emissions of the criteria air pollutants by 450 tons per year, decrease fuel use by 29,000 barrels per year of oil equivalent, and reduce the generation of oily drill cutting wastes requiring off-site disposal by 212 million pounds per year.

DATES: Comments on the proposal must be received by May 4, 1999. A public meeting will be held during the comment period, on Friday, March 5, 1999, from 9:00 a.m. to 12:00 p.m.

ADDRESSES: Send written comments and supporting data on this proposal to: Mr. Joseph Daly, Office of Water, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M St. SW, Washington, DC 20460. Please submit any references cited in your comments. EPA would appreciate an original and two copies of your comments and enclosures (including references).

The public meeting will be held at the EPA Region 6 Oklahoma Room, 1445 Ross Avenue, Dallas, TX. If you wish to present formal comments at the public meeting you should have a written copy for submittal. No meeting materials will be distributed in advance of the public meeting; all materials will be distributed at the meeting.

The public record is available for review in the EPA Water Docket, Room EB57, 401 M St. SW, Washington, DC 20460. The public record for this rulemaking has been established under docket number W–98–26, and includes supporting documentation, but does not include any information claimed as Confidential Business Information (CBI). The record is available for inspection 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 additional technical information contact Mr. Joseph Daly at (202) 260–7186. For additional economic information contact Mr. James Covington at (202) 260–5132.

SUPPLEMENTARY INFORMATION:

Regulated Entities: Entities potentially regulated by this action include:

Category	Examples of regulated entities
Industry	Facilities engaged in the drilling of wells in the oil and gas industry in areas defined as ''coastal'' or ''offshore'' and discharging in geographic areas where drilling wastes are allowed for discharge (offshore waters beyond 3 miles from the shoreline, in any Alaska offshore waters with no 3-mile restriction, and the coastal waters of Cook Inlet, Alaska). Includes certain facilities covered under Standard Industrial Classification code 13 and North American Classification System codes 211111 and 213111.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in 40 CFR Part 435, Subparts A and D. If you have questions regarding the applicability of this action to a particular entity, consult the person listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Supporting Documentation

The regulations proposed today are supported by several major documents:

1. ''Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–98–021). Hereafter referred to as the SBF Development Document, the document presents EPA's technical conclusions concerning the proposal. This document describes, among other things, the data collection activities in support of the proposal, the wastewater treatment technology options, effluent characterization, estimate of costs to the industry, and estimate of effects on non-water quality environmental impacts.

2. ''Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–98–020). Hereafter referred to as the SBF Economic Analysis, this document presents the analysis of compliance costs and/or savings; facility closures; changes in rate of return level. In addition, impacts on employment and affected communities, foreign trade, specific demographic groups, and new sources also are considered.

3. ''Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category'' (EPA–821–B–98–019). Hereafter referred to as the SBF Environmental Assessment, the document presents the analysis of relative water quality impacts for each regulatory option. EPA describes the environmental characteristics of SBF drilling wastes, types of anticipated impacts, and pollutant modeling results for water

column concentrations, pore water concentrations, and human health effects via consumption of affected seafood.

All documents are available from the Office of Water Resource Center, RC–4100, U.S. EPA, 401 M Street SW, Washington, DC 20460; telephone (202) 260–7786 for the voice mail publication request. The Development Document can also be obtained through EPA's Home Page on the Internet, located at WWW.EPA.GOV/OST/GUIDE. The preamble and rule can also be obtained at this site.

Overview

This preamble includes a description of the legal authority for these rules; a summary of the proposal; background information on the industry and its processes; and a description of the technical and economic methodologies used by EPA to develop these regulations. This preamble also solicits comment and data on all aspects of this proposed rule. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble.

Organization of This Document

I. Legal Authority

These regulations are proposed under the authority of Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

II. Purpose and Summary of the Proposed Regulation

A. Purpose of This Rulemaking

The purpose of this rulemaking is to amend the effluent limitations guidelines and standards for the control of discharges of certain pollutants associated with the use of synthetic-based drilling fluids (SBFs) and other non-aqueous drilling fluids in portions of the Offshore Subcategory and Cook Inlet portion of the Coastal Subcategory of the Oil and Gas Extraction Point Source Category. The limitations proposed today apply to wastes generated when oil and gas wells are drilled using SBFs or other non-aqueous drilling fluids (henceforth collectively referred to simply as SBFs) in coastal and offshore regions in locations where drilling wastes may be discharged. The processes and operations that comprise the offshore and coastal oil and gas subcategories are currently regulated under 40 CFR Part 435, Subparts A (offshore) and D (coastal). EPA is proposing these amendments under the authority of the CWA, as discussed in Section I of this notice. The regulations are also being proposed pursuant to a Consent Decree entered in *NRDC et al.* v. *Browner,* (D.D.C. No. 89–2980, January 31, 1992) and are consistent with EPA's latest Effluent Guidelines Plan under section 304(m) of the CWA. (See 63 FR 47285, September 4, 1998.) The most recent existing effluent limitations guidelines were issued on March 4, 1993 (58 FR 12454) for the Offshore Subcategory and on December 16, 1996 (61 FR 66086) for the Coastal Subcategory. This proposed rule is referred to as the Synthetic-Based Drilling Fluids Guidelines, or SBF Guidelines, throughout this preamble.

Today's proposal presents EPA's preferred technology approach and several others that are being considered in the regulation development process. The proposed rule is based on a detailed evaluation of the available data acquired during the development of the proposed limitations. EPA welcomes comment on all options and issues and encourages commenters to submit additional data during the comment period. Also, EPA is willing to meet with interested parties during the comment period to ensure that EPA has the views of all parties and the best possible data upon which to base a decision for the final regulation. EPA emphasizes that it is soliciting comments on all options discussed in this proposal and that it may adopt any

such options or combination of options in the final rule.

B. Summary of Proposed SBF Guidelines

This summary section highlights key aspects of the proposed rule. The technology descriptions discussed later in this notice are presented in abbreviated form; more detailed descriptions are included in the *Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category*, referred to hereafter as the ''SBF Development Document.''

EPA proposes to establish regulations based on the ''best practicable control technology currently available'' (BPT), ''best conventional pollutant control technology'' (BCT), ''best available technology economically achievable'' (BAT), and the best available demonstrated control technology (BADCT) for new source performance standards (NSPS), for the wastestream of synthetic-based drilling fluids and other non-aqueous drilling fluids, and cuttings contaminated with these drilling fluids.

For certain drilling situations, such as drilling in reactive shales, high angle and/or high displacement directional drilling, and drilling in deep water, progress with water-based drilling fluids (WBFs) can be slow, costly, or even impossible, and often creates a large amount of drilling waste. In these situations, the well is normally drilled with traditional oil-based drilling fluids (OBFs), which use diesel oil or mineral oil as the base fluid. Because EPA rules require zero discharge of these wastes, they are either sent to shore for disposal in non-hazardous oil field waste (NOW) sites or injected into disposal wells.

Since about 1990, the oil and gas extraction industry has developed many new oleaginous (oil-like) base materials from which to formulate high performance drilling fluids. A general class of these are called the synthetic materials, such as the vegetable esters, poly alpha olefins, internal olefins, linear alpha olefins, synthetic paraffins, ethers, linear alkyl benzenes, and others. Other oleaginous materials have also been developed for this purpose, such as the enhanced mineral oils and non-synthetic paraffins. Industry developed SBFs with these synthetic and non-synthetic oleaginous materials as the base fluid to provide the drilling performance characteristics of traditional OBFs based on diesel and mineral oil, but with lower environmental impact and greater worker safety through lower toxicity, elimination of polynuclear aromatic hydrocarbons (PAHs), faster biodegradability, lower bioaccumulation potential, and, in some drilling situations, less drilling waste volume. EPA believes that this product substitution approach is an excellent example of pollution prevention that can be accomplished by the oil and gas industry.

EPA intends that these proposed regulations control the discharge of SBFs in a way that reflects application of appropriate levels of technology, while also encouraging their use as a replacement to the traditional mineral oil and diesel oil-based fluids. Based on EPA's information to date, the record indicates that use of SBFs and discharge of the cuttings waste with proper controls would overall be environmentally preferable to the use of OBFs. This is because OBFs are subject to zero discharge requirements, and thus, must be shipped to shore for land disposal or injected underground, resulting in higher air emissions, increased energy use, and increased land disposal of oily wastes. By contrast, the discharge of cuttings associated with SBFs would eliminate those impacts. At the same time EPA recognizes that the discharge of SBFs may have impacts to the receiving water. Because SBFs are water non-dispersible and sink to the seafloor, the primary potential environmental impacts are associated with the benthic community. EPA's information to date, including limited seabed surveys in the Gulf of Mexico, indicate that the effect zone of the discharge of certain SBFs is within a few hundred meters of the discharge point and may be significantly recovered in one to two years. EPA believes that impacts are primarily due to smothering by the drill cuttings, changes in sediment grain size and composition (physical alteration of habitat), and anoxia (absence of oxygen) caused by the decomposition of the organic base fluid. The benthic smothering and changes in grain size and composition from the cuttings are effects that are also associated with the discharge of WBFs and associated cuttings.

Based on the record to date, EPA finds that these impacts, which are believed to be of limited duration, are less harmful to the environment than the non-water quality environmental impacts associated with the zero discharge requirement applicable to OBFs. Compared to the zero discharge option EPA estimates that allowing discharge will reduce air emissions of the criteria air pollutants by 450 tons per year, decrease fuel use by 29,000 barrels per year of oil equivalent, and reduce the generation of oily drill cutting wastes requiring off-site disposal by 212 million pounds per year. In addition, EPA estimates that compliance with these proposed limitations would result in a yearly decrease in the discharge of 11.7 million pounds of toxic and nonconventional pollutants in the form of SBFs. These estimates are based on the current industry practice of discharging SBF-cuttings outside of 3 miles in the Gulf of Mexico and no discharge of SBFs in any other areas, including 3 miles offshore of California and in Cook Inlet, Alaska.

As SBFs came into commercial use, EPA determined that the current discharge monitoring methods, which were developed to control the discharge of WBFs, did not appropriately control the discharge of these new drilling fluids. Since WBFs disperse in water, oil contamination of WBFs with formation oil or other sources can be measured by the static sheen test, and any toxic components of the WBFs will disperse in the aqueous phase and be detected by the suspended particulate phase (SPP) toxicity test. With SBFs, which do not disperse in water but instead sink as a mass, formation oil contamination has been shown to be less detectible by the static sheen test. Similarly, the potential toxicity of the discharge is not apparent in the current SPP toxicity test.

EPA has therefore sought to identify methods to control the discharge of cuttings associated with SBFs (SBF-cuttings) in a way that reflects the appropriate level of technology. One way to do this is through stock limitations on the base fluids from which the drilling fluids are formulated. This would ensure that substitution of synthetic and other oleaginous base fluids for traditional mineral oil and diesel oil reflects the appropriate level of technology. In other words, EPA wants to ensure that only the SBFs formulated from the ''best'' base fluids are allowed for discharge. Parameters that distinguish the various base fluid are the polynuclear aromatic hydrocarbon (PAH) content, sediment toxicity, rate of biodegradation, and potential for bioaccumulation.

EPA also thinks that the SBF-cuttings should be controlled with discharge limitations, such as a limitation on the toxicity of the SBF at the point of discharge, and a limitation on the mass (as volume) or concentration of SBFs discharged. The latter type of limitation would take advantage of the solids separation efficiencies achievable with SBFs, and consequently minimize the

discharge of organic and toxic components. EPA believes that SBFs separated from drill cuttings should meet zero discharge requirements, as this is the current industry practice due to the value of these drilling fluids.

Thus, EPA is proposing limits appropriate to SBF-cuttings. EPA is proposing zero discharge of neat SBFs (not associated with cuttings), which reflects current practice. The new limitations applicable to cuttings contaminated with SBFs would be as follows:

Stock Limitations on Base Fluids: (BAT/NSPS).

- Maximum PAH content 10 ppm (wt. based on phenanthrene/wt. base fluid).
- Minimum rate of biodegradation (biodegradation equal to or faster than C_{16}–C_{18} internal olefin by solid phase test).
- Maximum sediment toxicity (as toxic or less toxic than C_{16}–C_{18} internal olefin by 10-day sediment toxicity test).

Discharge Limitations on Cuttings Contaminated with SBFs:

- No free oil by the static sheen test. (BPT/BCT/NSPS).
- Maximum formation oil contamination (95 percent of representative formation oils failing 1 percent by volume in drilling fluid). (BAT/NSPS).
- Maximum well-average retention of SBF on cuttings (percent base fluid on wet cuttings). (BAT/NSPS).

Discharges remain subject to the following requirements already applicable to all drilling waste discharges and thus these requirements are not within the scope of this rulemaking:

- Mercury limitation in stock barite of 1 mg/kg. (BAT/NSPS).
- Cadmium limitation in stock barite of 3 mg/kg. (BAT/NSPS).
- Diesel oil discharge prohibition. (BAT/NSPS).

EPA may require these additional or alternative controls as part of the discharge option based on method development and data gathering subsequent to today's notice:

- Maximum sediment toxicity of drilling fluid at point of discharge (minimum LC_{50}, mL drilling fluid/kg dry sediment by 10-day sediment toxicity test or amended test). (BAT/NSPS).
- Maximum aqueous phase toxicity of drilling fluid at point of discharge (minimum LC_{50} by SPP test or amended SPP test). (BAT/NSPS).
- Maximum potential for bioaccumulation of stock base fluid (maximum concentration in sediment-eating organisms). (BAT/NSPS).

EPA is also considering a zero discharge option in the event that EPA has an insufficient basis upon which to develop appropriate discharge controls for SBF-cuttings:

- Zero discharge of drill cuttings contaminated with SBFs and other non-aqueous drilling fluids. (BPT/BCT/BAT/NSPS).

While EPA is proposing limitations on these parameters today, many of the test methods that would be used to demonstrate attainment with the limitations are still under development at this time, or additional data needs to be gathered towards validating methods, proving the variability and appropriateness of the methods, and assessing appropriate limitations for the parameters. For example, as noted in the list above, EPA is considering limitations in addition, or as an alternative, to the limitations in today's proposal. The reason for this is that EPA has insufficient data at this time to determine how to best control toxicity and whether a bioaccumulation limitation is necessary to adequately control the SBF-cuttings wastestream.

EPA would prefer to control sediment toxicity at the point of discharge. While there is an EPA approved sediment toxicity test to do this, EPA has concerns about the uniformity of the sediment used in the toxicity test, the discriminatory power and variability of the test so applied. Since the test is 10 days long, it poses a practical problem for operators who would prefer to know immediately whether cuttings may be discharges. Applying EPA's existing sediment toxicity test to the base fluid as a stock limitation ameliorates these concerns, such that, at this stage of the development of the test, EPA thinks that it is more likely to be practically applied. As this would be the preferred method of control, EPA intends to continue research into the test as applied to the drilling fluid at the point of discharge. Industry also has been conducting research to develop a sediment toxicity test that may be applied to SBFs at the point of discharge with the cuttings. Further, EPA intends to perform research into the aquatic toxicity test to see if it can be used to adequately control the discharge through modification. EPA may then consider applying an aqueous phase toxicity test, either alone or in conjunction with a sediment toxicity test of either the stock base fluid or drilling fluid at the point of discharge.

In terms of the retention of SBF on cuttings, while EPA has enough information to propose a limitation, EPA is still evaluating methods to determine attainment of this limit. For the parameter of biodegradation, EPA is proposing a numerical limit, but the analytic method for measuring attainment of the limit has not yet been validated. EPA wishes to do additional studies to validate the method and provide public notice of any subsequently developed numerical limit.

Because EPA plans to gather significant additional information in support of the final rule, EPA intends to publish a supplemental notice for public comment providing the proposed limitations and specific test methods. These data gathering activities are summarized in Section V of today's notice. Section VI details the information gathered to support this selection of parameters, and the further information that EPA intends to gather to support the methods and limitations for the intended notice and subsequent final rule.

Therefore, the purpose of today's proposal is to request comment on the candidate requirements listed above, identify the additional work that EPA intends to perform towards promulgation of the limitations, and request comments and additional data towards the selection of parameters, methods and limitations development. EPA also intends that this proposal serve as guidance to permit writers such that the proposed methods can be incorporated into permits through best professional judgement (BPJ). Such permits can be used to gather supporting information towards selection of parameters, methods development, and appropriate limitations.

The current regulations establish the geographic areas where drilling wastes may be discharged: the offshore subcategory waters beyond 3 miles from the shoreline, and in Alaska offshore waters with no 3-mile restriction. The only coastal subcategory waters where drilling wastes may be discharged is in Cook Inlet, Alaska. EPA is retaining the zero discharge limitations in areas where discharge is currently prohibited and these requirements are not within the scope of this rulemaking.

EPA is limiting the scope of today's proposed rulemaking to locations where drilling wastes may be discharged because these are the only locations for which EPA has evaluated the non-water quality environmental impacts of zero discharge versus the environmental impacts of discharging drill cuttings associated with SBFs. For example, EPA has only assessed the non-water quality environmental impacts of zero discharge beyond three miles from shore. EPA expects these impacts to be less where

the wastes are generated closer to shore. In addition, EPA has not assessed the environmental effects of these discharges in coastal areas. The current zero discharge areas are more likely to be environmentally sensitive due to the presence of spawning grounds, wetlands, lower energy (currents), and more likely to be closer to recreational swimming and fishing areas. Further, dischargers are in compliance with the zero discharge requirement and have only expressed an interest in the use of these newer fluids where drilling wastes may be discharged today.

III. Background

A. Clean Water Act

1. Summary of Effluent Limitations Guidelines and Standards

Congress adopted the Clean Water Act (CWA) to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters'' (Section 101(a), 33 U.S.C. 1251(a)). To achieve this goal, the CWA prohibits the discharge of pollutants into navigable waters except in compliance with the statute. The Clean Water Act confronts the problem of water pollution on a number of different fronts. Its primary reliance, however, is on establishing restrictions on the types and amounts of pollutants discharged from various industrial, commercial, and public sources of wastewater.

Direct dischargers must comply with effluent limitation guidelines and new source performance standards in National Pollutant Discharge Elimination System (''NPDES'') permits; indirect dischargers must comply with pretreatment standards. EPA issues these guidelines and standards for categories of industrial dischargers based on the degree of control that can be achieved using various levels of pollution control technology. The guidelines and standards are summarized below:

a. *Best Practicable Control Technology Currently Available (BPT)—sec. 304(b)(1) of the CWA.*—Effluent limitations guidelines based on BPT apply to discharges of conventional, toxic, and non-conventional pollutants from existing sources. BPT guidelines are generally based on the average of the best existing performance by plants in a category or subcategory. In establishing BPT, EPA considers the cost of achieving effluent reductions in relation to the effluent reduction benefits, the age of equipment and facilities, the processes employed, process changes required, engineering aspects of the control technologies, non-water quality environmental impacts (including energy requirements), and other factors the EPA Administrator deems appropriate. CWA § 304(b)(1)(B). Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category.

b. *Best Conventional Pollutant Control Technology (BCT)—sec. 304(b)(4) of the CWA.*—The 1977 amendments to the CWA established BCT as an additional level of control for discharges of conventional pollutants from existing industrial point sources. In addition to other factors specified in section 304(b)(4)(B), the CWA requires that BCT limitations be established in light of a two part ''cost-reasonableness'' test. EPA published a methodology for the development of BCT limitations which became effective August 22, 1986 (51 FR 24974, July 9, 1986).

Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demanding pollutants (measured as BOD_5), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979 (44 FR 44501).

c. *Best Available Technology Economically Achievable (BAT)—sec. 304(b)(2) of the CWA.*—In general, BAT effluent limitations guidelines represent the best available economically achievable performance of plants in the industrial subcategory or category. The CWA establishes BAT as a principal national means of controlling the direct discharge of toxic and nonconventional pollutants. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. The Agency retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability across the subcategory. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and their effect on the overall industry (or subcategory) financial health. As with BPT, where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, such as product substitution, even when these technologies are not common industry practice. The CWA does not require a cost-benefit comparison in establishing BAT.

d. *New Source Performance Standards (NSPS)—section 306 of the CWA.*—NSPS are based on the best available demonstrated control technology (BADCT) and apply to all pollutants (conventional, nonconventional, and toxic). NSPS are at least as stringent as BAT. New plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

e. *Pretreatment Standards for Existing Sources (PSES)—sec. 307(b) of the CWA—and Pretreatment Standards for New Sources (PSNS)—sec. 307(b) of the CWA.*—Pretreatment standards are designed to prevent the discharge of pollutants to a publicly-owned treatment works (POTW) which pass through, interfere, or are otherwise incompatible with the operation of the POTW. Since none of the facilities to which this rule applies discharge to a POTW, pretreatment standards are not being considered as part of this rulemaking.

f. *Best Management Practices (BMPs).*—Section 304(e) of the CWA gives the Administrator the authority to publish regulations, in addition to the effluent limitations guidelines and standards listed above, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines may contribute significant amounts of toxic and hazardous pollutants to navigable waters. Section 402(a)(1) also authorizes best management practices (BMPs) as necessary to carry out the purposes and intent of the CWA. See 40 CFR Part 122.44(k).

g. *CWA Section 304(m) Requirements.*—Section 304(m) of the CWA, added by the Water Quality Act of 1987, requires EPA to establish schedules for (i) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent guidelines. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised effluent guidelines for several industry

categories, including the oil and gas extraction industry. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (NRDC *et al* v. Browner, Civ. No. 89–2980). On January 31, 1992, the Court entered a consent decree (the ''304(m) Decree''), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories. The most recent Effluent Guidelines Plan was published in the **Federal Register** on September 4, 1998 (63 FR 47285). This plan requires, among other things, that EPA propose the Synthetic-Based Drilling Fluids Guidelines by 1998 and promulgate the Guidelines by 2000.

2. Prior Federal Rulemakings and Other Notices

On March 4, 1993, EPA issued final effluent guidelines for the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (58 FR 12454). The data and information gathering phase for this rulemaking thus corresponded to the introduction of SBFs in the Gulf of Mexico. Because of this timing, the range of drilling fluids for which data and information were available to EPA was limited to water-based drilling fluids (WBFs) and oil-based drilling fluids (OBFs) using diesel and mineral oil. Industry representatives, however, submitted information on SBFs during the comment period concerning environmental benefits of SBFs over OBFs and WBFs, and problems with false positives of free oil in the static sheen test applied to SBFs.

The requirements in the offshore rule applicable to drilling fluids and drill cuttings consist of mercury and cadmium limitations on the stock barite, a diesel oil discharge prohibition, a toxicity limitation on the suspended particulate phase (SPP) generated when the drilling fluids or drill cuttings are mixed in seawater, and no discharge of free oil as determined by the static sheen test.

While the SPP toxicity test and the static sheen test, and their limitations, were developed for use with WBF, the offshore regulation does not specify the types of drilling fluids and drill cuttings to which these limitations apply. Thus, under the rule, any drilling waste in compliance with the discharge limitations could be discharged. When the offshore rule was proposed, EPA believed that all drilling fluids, be they WBFs, OBFs, or SBFs, could be controlled by the SPP toxicity and static sheen tests. This is because OBFs based on diesel oil or mineral oil failed one or both of the SPP toxicity test and no free oil static sheen test. In addition, OBFs based on diesel oil were subject to the diesel oil discharge prohibition.

EPA thought SBFs could also be adequately controlled by the regulation based on comments received from industry. After the offshore rule was proposed, EPA received several industry comments which focused on the fact that the static sheen test could often be interpreted as giving a false positive for the presence of diesel oil, mineral oil, or formation hydrocarbons. For this reason, the industry commenters contended that SBFs should be exempt from compliance with the no free oil limitation required by the proposed offshore effluent guidelines.

In the final rulemaking in 1993, EPA's response to these comments was that the prohibition on discharges of free oil was an appropriate limitation for discharge of drill fluids and drill cuttings, including SBFs. While EPA agreed that some of the newer SBFs may be less toxic and more readily biodegradable than many of the OBFs, EPA was concerned that no alternative method was offered for determining compliance with the no free oil standard to replace the static sheen test. In other words, if EPA were to exclude certain fluids from the requirement, there would be no way to determine if at that particular facility, diesel oil, mineral oil or formation hydrocarbons were also being discharged.

Also in the final offshore rule, EPA encouraged the use of drilling fluids that were less toxic and biodegraded faster. EPA solicited data on alternative ways of monitoring for the no free oil discharge requirement, such as gas chromatography or other analytical methods. EPA also solicited information on technology issues related to the use of SBFs, any toxicity data or biodegradation data on these newer fluids, and cost information.

By focusing on the issue of false positives with the static sheen test, EPA interpreted the offshore effluent guidelines to mean that SBFs could be discharged provided they complied with the current discharge requirements. EPA did not think, however, that many, if any, SBFs would be able to meet the no free oil requirement.

In the final coastal effluent guidelines, EPA raised the issue of false negatives with the static sheen test as opposed to the issue of false positives raised during the offshore rulemaking. EPA had information indicating that the static sheen test does not adequately detect the presence of diesel, mineral, or formation oil in SBFs. In addition, EPA raised other concerns regarding the inadequacy of the current effluent guidelines to control of SBF wastestreams. Thus the final coastal effluent guidelines, published on December 16, 1996 (61 FR 66086), constitute the first time EPA identified, as part of a rulemaking, the inadequacies of the current regulations and the need for new BPT, BAT, BCT, and NSPS controls for discharges associated with SBFs.

The coastal rule adopted the offshore discharge requirements to allow discharge of drilling wastes in one geographic area of the coastal subcategory; Cook Inlet, Alaska, and prohibited the discharge of drilling wastes in all other coastal areas.

Due to the lack of information concerning appropriate controls, EPA could not provide controls specific to SBFs as a part of the coastal rule. However, the coastal rulemaking solicited comments on SBFs. In responding to these comments, EPA again identified certain environmental benefits of using SBFs, and stated that allowing the controlled discharge of SBF-cuttings would encourage their use in place of OBFs. EPA also raised the inadequacies of the current effluent guidelines to control the SBF wastestreams, and provided an outline of the parameters which EPA saw as important for adequate control. The inadequacies cited include the inability of the static sheen test to detect formation oil or other oil contamination in SBFs and the inability of the SPP toxicity test to adequately measure the toxicity of SBFs. EPA offered alternative tests of gas chromatography (GC) and a benthic toxicity test to verify the results of the static sheen and the suspended particulate phase (SPP) toxicity testing currently required. EPA also mentioned the potential need for controls on the base fluid used to formulate the SBF, based on one or more of the following parameters: PAH content, toxicity (preferably sediment toxicity), rate of biodegradation, and bioaccumulation potential.

The final coastal rule also incorporated clarifying definitions of drilling fluids for both the offshore and coastal subcategories to better differentiate between the types of drilling fluids. The rule provided guidance to permit writers needing to write limits for SBFs on a best professional judgement (BPJ) basis as using GC as a confirmation tool to assure the absence of free oil in addition to meeting the current no free oil (static sheen), toxicity, and barite limits on mercury and cadmium. EPA

recommended Method 1663 as described in EPA 821–R–92–008 as a gas chromatograph with flame ionization detection (GC/FID) method to identify an increase in n-alkanes due to crude oil contamination of the synthetic materials coating the drill cuttings. Additional tests, such as benthic toxicity conducted on the synthetic material prior to use or whole SBF prior to discharge, were also suggested for controlling the discharge of cuttings contaminated with drilling fluid.

EPA stated intentions to evaluate further the test methods for benthic toxicity and determine an appropriate limitation if this additional test is warranted. In addition, test methods and results for bioaccumulation and biodegradation, as indications of the rate of recovery of the cuttings piles on the sea floor, were to be evaluated. EPA recognized that evaluations of such new testing protocols may be beyond the technical expertise of individual permit writers, and so stated that these efforts would be coordinated as a continuing effluent guidelines effort. Today's proposal is a result of these efforts.

B. Permits

Four EPA Regions currently issue or review permits for offshore and coastal oil and gas well drilling activities in areas where drilling wastes may be discharged: Region 4 in the Eastern Gulf of Mexico (GOM), Region 6 in the Central and Western GOM, Region 9 in offshore California, and Region 10 in offshore and Cook Inlet, Alaska. Permits in Regions 4, 9 and 10 never allowed the discharge of SBFs, and those three Regions are currently preparing final general permits that either specifically disallow SBF discharges until adequate discharge controls are available to control the SBF wastestreams, or allow a limited use of SBF to facilitate information gathering.

Discharge of drill cuttings contaminated with SBF (SBF-cuttings) has occurred under the Region 6 offshore continental shelf (OCS) general permit issued in 1993 (58 FR 63964), and the general permit reissued on November 2, 1998 (63 FR 58722) again does not specifically disallow the continued discharge of SBF-cuttings. The reason for these differences between Region 6 and the other EPA Regions relates to the timing of the 1993 Region 6 general permit and the issues raised in comments during the issuance of that permit.

The previous individual and general permits of Regions 4, 9 and 10 were issued long before SBFs were developed and used. In Region 6, however, the first SBF well was drilled in June of 1992 and the development of the Region 6 OCS general permit, published December 3, 1993 (58 FR 63964), thus corresponded to the introduction of SBF use in the GOM. After proposal of this permit, industry representatives commented that the no free oil limitation as measured by the static sheen test should be waived for SBFs, due to the occurrence of false positives. They contended that a sheen was sometimes perceived when the SBF was known to be free of diesel oil, mineral oil or formation oil. These comments were basically the same as those submitted as part of the offshore rulemaking, which occurred in the same time frame. EPA responded as it had in the offshore rulemaking, maintaining the static sheen test until there existed a replacement test to determine the presence of free oil. EPA stated that if the current discharge requirements could be met then the drilling fluid and associated wastes could be discharged. This response indicated EPA's position that SBF drilling wastes could be discharged as long as the discharge met permit requirements. But again, in the context of these comments, EPA did not expect that many, if any SBFs, would be able to meet the static sheen requirements.

In addition to the requirements of the offshore guidelines, the Region 6 OCS general permit also prohibited the discharge of oil-based and inverse emulsion drilling fluids. Although SBFs are, in chemistry terms, inverse emulsion drilling fluids, the definition in the permit limited the term ''inverse emulsion drilling fluids'' to mean ''an oil-based drilling fluid which also contains a large amount of water.'' Further, the permit provides a definition for oil-based drilling fluid as having ''diesel oil, mineral oil, or some other oil as its continuous phase with water as the dispersed phase.'' Since the SBFs clearly do not have diesel or mineral oil as the continuous phase, there was a question of whether synthetic base fluids (and more broadly, other oleaginous base fluids) used to formulate the SBFs are ''some other oil.'' With consideration of the intent of the inverse emulsion discharge prohibition, and the known differences in polynuclear aromatic hydrocarbon content, toxicity, and biodegradation between diesel and mineral oil versus the synthetics, EPA determined that SBFs were not inverse emulsion drilling fluids as defined in the Region 6 general permit. This determination is exemplified by the separate definitions for OBFs and SBFs introduced with the Coastal Effluent Guidelines (see 61 FR 66086, December 16, 1996).

In late 1998 and early 1999, all four Regions are (re)issuing their general permits for offshore (Regions 4, 6 and 9) and coastal (Region 10) oil and gas wells. Once the effluent guidelines or guidance becomes available, EPA intends to reopen the permits to add requirements that adequately control SBF drilling wastes.

EPA intends for today's proposal to act as guidance such that the Regions do not have to wait until issuance of a final rule planned for December 2000, but may propose to add the appropriate discharge controls through best professional judgement (BPJ). In this manner, the controlled discharge of SBF may be used to further aid EPA in gathering information subsequent to today's proposal.

C. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 et seq., Pub. L. 101–508, November 5, 1990) ''declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *'' (Sec. 6602; 42 U.S.C. 13101 (b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, ''review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction'' (Sec. 6604; 42 U.S.C. 13103(b)(2)). EPA reviewed this effluent guideline for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants, or residuals at the source, usually within a process. The term source reduction ''include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term 'source reduction.' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a

process or activity which itself is not integral to or necessary for the production of a product or the providing of a service.'' 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

In this proposed rule, EPA supports pollution prevention technology by encouraging the use of SBFs based on certain synthetic materials and other similarly performing materials in place of traditional oil-based drilling fluids based on diesel oil and mineral oil. The waste generated from SBFs is anticipated to have lower toxicity, lower bioaccumulation potential, faster biodegradation, and elimination of polynuclear aromatic hydrocarbons, including those which are priority pollutants. With these improved characteristics, and to encourage their use in place of OBFs, EPA is proposing to allow the controlled on-site discharge of the cuttings associated with SBF. Use of SBF in place of OBF will eliminate the need to barge to shore or inject oily waste cuttings, reducing fuel use, air emissions, and land disposal. It also eliminates the risk of OBF and OBF-cuttings spills. In addition, the proposed regulatory option includes efficient closed-loop recycling systems to reduce the quantity of SBF discharged with the drill cuttings. A discussion of this pollution prevention technology is contained in Section VI of this notice and in the Development Document.

IV. Description of Process and Well Drilling Activities

A. Well Drilling Process Description

Drilling occurs in two phases: exploration and development. Exploration activities are those operations involving the drilling of wells to locate hydrocarbon bearing formations and to determine the size and production potential of hydrocarbon reserves. Development activities involve the drilling of production wells once a hydrocarbon reserve has been discovered and delineated.

Drilling for oil and gas is generally performed by rotary drilling methods which use a circularly rotating drill bit that grinds through the earth's crust as it descends. Drilling fluids are pumped down through the drill bit via a pipe that is connected to the bit, and serve to cool and lubricate the bit during drilling. The rock chips that are generated as the bit drills through the earth are termed drill cuttings. The drilling fluid also serves to transport the drill cuttings back up to the surface through the space between the drill pipe and the well wall (this space is termed the annulus), in addition to controlling downhole pressure and stabilizing the well bore.

As drilling progresses, large pipes called ''casing'' are inserted into the well to line the well wall. Drilling continues until the hydrocarbon bearing formations are encountered. In areas where drilling fluids and drill cuttings are allowed to be discharged under the current regulations, well depths range from approximately 4,000 to 12,000 feet deep, and it takes approximately 20 to 60 days to complete drilling.

On the surface, the drilling fluid and drill cuttings undergo an extensive separation process to remove as much fluid from the cuttings as possible. The fluid is then recycled into the system, and the cuttings become a waste product. The drill cuttings retain a certain amount of the drilling fluid that are discharged or disposed with the cuttings. Drill cuttings are discharged by the shale shakers and other solids separation equipment. Drill cuttings are also cleaned out of the mud pits and from the solid separation equipment during displacement of the drilling fluid system. Intermittently during drilling, and at the end of the drilling process, drilling fluids may become wastes if they can no longer be reused or recycled.

In the relatively new area of deepwater drilling, generally greater than 3000′ water depth, new drilling methods are evolving which can significantly improve drilling efficiencies and thereby reduce the volume of drilling fluid discharges as well as reduce non-water quality effects of fuel and steel consumption and air emissions. Subsea drilling fluid boosting, referred to as ''subsea pumping'', is one such technology. Rotary drilling methods are generally performed as described with the exception that the drilling fluid is energized or boosted by use of a pump at or near the seafloor. By boosting the drilling fluid, the adverse effect on the wellbore caused by the drilling fluid pressure from the seafloor to the surface is eliminated, thereby allowing wells to be drilled with as much as a 50% reduction in the number of casing strings generally required to line the well wall. Wells are drilled in less time, including less trouble time. To enable the pumping of drilling fluids and cuttings to the surface, some drill cuttings, larger than approximately one-fourth of an inch, are separated from the drilling fluid at the seafloor since these cuttings cannot reliably be pumped to the surface. The drill cuttings which are separated at the seafloor are discharged through an eductor hose at the seafloor within a 300′ radius of the well site. For purposes of monitoring, representative samples of drill cuttings discharged at the seafloor can be transported to the surface and separated from the drilling fluid in a manner similar to that employed at the seafloor. The drilling fluid, which is boosted at the seafloor and transports most of the drill cuttings back to the surface, is processed as described in the general rotary drilling methods described above in this section.

Once the target formations have been reached, and a determination made as to which have commercial potential, the well is made ready for production by a process termed ''completion.'' Completion involves cleaning the well to remove drilling fluids and debris, perforating the casing that lines the producing formation, inserting production tubing to transport the hydrocarbon fluids to the surface, and installing the surface wellhead. The well is then ready for production, or actual extraction of hydrocarbons.

B. Location and Activity

This proposed regulation would establish discharge limitations for SBFs in areas where drilling fluids and drill cuttings are allowed for discharge. These discharge areas are the offshore waters beyond 3 miles from shore except the offshore waters of Alaska which has no 3 mile discharge restriction, and the coastal waters of Cook Inlet, Alaska. Drilling is currently active in three regions in these discharge areas: (i) the offshore waters beyond three miles from shore in the Gulf of Mexico (GOM), (ii) offshore waters beyond three miles from shore in California, and (iii) the coastal waters of Cook Inlet, Alaska. Offshore Alaska is the only other area where drilling is active and effluent guidelines allows discharge. However, drilling wastes are not currently discharged in the Alaska offshore waters.

Among these three areas, most drilling activity occurs in the GOM, where 1,302 wells were drilled in 1997, compared to 28 wells drilled in California and 7 wells drilled in Cook Inlet. In the GOM, over the last few years, there has been high growth in the number of wells drilled in the deepwater, defined as water greater than 1,000 feet deep. For example, in 1995, 84 wells were drilled in the deepwater, comprising 8.6 percent of all GOM wells drilled that year. By 1997, that number increased to 173 wells drilled and comprised over 13 percent of all GOM

wells drilled. The increased activity in the deepwater increases the usefulness of SBFs. Operators drilling in the deepwater cite the potential for riser disconnect in floating drill ships, which favors SBF over OBF; higher daily drilling cost which more easily justifies use of more expensive SBFs over WBFs; and greater distance to barge drilling wastes that may not be discharged (i.e., OBFs).

C. Drilling Wastestreams

Drilling fluids and drill cuttings are the most significant wastestreams from exploratory and development well drilling operations. This rule proposes limitations for the drilling fluid and cuttings wastestream resulting when SBFs or other non-aqueous drilling fluids are used. All other wastestreams and drilling fluids have current applicable limitations which are outside the scope of this rulemaking. A summary of the characteristics of these wastes is presented in Section VI of this notice. A more detailed discussion of the origins and characteristics of these wastes is included in the Development Document.

V. Summary of Data Gathering Efforts

A. Expedited Guidelines Approach

This regulation is being developed using an expedited rulemaking process. This process relies on stakeholder support to develop the initial technology and regulatory options. At various stages of information gathering, industry, EPA and other stakeholders present and discuss their preferred options and identify differences in opinion. This proposal, as part of the expedited process, is being presented today in a shorter developmental time period, and with less information than a typical effluent guidelines proposal. The proposed rule is then a tool to identify the candidate requirements, and request comments and additional data. EPA plans to continue this expedited rulemaking process of relying on industry, environmental groups, and other stakeholder support for the further regulatory development after proposal.

EPA encourages full public participation in developing the final SBF Guidelines. This expedited rulemaking process succeeds with more open communication between EPA, the regulated community, and other stakeholders, and relies less on formal data and information gathering mechanisms. The expedited guidelines approach is suitable when EPA, industry, and other stakeholders have a common goal on the structure of the limitations and standards. EPA believes this is the case with the SBF rulemaking; EPA is proposing to allow the controlled discharge of the SBF-cuttings wastestream to encourage the use and further development of this pollution prevention technology. Based on information to date, EPA believes that this option has better environmental results than the current use and subsequent land disposal or injection of OBFs. Through the exchange of information among the stakeholders, EPA understands the industry's interest in discharging the SBF-cuttings wastestream because discharge of SBFs is more likely to be cost effective as a replacement to the diesel and mineral oil based OBFs. EPA was able to accommodate both environmental benefits and business interests in today's proposal.

Throughout regulatory development, EPA has worked with representatives from the oil and gas industry and several trade associations, including the National Ocean Industries Association (NOIA) and the American Petroleum Institute (API), SBF vendors, solids control equipment vendors, the U.S. Department of Energy, the U.S. Department of Interior Minerals Management Service, the Texas Railroad Commission, and research and regulatory bodies of the United Kingdom and Norway, to develop effluent limitations guidelines and standards that represent the appropriate level of technology (e.g., BAT). The Agency also discussed the progress of the rulemaking with the Natural Resources Defense Council (NRDC) and invited its participation. The Cook Inlet Keepers are participating in the rulemaking as well.

As part of the expedited approach to this rulemaking, EPA has chosen not to gather data using the time consuming approach of a Clean Water Act section 308 questionnaire, but rather by using data submitted by industry, vendors, academia, and others, along with data EPA can develop in a limited period of time. Because all of the facilities affected by this proposal are direct dischargers, the Agency did not conduct an outreach survey to POTWs.

Subsequent to today's proposal, EPA intends to continue its data gathering efforts for support of the final rule. These continuing efforts are discussed below in conjunction with the information already gathered. Because of these continuing information gathering activities, EPA expects that it will publish a subsequent notice of any data either generated by EPA or submitted after this proposal that will be used to develop the final rule.

B. Identification of Information Needs

As part of the final coastal effluent guidelines, published on December 16, 1996 (61 FR 66086), EPA stated that appropriate and adequate discharge controls would be necessary to allow the discharge of SBF-cuttings under BPT, BAT, BCT, and NSPS in NPDES permits. As detailed in Section III of today's notice, in the final coastal effluent guidelines EPA recommended gas chromatography (GC) as a test for formation oil contamination, and a sediment toxicity test as a replacement for the suspended particulate phase (SPP) toxicity testing currently required. EPA also mentioned the potential need for controls on the base fluid used to formulate the SBF, controlling one or more of the following parameters: PAH content, toxicity (preferably sediment toxicity), rate of biodegradation, and bioaccumulation potential. EPA summarized the information available from seabed surveys at SBF-cuttings discharge sites.

Subsequent to the publication of the final coastal effluent guidelines, EPA continued research into the appropriate controls for the SBF-cuttings wastestream, and presented its findings to stakeholders at meetings held in Dallas, Texas, on February 19, 1998, and in Houston on May 8 and 9, 1997. EPA also presented data and information requirements to develop adequate and appropriate controls for the SBF-cuttings wastestream at four conferences, in Aberdeen, Scotland, on June 23 and 24, 1997, in Houston, Texas on February 9, 1998, again in Aberdeen Scotland on June 18 and 19, 1998, and at the Minerals Management Service Information Transfer Meeting held in New Orleans, Louisiana on December 18, 1997. The conferences in Scotland were germane because of the work that the Scottish Office Agriculture, Environment and Fisheries Department had performed on sediment toxicity testing, biodegradability testing, and seabed surveys at SBF-cuttings and OBF-cuttings discharge sites. This detailed level of work has not been performed in the United States.

EPA conducted literature reviews and in September 1997 published documents entitled ''Bioaccumulation of Synthetic-Based Drilling Fluids,'' ''Biodegradation of Synthetic-Based Drilling Fluids,'' ''Assessment and Comparison of Available Drilling Waste Data from Wells Drilled Using Water Based Fluids and Synthetic Based Fluids,'' and ''Seabed Survey Review and Summary.'' The purpose of these documents was to help direct EPA's and other stakeholder's research efforts in

defining BPT, BAT, BCT, and NSPS, and address CWA 403(c) requirements for SBFs.

Industry stakeholders, with the motivation of having SBFs addressed in NPDES permits that allow the discharge of SBF-cuttings, assisted EPA in the development of methods and data gathering to describe currently available technologies. Thus, by means of meetings, conferences, and other stakeholder meetings, EPA detailed the methods and/or types of information required in order to support BPT, BCT, BAT, and NSPS controls in NPDES permits. The past and anticipated future efforts by various stakeholder groups and the EPA are presented below.

C. Stakeholder Technical Work Groups

In order to concentrate efforts on certain technical issues, in May of 1997 industry prepared studies on the following subjects: (a) the determination of formation oil contamination in SBFs, (b) toxicity testing of SBFs and base fluids, (c) quantity of SBF discharged (retention of base fluid on cuttings), and (d) seabed surveys at SBF-cuttings discharge sites. Industry representatives formed work groups to address these issues. The sections below describe their work.

1. Formation Oil Contamination Determination (Analytical)

The goal of this work group was to define the monitoring and compliance method to determine crude oil (or other oil) contamination of SBF-cuttings. The work group has issued several reports concerning the static sheen test, and developed two replacement tests for formation oil contamination, one based on fluorescence and the other on gas chromatography with mass spectroscopy detection (GC/MS).

On September 28, 1998, the workgroup published the final draft of the Phase I report entitled ''Evaluation of Static Sheen Test for Water-based Muds, Synthetic-based Muds and Enhanced Mineral Oils. The conclusions of the report are that the static sheen test is not a good indicator of oil contamination in SBFs, and that in WBFs formation oil contamination is often detected at 1.0 percent and sometimes as low as 0.5 percent.

On October 21, 1998, the work group published its final draft to the Phase II report entitled ''Survey of Monitoring Approaches for the Detection of Oil Contamination in Synthetic-based Drilling Muds.'' This document lists thirteen methods that the work group considered as a replacement to the static sheen test. From these thirteen, EPA selected the reverse phase extraction method to be used on offshore drilling sites, and the GC/MS method for onshore baseline measurements.

On November 16, 1998, the work group published its final draft of the Phase III report entitled ''Laboratory Evaluation of Static Sheen Replacements: RPE Method and GC/MS Method.'' This report provides the methods. The future work of the Analytical Work Group is to validate these methods.

2. Retention on Cuttings

The goals of this work group were to determine the SBF retention on cuttings using the equipment currently used in the Gulf of Mexico (GOM), and investigate ways of determining the total quantity of SBF discharged when drilling a well. To address the first goal, API reported data from GOM wells on the amount of SBF base fluid retained on drill cuttings. The results were published on August 29, 1997, in a report entitled ''Retention of Synthetic-Based Drilling Material on Cuttings Discharged to the Gulf of Mexico.''

To address the second goal of determining the total quantity of SBF discharged, the work group has created a spreadsheet which records information allowing two independent analyses of the SBF quantity discharged. One method is based on a mass balance of the SBF, and the other is based on retort measurements of the cuttings wastestream. Both methods of analyses carry certain benefits and drawbacks. By comparing the results from the two analyses, EPA intends to select one method as preferred for the final rule. The work group is currently gathering these comparative data. The preferred method will then be validated for inclusion in the final rule. At this time, EPA thinks that the retort measurement is preferable to implement, and therefore it is the method proposed today. As further information is gathered, however, EPA may decide that attainment of the limit in the final rule is to be determined by the mass balance method.

3. Toxicity Testing

The goal of this work group was to define the toxicity test for monitoring and compliance of SBF-cuttings. EPA has indicated that the test could be performed on either the stock base fluid, or the SBF separated from the cuttings at the point of discharge.

Through data generated by members of the work group, the work group has shown that SBF and synthetic base fluid toxicity are mainly evident in the sedimentary phase. When measured in the suspended particulate phase (SPP) in the current Mysid shrimp toxicity test, the toxicity is not evident and the results are highly variable, and are easily affected by the intensity of stirring and emulsifier content of the SBF.

Having shown that an aqueous phase test is unlikely to yield satisfactory results with SBFs and associated base fluids, the work group has been investigating sediment toxicity tests, mainly the 10-day sediment toxicity test with amphipods (ASTM E1367–92). To effect this work, API funded a currently ongoing contract to evaluate four test methods: 10-day acute sediment toxicity test with (a) *Ampelisca abdita,* (b) *Leptocheirus plumulosus,* and (c) *Mysidopsis bahia,* and (d) *microtox tests.* Main issues that the work group hopes to resolve are discriminatory power of the method and variability in results. Since the API contract work began, the work group has considered many variables to the sediment toxicity test to ameliorate these problems. The work group is investigating: organisms other than amphipods, such as Mysid shrimp and polychaetes; shortening the length of the test, *i.e.* from 10 days to 4 days; and the use of formulated sediments in place of natural sediments. Work continues to determine the most appropriate method to evaluate the toxic effect of the SBF discharged with drill cuttings.

4. Environmental Effects/Seabed Surveys

The goal of this work group was to determine the spacial and temporal recovery of the seafloor at sites where SBF-cuttings had been discharged, and compare these effects with effects caused by the discharge of WBF and WBF-cuttings discharge.

The work group performed a five-day screening cruise at three offshore oil platforms where SBFs has been used and SBF-cuttings discharged for the purpose of gathering preliminary environmental effects information. This screening cruise, and its planning, was performed in collaboration with EPA and with the use of the EPA Ocean Survey Vessel Peter W. Anderson. The study conducted a preliminary evaluation of offshore discharge locations and determine the areal extent of observable physical, chemical, and biological impact. EPA intended that this base information would provide (1) information relative to the immediate concerns on impacts, and (2) valuable preliminary information for designing future offshore assessments.

The study provided preliminary information on cuttings deposition, SBF content of nearfield marine sediments,

anoxia in nearfield sediments, qualitative information on biological communities in the area, and toxicity of field collected sediments. The results of this survey were published on October 21, 1998, in a report entitled ''Joint EPA/Industry Screening Survey to Assess the Deposition of Drill Cuttings and Associated Synthetic Based Mud on the Seabed of the Louisiana Continental Shelf, Gulf of Mexico.''

The ongoing effort of the work group is to address CWA 403(c) permit requirements for seabed surveys by organizing collaborative industry seabed surveys at selected SBF-discharge sites.

D. EPA Research on Toxicity, Biodegradation, Bioaccumulation

Subsequent to today's proposal, EPA plans to compare the relative environmental effects of SBFs and OBFs in terms of (i) sediment and aquatic toxicity, (ii) biodegradation, and (iii) bioaccumulation. The methods development to occur as part of this research, and the resulting data, are intended to be used towards the final stock base fluid limitations and SBF discharge limitations proposed today.

The base fluids to consider in the sediment toxicity, biodegradation, and bioaccumulation tests are the full range of synthetic and oleaginous base fluids. These include the synthetic oils such as vegetable esters, linear alpha olefins, internal olefins and poly alpha olefins, the traditional base oils of mineral oil and diesel oil, and the newer more refined and treated oils such as enhanced mineral oil and paraffinic oils. These oily base fluids are common in that they are immiscible (do not mix) with water, and form drilling fluids that do not disperse in water.

The outline of this research plan in terms of goals and considerations is as follows:

- For sediment toxicity, this plan intends to investigate the effects of base fluid, whole mud formulation, and crude oil contamination on sediment toxicity as measured by the 10-day acute sediment toxicity test performed in natural sediment with *Ampelisca abdita and Leptocheirus plumulosus.* The goals of this research are threefold:
- Amend the EPA 10-day acute sediment toxicity test for application to SBFs and base fluids.
- Determine the LC_{50} values for the base fluids by this method, potentially for determination of stock limitations values.
- Determine the effects of mud formulation and crude oil contamination on sediment toxicity by maintaining the base fluid constant. The purpose is to investigate the parameters which affect toxicity in SBFs.
- For aqueous phase toxicity, this plan intends to investigate if any correlation exists between aqueous phase toxicity to Mysid shrimp and sediment toxicity.
- For biodegradation, this plan intends to perform the solid phase test or modified solid phase test as developed by the Scottish Office Agriculture, Environment and Fisheries Department for a range of oily base fluids, and environments of the Gulf of Mexico, Offshore California, Cook Inlet Alaska, and Offshore Alaska.
- For bioaccumulation, this plan intends to test bioconcentration in *Macoma nasuta* and *Nereis virens.*

The research concerning sediment toxicity testing that API supports is seen as complementary to, and not overlapping with, this EPA plan. API's goal is to identify a bioassay test organism and protocol to accurately and reliably evaluate the toxicity of SBF and OBF in sediments. The API research is concentrating efforts on using both formulated and natural sediments, and possibly a test period shorter than the standard 10-day EPA method. Thus, while EPA is focusing on investigating the parameters that affect toxicity of SBFs, the API research is looking ahead to discharge monitoring requirements with the goal of identifying an appropriate and reliable test method.

E. EPA Investigation of Solids Control Technologies for Drilling Fluids

EPA has contacted numerous vendors of solids control equipment and requested information on performance and cost of the various solids separation units available. EPA has also received information from operators data showing the performance of the vibrating centrifuge technology. As part of its investigation of solids control equipment used on offshore drilling platforms, EPA visited Amoco's Marlin deepwater drilling project aboard the Amirante semi-submersible drilling platform located in Viosca Knoll Block 915 approximately 100 miles south of Mobile, Alabama. The primary purpose of this site visit was to observe the demonstration of the vibrating centrifuge drilling fluid recovery device heretofore used only on North Sea drilling projects. The device reportedly can produce drill cuttings containing less than 6 percent by volume synthetic drilling fluid on wet cuttings when well operated and maintained and used in conjunction with shale shakers that are well operated and maintained. The information gathered by the EPA during this trip is described in a report dated August 7, 1998, entitled ''Demonstration of the 'Mud 10' Drilling Fluid Recovery Device at the Amoco Marlin Deepwater Drill Site.''

F. Assistance From Other State and Federal Agencies

The United States Department of Interior Minerals Management Service (MMS) maintains data of the number of wells drilled in offshore waters under MMS jurisdiction, i.e., those that are not territorial seas. In general, this covers the offshore waters beyond 3 miles from the shoreline, which corresponds with the area were drilling wastes are currently allowed for discharge and so is the same area affected by this rule. MMS supplied data for years 1995, 1996, and 1997 of the number of wells drilled in the GOM and offshore California according to depth (less than or greater than 1000 feet water depth) and type of well (exploratory or development). Since Texas jurisdiction over oil and gas leases extends out to 10 miles, information was requested and received from the Texas Railroad Commission regarding the number of wells drilled in Texas territorial seas from 3 miles to 10 miles from shore. This is the area in the GOM that is affected by this proposed rule, but not included in the MMS data.

Information concerning the number of wells drilled in the state waters of Upper Cook Inlet, Alaska, was gathered from the Alaska Oil and Gas Commission. The Alaska Oil and Gas Commission provided information of the number of wells drilled in Upper Cook Inlet for the years 1995, 1996, and 1997, according to type of well as exploratory or development.

MMS also assisted in developing the cruise plan of the screening seabed survey mentioned in section V.C.4 above.

The United States Department of Energy (DOE) has been active in assisting EPA to gather information concerning drilling waste disposal methods and costs, and type of fuel used on offshore platforms. In November 1998 Argonne National Laboratory, under contract with DOE, published the results of this information gathering effort in a report entitled ''Data Summary of Offshore Drilling Waste Disposal Practices.''

Also under contract with DOE, Brookhaven National Laboratory developed a comparative risk assessment for the discharge of SBFs. The risk assessment, published November 1998, is entitled ''Framework for a Comparative Environmental Assessment of Drilling Fluids.''

VI. Development of Effluent Limitations Guidelines and Standards

A. Waste Generation and Characterization

Drill cuttings are produced continuously at the bottom of the hole at a rate proportionate to the advancement of the drill bit. These drill cuttings are carried to the surface by the drilling fluid, where the cuttings are separated from the drilling fluid by the solids control system. The drilling fluid is then sent back down hole, provided it still has characteristics to meet technical requirements. Various sizes of drill cuttings are separated by the solids separations equipment, and it is necessary to remove the fines (small sized cuttings) as well as the large cuttings from the drilling fluid to maintain the required flow properties.

SBFs, used or unused, are considered a valuable commodity and not a waste. It is industry practice to continuously reuse the SBF while drilling a well interval, and at the end of the well, to ship the remaining SBF back to shore for refurbishment and reuse. Compared to WBFs, SBFs are relatively easy to separate from the drill cuttings because the drill cuttings do not disperse in the drilling fluid to the same extent. With WBF, due to dispersion of the drill cuttings, drilling fluid components often need to be added to maintain the required drilling fluid properties. These additions are often in excess of what the drilling system can accommodate. The excess ''dilution volume'' of WBF is a resultant waste. This dilution volume waste does not occur with SBF. For these reasons, SBF is only discharged as a contaminant of the drill cuttings wastestream. It is not discharged as neat drilling fluid (drilling fluid not associated with cuttings).

The top of the well is normally drilled with a WBF. As the well becomes deeper, the performance requirements of the drilling fluid increase, and the operator may, at some point, decide that the drilling fluid system should be changed to either a traditional OBF based on diesel oil or mineral oil, or an SBF. The system, including the drill string and the solids separation equipment, must be changed entirely from the WBF to the SBF (or OBF) system, and the two do not function as a blended system. The entire system is either (a) a water dispersible drilling fluid such as a WBF, or (b) a water non-dispersible drilling fluid such as an SBF. The decision to change the system from a WBF water dispersible system to an OBF or SBF water non-dispersible system depends on many factors including:

- The operational considerations, i.e. rig type (risk of riser disconnects with floating drilling rigs), rig equipment, distance from support facilities,
- The relative drilling performance of one type fluid compared to another, e.g., rate of penetration, well angle, hole size/casing program options, horizontal deviation,
- The presence of geologic conditions that favor a particular fluid type or performance characteristic, e.g., formation stability/sensitivity, formation pore pressure vs. fracture gradient, potential for gas hydrate formation,
- Drilling fluid cost—base cost plus daily operating cost,
- Drilling operation cost—rig cost plus logistic and operation support,
- Drilling waste disposal cost.

Industry has commented that while the right combination of factors that favor the use of SBF can occur in any area, they most frequently occur with ''deep water'' operations. This is due to the fact that these operations are higher cost and can therefore better justify the higher initial cost of SBF use.

The volume of cuttings generated while drilling the SBF intervals of a well depends on the type of well, development or production, and the water depth. According to analyses of the model wells provided by industry representatives, wells drilled in less than 1,000 feet of water are estimated to generate 565 barrels for a development well and 1,184 barrels for an exploratory well. Wells drilled in water greater than 1,000 feet deep are estimated to generate 855 barrels for a development well, and 1,901 for an exploratory well. These values assume 7.5 percent washout, based on the rule of thumb reported by industry representatives of 5 to 10 percent washout when drilling with SBF. Washout is caving in or sluffing off of the well bore. Washout, therefore, increases hole volume and increases the amount of cuttings generated when drilling a well. Assuming no washout, the values above become, respectively, 526, 1,101, 795, and 1,768, barrels.

The drill cuttings range in size from large particles on the order of a centimeter in size to small particles a fraction of a millimeter in size, called fines. As the drilling fluid returns from downhole laden with drill cuttings, it normally is first passed through primary shale shakers which remove the largest cuttings, ranging in size of approximately 1 to 5 millimeters. The drilling fluid may then be passed over secondary shale shakers to remove smaller drill cuttings. Finally, a portion or all of the drilling fluid may be passed through a centrifuge or other shale shaker with a very fine mesh screen, for the purpose of removing the fines. It is important to remove fines from the drilling fluid in order to maintain the desired flow properties of the active drilling fluid system. Thus, the cuttings wastestream normally consists of larger cuttings from the primary shale shakers and fines from a fine mesh shaker or centrifuge, and may also consist of smaller cuttings from a secondary shale shaker. Before being discharged, the larger cuttings are sometimes sent through another separation device in order to recover additional drilling fluid.

The recovery of SBF from the cuttings serves two purposes. The first is to deliver drilling fluid for reintroduction to the active drilling fluid system, and the second is to minimize the discharge of SBF. The recovery of drilling fluid from the cuttings is a conflicting concern, because as more aggressive methods are used to recover the drilling fluid from the cuttings, the cuttings tend to break down and become fines. The fines are not only more difficult to separate from the drilling fluid, but as stated above they also deteriorate the properties of the drilling fluid. Increased recovery from the cuttings is more problematic for WBF than with SBF because the WBF water-wets the cuttings which encourages the cuttings to disperse and spoil the drilling fluid properties. Therefore, compared to WBF, more aggressive methods of recovering SBF from the cuttings wastestream are practical. These more aggressive methods may be justified for cuttings associated with SBF so as to reduce the discharge of SBF. This, consequently, will reduce the potential to cause anoxia (lack of oxygen) in the receiving sediment as well as reduce the quantity of toxic organic and metallic components of the drilling fluid discharged.

Drill cuttings are typically discharged continuously as they are separated from the drilling fluid in the solids separation equipment. The drill cuttings will also carry a residual amount of adhered drilling fluid. TSS makes up the bulk of the pollutant loadings, and is comprised of two components: the drill cuttings themselves, and the solids in the adhered drilling fluid. The drill cuttings are primarily small bits of stone, clay, shale, and sand. The source of the solids in the drilling fluid is primarily the barite weighting agent, and clays which are added to modify the viscosity. Because the quantity of TSS is so high and consists of mainly large particles which settle quickly, discharge of SBF drill cuttings can cause benthic

smothering and/or sediment grain size alteration resulting in potential damage to invertebrate populations and alterations in benthic community structure.

Additionally, environmental impacts can be caused by toxic, conventional, and nonconventional pollutants adhering to the solids. The adhered SBF drilling fluid is mainly composed, on a volumetric basis, of the synthetic material, or more broadly speaking, oleaginous material. The oleaginous material may also be toxic or bioaccumulate, and it may contain priority pollutants such as polynuclear aromatic hydrocarbons (PAHs). This oleaginous material may cause hypoxia (reduction in oxygen) or anoxia in the immediate sediment, depending on bottom currents, temperature, and rate of biodegradation. Oleaginous materials which biodegrade quickly will deplete oxygen more rapidly than more slowly degrading materials. EPA, however, thinks that fast biodegradation is environmentally preferable to persistence despite the increased risk of anoxia which accompanies fast biodegradation. This is because recolonization of the area impacted by the discharge of SBF-cuttings or OBF-cuttings has been correlated with the disappearance of the base fluid in the sediment, and does not seem to be correlated with anoxic effects that may result while the base fluid is disappearing. In studies conducted in the North Sea, base fluids that biodegrade faster have been found to disappear more quickly, and recolonization at these sites has been more rapid.

As a component of the drilling fluid, the barite weighting agent is also discharged as a contaminant of the drill cuttings. Barite is a mineral principally composed of barium sulfate, and it is known to generally have trace contaminants of several toxic heavy metals such as mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc.

B. Selection of Pollutant Parameters

1. Stock Limitations of Base Fluids

a. *General.*—EPA is proposing to establish BAT and NSPS that would require the synthetic materials and other oleaginous materials which form the base fluid of the SBFs and other non-aqueous drilling fluids to meet limitations on PAH content, sediment toxicity and biodegradation. The technology basis for meeting these limits would be product substitution, or zero discharge based on land disposal or injection if these limits are not met. These parameters are being regulated to control the discharge of certain toxic and nonconventional pollutants. A large range of synthetic, oleaginous, and water miscible materials have been developed for use as base fluids. These stock limitations on the base fluid are intended to encourage product substitution reflecting best available technology wherein only those synthetic materials and other base fluids which minimize potential loadings and toxicity may be discharged.

b. *PAH Content.*—EPA proposes to regulate PAH content of base fluids because PAHs are comprised of toxic priority pollutants. SBF base fluids typically do not contain PAHs, whereas the traditional OBF base fluids of diesel and mineral oil typically contain on the order of 5 to 10 percent PAH in diesel oil and 0.35 percent PAH in mineral oil. The PAHs typically found in diesel and mineral oil include the toxic priority pollutants fluorene, naphthalene, phenanthrene, and others, and nonconventional pollutants such as alkylated benzenes and biphenyls. Thus, this stock limitation would be one component of a rule reflecting the use of the best available technology.

c. *Sediment Toxicity.*—EPA proposes to regulate sediment toxicity in base fluids and SBFs as a nonconventional pollutant parameter, as an indicator for toxic components of base fluids or drilling fluid. Some of the toxic components of the base fluids may include enhanced mineral oils, internal olefins, linear alpha olefins, paraffinic oils, vegetable esters of 2-hexanol and palm kernel oil, and other oleaginous materials. Some of the possible toxic components of drilling fluids may include the same components as the base fluid, and in addition mercury, cadmium, arsenic, chromium, copper, lead, nickel, and zinc, formation oil contaminants, and other intended or unintended components of the drilling fluid. It has been shown, during EPA's development of the Offshore Guidelines, that establishing limits on toxicity encourages the use of less toxic drilling fluids and additives. Many of the synthetic base fluids have been shown to have lower toxicity than diesel and mineral oil, but among the synthetic and other oleaginous base fluids some are more toxic than others. Today's proposed discharge option includes a sediment toxicity limitation of the SBF's base fluid stock material, as measured by the 10-day sediment toxicity test (ASTM E1367–92) using a natural sediment and *Leptocheirus plumulosus* as the test organism.

Subsequent to this proposal and before the final rule, EPA intends to gather information to determine how to most appropriately control toxicity and solicit comment on these findings. The sediment toxicity test may be altered, for instance, in terms of test organism (other amphipods or possibly a polychaete), sediment type (formulated in place of natural), or length of test (to shorten the 10-day test period). Further, while today's proposal includes a sediment toxicity limitation of the base fluid stock material, the final discharge option to control toxicity might consist of a different option.

EPA would prefer to control sediment toxicity at the point of discharge as opposed to controlling the base fluid. EPA realizes, however, that the sediment toxicity test may be impractical to implement as a discharge requirement due to potential problems in the availability of uniform sediment and other factors affecting test variability. If EPA finds, through subsequent research, that the sediment toxicity test at the point of discharge is both practical and superior to the base fluid toxicity as an indicator of the toxicity of the SBF at the point of discharge, EPA might apply the sediment toxicity test to the SBF at the point of discharge in place of today's proposed method of the sediment toxicity test to the base fluid.

If the sediment toxicity test of neither the SBF at point of discharge nor synthetic base fluid as a stock limitation is found to be practical due to variability, lack of discriminatory power, or other problems, EPA will search for an alternative toxicity test. One candidate is modification to the current SPP toxicity test, or aquatic phase toxicity test. EPA has several concerns with applying the current SPP test to SBFs. EPA has received information from industry sources and testing laboratories that the results from the SPP test applied to SBFs are highly dependent on both the agitation when mixing the seawater with the SBF and the amount and type of emulsifiers in the SBF formulation. Further, results to date show that, compared to the aquatic toxicity test, the sediment toxicity test provides a better correlation with known toxicity effects of the various synthetic and oleaginous base fluids, and the experimental situation more closely mimics the actual fate of the drilling fluid. While EPA does not think that the current SPP test is useful for application to SBFs, modifications to either the method or limitation may render it functional. Thus, EPA intends to investigate the aquatic phase toxicity test as a possible control in the event that the sediment toxicity test of the drilling fluid is impractical and the

sediment toxicity test of the base fluid is either impractical or inadequate to control the toxicity of the SBF at the point of discharge.

EPA intends, therefore, to investigate further the most appropriate test method for controlling toxicity of SBF discharges, and to validate this method. EPA intends to publish any additional data concerning this limitation in a notice prior to publication of the final rule.

d. *Biodegradation.*—EPA proposes to limit biodegradation as an indicator of the extent, in level and duration, of the toxic effect of toxic components of nonconventional pollutants present in the base fluids, e.g., poly alpha olefins, enhanced mineral oils, internal olefins, linear alpha olefins, paraffinic oils, and vegetable ester of 2-hexanol and palm kernel oil. The various SBF base fluids vary widely in biodegradation rate, as measured by the solid phase test and simulated seabed tests. Based on results from seabed surveys at sites where various base fluids have been discharged with drill cuttings, EPA believes that the results from both measurement methods are indicative of the relative rates of biodegradation in the marine environment. In addition, EPA thinks this parameter correlates strongly with the rate of recovery of the seabed where SBF-cuttings have been discharged.

While EPA is proposing to use the solid phase test to measure compliance with the biodegradation limitation, this test is not yet an EPA validated method. In addition to validating the method for the final rule, EPA intends to gather additional data in support of the biodegradation rate limitation. EPA plans to present any additional data it collects towards this limitation in a notice subsequent to today's proposed rule and before the final rule.

e. *Bioaccumulation.*—While not a part of today's proposal, EPA is also considering establishing BAT and NSPS that would require the synthetic materials and other base fluids used in non-aqueous drilling fluids to meet limitations on bioaccumulation potential. The regulated parameters would be the nonconventional and toxic priority pollutants that bioaccumulate. Based on current information, EPA believes that the base fluid controls on PAH content, sediment toxicity, and biodegradation rate being proposed today are sufficient to control bioaccumulation. EPA intends, however, to study the bioaccumulation potential of the various synthetic base fluids for comparison, and subsequently solicit comments on the results if EPA thinks that some measure of bioaccumulation potential is needed to control adequately the SBF-cuttings wastestream.

2. Discharge Limitations

a. *Free Oil.*—Under BPT and BCT limitations for SBF-cuttings, EPA would retain the prohibition on the discharge of free oil as determined by the static sheen test. Under this prohibition, drill cuttings may not be discharged when the associated drilling fluid would fail the static sheen test defined in Appendix 1 to 40 CFR Part 435, Subpart A. The prohibition on the discharge of free oil is intended to minimize the formation of sheens on the surface of the receiving water. The regulated parameter of the no free oil limitation would be the conventional pollutants oil and grease which separate from the SBF and cause a sheen on the surface of the receiving water.

The free oil discharge prohibition does not control the discharge of oil and grease and crude oil contamination in SBFs as it would in WBFs. With WBFs, oils which may be present (such as diesel oil, mineral oil, formation oil, or other oleaginous materials) are present as the discontinuous phase. As such these oils are free to rise to the surface of the receiving water where they may appear as a film or sheen upon or discoloration of the surface. By contrast, the oleaginous matrices of SBFs do not disperse in water. In addition they are weighted with barite, which causes them to sink as a mass without releasing either the oleaginous materials which comprise the SBF or any contaminant formation oil. Thus, the test would not identify these pollutants. However, a portion of the synthetic material comprising the SBF may rise to the surface to cause a sheen. These components that rise to the surface fall under the general category of oil and grease and are considered conventional pollutants. Therefore, the purpose of the no free oil limitation of today's proposal is to control the discharge of conventional pollutants which separate from the SBF and cause a sheen on the surface of the receiving water. The limitation, however, is not intended to control formation oil contamination nor the total quantity of conventional pollutants discharged.

b. *Formation Oil Contamination.*—Formation oil contamination of the SBF associated with the cuttings would be limited under BAT and NSPS. Formation oil is an ''indicator'' pollutant for the many toxic and priority pollutant components present in formation (crude) oil, such as aromatic and polynuclear aromatic hydrocarbons. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. (See Development Document Chapter VII). The primary limitation is based on a fluorescence test. This test is considered an appropriately ''weighted'' test because crude oils containing more toxic aromatic and PAH components tend to show brighter fluorescence and hence noncompliance at a lower level of contamination. Since fluorescence is a relative brightness test, gas chromatography with mass spectroscopy detection (GC/MS) is provided as a baseline method before the drilling fluid is delivered for use, and is also available as an assurance method when the results from the fluorescence compliance method are in doubt.

c. *Retention of SBF on Cuttings.*—The retention of SBF on drill cuttings would be limited under BAT and NSPS. This limitation controls the quantity of SBF discharged with the drill cuttings. Both nonconventional and priority toxic pollutants would be controlled by this limitation. Nonconventionals include the SBF base fluids, such as vegetable esters, internal olefins, linear alpha olefins, paraffinic oils, mineral oils, and others. This limitation would also limit the toxic effect of the drilling fluid and the persistence or biodegradation of the base fluid. Several toxic and priority pollutant metals are present in the barite weighting agent, including arsenic, chromium, copper, lead, mercury, nickel, and zinc, and nonconventional pollutants such as aluminum and tin.

The emulsifying and wetting agents of the SBF would also be controlled by limiting the amount of SBF discharged. EPA solicits information concerning the composition of the wetting and emulsifying agents so that they can be classified as conventional, nonconventional, or toxic pollutants.

Today's proposed rule uses the retort method to determine compliance with the limit. The limit is expressed as percentage base fluid on wet cuttings (weight/weight), averaged over the well sections drilled with SBF. This method has not yet been validated by EPA. Further, EPA is currently researching a mass balance method as an alternative method to determine the quantity of SBF discharged. After EPA has gathered sufficient data using the two methods in a comparative analysis, EPA intends to validate the preferred method and solicit comment concerning the method to be applied for the final rule.

3. Maintenance of Current Requirements

EPA would retain the existing BAT and NSPS limitations on the stock barite of 1 mg/kg mercury and 3 mg/kg

cadmium. These limitations would control the levels of toxic pollutant metals because cleaner barite that meets the mercury and cadmium limits is also likely to have reduced concentrations of other metals. Evaluation of the relationship between cadmium and mercury and the trace metals in barite shows a correlation between the concentration of mercury with the concentration of arsenic, chromium, copper, lead, molybdenum, sodium, tin, titanium and zinc. (See the Offshore Development Document in Section VI).

EPA also would retain the BAT and NSPS limitations prohibiting the discharge of drilling wastes containing diesel oil in any amount. Diesel oil is considered an ''indicator'' for the control of specific toxic pollutants. These pollutants include benzene, toluene, ethylbenzene, naphthalene, phenanthrene, and phenol. Diesel oil may contain from 3 to 10 percent by volume PAHs, which constitute the more toxic components of petroleum products.

C. Regulatory Options Considered for SBFs Not Associated With Drill Cuttings

Today EPA proposes, under BPT, BCT, BAT, and NSPS, zero discharge for SBFs not associated with drill cuttings. This option is technically available and economically achievable with equipment commonly used. It is also current industry practice due to the value of SBFs recovered and reused. Since this option reflects current industry practice, it has no non-water quality environmental impacts.

Industry sources have indicated that at times, there may be minor drips or spills of SBFs that occur on the platform. EPA is considering whether these discharges should be governed by the zero discharge requirement, or whether to view the zero discharge requirements as being limited to discharge of whole drilling fluids, and allowing unintentional drips and spills to be treated as miscellaneous wastes. EPA solicits comment on this approach. EPA thinks that the best way to control these discharges would be through the use of BMPs and solicits comment on what types of BMPs would be effective for controlling these discharges and whether such BMPs should be part of this effluent guideline or be applied by the permit authority.

D. Regulatory Options Considered for SBFs Associated With Drill Cuttings

EPA considered two options for today's proposed rule for SBFs associated with drill cuttings, or SBF-cuttings: a discharge option and a zero discharge option. EPA has selected the discharge option as the basis for today's proposal. As detailed above, this discharge option controls under BAT and NSPS the stock base fluid through limitations on PAH content, sediment toxicity, and biodegradation rate, and controls at the point of discharge under BPT and BCT sheen formation and under BAT and NSPS formation oil content and quantity of SBF discharged. The discharge option maintains current requirements of stock limitations on barite of mercury and cadmium, and the diesel oil discharge prohibition. EPA at this time thinks that all of these components are essential for appropriate control of the SBF cuttings wastestream.

Although not the basis for today's proposal, EPA considered zero discharge as an option for BPT, BCT, BAT, and NSPS. Under zero discharge all pollutants would be controlled in SBF discharges. This option was clearly technically feasible and economically achievable because in the past SBFs did not exist, and industry was able to operate using only the traditional non-dischargeable OBFs based on diesel oil and mineral oil.

EPA presently rejects zero discharge as the preferred option because it would result in unacceptable non-water quality environmental impacts. If EPA were to choose zero discharge for SBF-cuttings, operators would not have an incentive to use SBFs since they are more expensive than OBFs. Thus, if EPA requires zero discharge, OBF-cuttings would continue to be injected or shipped to shore for land disposal. EPA's analysis shows that under this option as compared to the discharge option, for existing and new sources combined, there would be 172 million pounds annually of OBF-cuttings shipped to shore for disposal in non-hazardous oilfield waste sites and 40 million pounds annually injected, with associated fuel use of 29,000 BOE and annual air emissions of 450 tons. EPA believes these impacts far outweigh the water impacts associated with these discharges detailed in Section VIII of this preamble. EPA's current analysis shows that the impacts of these discharges to water are of limited scope and duration, particularly if EPA controls the discharges of SBFs to the best environmental performers that also meet the technical requirements needed to drill. By contrast, the landfilling of OBF-cuttings is of a longer term duration and associated pollutants may effect ambient air, soil, and groundwater quality. For these reasons, under EPA's authority to consider the non-water quality environmental impacts of its rule, EPA rejects zero discharge of SBF-cuttings.

Nonetheless, while discharge with adequate controls is preferred over zero discharge, discharge with inadequate controls is not preferred over zero discharge. EPA believes that to allow discharge of SBF-cuttings, there must be appropriate controls to ensure that EPA's discharge limitations reflect the ''best available technology'' or other appropriate level of technology. EPA has worked with industry to address the determination of PAH content, sediment toxicity, biodegradation, bioaccumulation, the quantity of SBF discharged, and formation oil contamination. The successful completion of these efforts is necessary for EPA to continue to reject zero discharge.

E. BPT Technology Options Considered and Selected

As previously discussed, Section 304(b)(1)(A) of the CWA requires EPA to identify effluent reductions attainable through the application of ''best practicable control technology currently available for classes and categories of point sources.'' Generally, EPA determines BPT effluent levels based upon the average of the best existing performances by plants of various sizes, ages, and unit processes within each industrial category or subcategory. In industrial categories where present practices are uniformly inadequate, however, EPA may determine that BPT requires higher levels of control than any currently in place if the technology to achieve those levels can be practicably applied. See *A Legislative History of the Federal Water Pollution Control Act Amendments of 1972,* U.S. Senate Committee of Public Works, Serial No. 93–1, January 1973, p. 1468.

In addition, CWA Section 304(b)(1)(B) requires a cost assessment for BPT limitations. In determining the BPT limits, EPA must consider the total cost of treatment technologies in relation to the effluent reduction benefits achieved. This inquiry does not limit EPA's broad discretion to adopt BPT limitations that are achievable with available technology *unless* the required additional reductions are ''wholly out of proportion to the costs of achieving such marginal level of reduction.'' See *Legislative History,* op. cit. p. 170. Moreover, the inquiry does not require the Agency to quantify benefits in monetary terms. See e.g. *American Iron and Steel Institute* v. *EPA,* 526 F. 2d 1027 (3rd Cir., 1975).

In balancing costs against the benefits of effluent reduction, EPA considers the volume and nature of expected

discharges after application of BPT, the general environmental effects of pollutants, and the cost and economic impacts of the required level of pollution control. In developing guidelines, the Act does not require consideration of water quality problems attributable to particular point sources, or water quality improvements in particular bodies of water. Therefore, EPA has not considered these factors in developing the limitations being proposed today. See *Weyerhaeuser Company* v. *Costle*, 590 F. 2d 1011 (D.C. Cir. 1978).

EPA today proposes BPT effluent limitations for the cuttings contaminated with SBF and other non-aqueous drilling fluids. The BPT effluent limitations proposed today would control free oil as a conventional pollutant. The limitation is no free oil as measured by the static sheen test, performed on SBF separated from the cuttings.

In setting the no free oil limitation, EPA considered the sheen characteristics of currently available SBFs. Since this requirement is currently met by dischargers in the Gulf of Mexico, EPA anticipates no additional costs to the industry to comply with this limitation.

EPA also considered a BPT level of control for the quantity of SBF discharged with the cuttings consisting of improved use of currently existing shale shaker equipment. However, EPA did not have enough information to establish BPT beyond current performance. Further, EPA is not setting a BPT limit based on current performance because operators already have incentive to recover as much SBFs as possible through the optimization of existing equipment due to the value of the SBFs. Therefore, a BPT limitation based on the current equipment, and as it is currently used, would not have any practical effect on the quantity of SBF discharged with the cuttings. Further, given that the BAT and NSPS limitations would be more stringent and control the conventional pollutants in addition to the non-conventional and toxic pollutants, EPA saw no reason to expend time and resources to develop a different, less restrictive BPT limit.

F. BCT Technology Options Considered and Selected

In July 1986, EPA promulgated a methodology for establishing BCT effluent limitations. EPA evaluates the reasonableness of BCT candidate technologies—those that are technologically feasible—by applying a two-part cost test: (1) a POTW test; and (2) an industry cost-effectiveness test.

EPA first calculates the cost per pound of conventional pollutant removed by industrial dischargers in upgrading from BPT to a BCT candidate technology and then compares this cost to the cost per pound of conventional pollutants removed in upgrading POTWs from secondary treatment. The upgrade cost to industry must be less than the POTW benchmark of $0.25 per pound (in 1976 dollars).

In the industry cost-effectiveness test, the ratio of the incremental BPT to BCT cost divided by the BPT cost for the industry must be less than 1.29 (i.e., the cost increase must be less than 29 percent).

In today's proposal, EPA is proposing to establish a BCT limitation of no free oil equivalent to the BPT limitation of no free oil as determined by the static sheen test. In developing BCT limits, EPA considered whether there are technologies (including drilling fluid formulations) that achieve greater removals of conventional pollutants than proposed for BPT, and whether those technologies are cost-reasonable according to the BCT Cost Test. EPA identified no technologies that can achieve greater removals of conventional pollutants than proposed for BPT that are also cost-reasonable under the BCT Cost Test, and accordingly EPA proposes BCT effluent limitations equal to the proposed BPT effluent limitations guidelines.

G. BAT Technology Options Considered and Selected

EPA today proposes BAT effluent limitations for the cuttings contaminated with SBFs. The BAT effluent limitations proposed today would control the stock base fluids in terms of PAH content, sediment toxicity, and biodegradation. Controls at the point of discharge include formation oil contamination and the quantity of SBF discharged. This level of control has been developed taking into consideration the availability and cost of oleaginous (SBF) base fluids in terms of PAH content, sediment toxicity, and biodegradation rate; the frequency of formation oil contamination at the control level; the performance and cost of equipment to recover SBF from the drill cuttings. The technical availability and economic achievability of today's proposed limitations is discussed below by regulated parameter.

1. Stock Base Fluid Technical Availability and Economic Achievability

a. *Introduction.*—As SBFs have developed over the past few years, the industry has come to use mainly a few primary base fluids. These include the vegetable esters, internal olefins, linear alpha olefins, and poly alpha olefins. Thus, these are the base fluids for which EPA has data and costs to develop the effluent limitations of today's proposed rule. In this document, vegetable ester means a monoester of 2-ethylhexanol and saturated fatty acids with chain lengths in the range C_8-C_{16}, internal olefin means a series of isomeric forms of C_{16} and C_{18} alkenes, linear alpha olefin means a series of isomeric forms of C_{14} and C_{16} monoenes, and poly alpha olefins means a mix mainly comprised of a hydrogenated decene dimer $C_{20}H_{62}$ (95%), with lesser amounts of $C_{30}H_{62}$ (4.8%) and $C_{10}H_{22}$ (0.2%). EPA also has data on other oleaginous base fluids, such as enhanced mineral oil, paraffinic oils, and the traditional OBF base fluids mineral oil and diesel oil.

The stock base fluid limitations presented below are based on currently available base fluids, and the limitations would be achievable through product substitution. EPA anticipates that the currently available and economically achievable base fluids meeting all requirements would include vegetable esters and internal olefins. EPA also solicits data on linear alpha olefins and certain paraffinic oils to determine whether these base fluids are comparable in terms of sediment toxicity, biodegradation, and bioaccumulation.

b. *PAH Content Technical Availability.*—Today's proposed limitation of PAH content is 0.001 percent, or 10 parts per million (ppm), weight percent PAH expressed as phenanthrene. This limitation is based on the availability of base fluids that are free of PAHs and the detection of the PAHs by EPA Method 1654A. EPA's proposed PAH content limitation is technically available. Producers of several SBF base fluids have reported to EPA that their base fluids are free of PAHs. The base fluids which suppliers have reported are free of PAHs include linear alpha olefins, internal olefins, vegetable esters, certain enhanced mineral oils, synthetic paraffins, certain non-synthetic paraffins, and others. See the Development Document, Chapter VII. Compliance with the BAT and NSPS stock limitations on PAH content may be achieved by product substitution.

c. *Sediment Toxicity Technical Availability.*—EPA is today proposing a sediment toxicity stock base fluid limitation that would allow only the discharge of SBF-cuttings using base fluids as toxic or less toxic, but not more toxic, than C_{16}-C_{18} internal olefin.

Alternatively, this limitation could be expressed as the LC_{50} of the base fluid minus the LC_{50} of the C_{16}-C_{18} internal olefin shall not be less than zero. Based on information available to EPA at this time, the only base fluids which would attain this limitation are the internal olefins and vegetable esters.

EPA finds this limit to be technically available because information in the rulemaking record supports that internal olefin SBFs and vegetable ester SBFs together have performance characteristics enabling them to be used in a wide variety of drilling situations offshore. Marketing data given to the EPA shows that, at least for certain of the major drilling fluid suppliers, internal olefin SBFs are currently the most popular SBFs used in the Gulf of Mexico.

Various researchers have performed toxicity testing of the synthetic base fluids with the 10-day sediment toxicity test (EPA/600/R–94/025) using a natural sediment and *Leptocheirus plumulosus* as the test organism. The synthetic base fluids have been shown to have lower toxicity than diesel and mineral oil, and among the synthetic and other oleaginous base fluids some are more toxic than others. For example, Still et al. reported the following 10-day LC_{50} results, expressed as mg base fluid/Kg dry sediment: diesel LC_{50} of 850, enhanced mineral oil LC_{50} of 251, internal olefin LC_{50} of 2,944, and poly alpha olefin LC_{50} of 9,636. A higher LC_{50} value means the material is less toxic. Similar results, with the same trend in toxicity in the base fluids above, have been reported by Hood et al. Candler et al. performed the 10-day sediment toxicity test with the amphipod *Ampelicsa abdita* in place of *Leptocheirus plumulosus*, and again obtained very similar results as follows: diesel LC_{50} of 879, enhanced mineral oil LC_{50} of 557, internal olefin LC_{50} of 3,121, and PAO LC_{50} of 10,680.

None of these researchers reported sediment toxicity values for vegetable esters. Recently, industry has evaluated a number of base fluids including vegetable esters. While the absolute values are not comparable because the tests were performed on the drilling fluid and not just the base fluid, the results showed the vegetable ester to be less toxic than the internal olefin.

Researchers in the United Kingdom and Norway investigating effects in the North Sea have conducted sediment toxicity tests on other organisms, namely *Corophium volutator* and *Abra alba*. Similar trends were seen in the measured toxicity, with vegetable ester having very low sediment toxicity (very high LC_{50}), poly alpha olefin having a mid range toxicity, and internal olefin having a higher toxicity, in this comparison.

While the poly alpha olefins were found to have the lowest toxicity of the measured base fluids (excludes vegetable esters), EPA did not base the toxicity limitation on poly alpha olefins because, as presented below, they biodegrade much more slowly and so are unlikely to pass the biodegradation limitation. EPA intends to generate and gather additional data comparing the toxicity of the various base fluids, especially to compare the vegetable ester toxicity with that of the olefins since, at this time, directly comparable data is not available. If vegetable esters are found to have significant reduced toxicity compared to the other base fluids, EPA may choose to base the toxicity limitation on vegetable esters. EPA has concerns, however, over the technical performance and possible non-water quality implications with the use of vegetable ester as the only technology available to meet the stock base fluid limitations, as discussed below under biodegradation.

As an alternative, EPA solicits comment on a numeric limitation of a minimum LC_{50} of 2,600 mg base fluid/Kg dry sediment as an appropriate level of control, based on the toxicity of C_{16} – C_{18} internal olefins as determined by the 10-day sediment toxicity test using *Leptocheirus plumulosus* as the test organism. If EPA pursues this approach, EPA expects that it may need to revise this numeric limitations due to the variability currently experienced with this test.

d. *Biodegradation Rate Technical Availability.*—Today's proposed limitation of biodegradation rate for the base fluid, as determined by the solid phase test, is equal to or faster than the rate of a C_{16}-C_{18} internal olefin. Alternatively, this limitation could be expressed as the percent of the base fluid degraded at 120 days minus the percent of C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero. With this limitation the base fluids currently available for use include vegetable ester, linear alpha olefin, internal olefins, and possibly certain linear paraffins. Combined with the other stock base fluid limitations of PAH content and sediment toxicity, the base fluids for which EPA has data that would attain all three limitations are internal olefins and vegetable esters.

EPA finds this limit to be technically available because information in the rulemaking record supports that internal olefin SBFs and vegetable ester SBFs together have performance characteristics to address the broad variety of drilling situations found offshore.

As an alternative to today's proposal, EPA solicits comment on a numeric limitation of a minimum biodegradation rate of 68 percent base fluid dissipation at 120 days for the standardized solid phase test. If EPA pursues this approach, EPA expects that it may need to revise this numeric limitations as additional test results are generated.

As with the sediment toxicity test presented above, due to the lack of data from the biodegradation test EPA again intends to propose a limitation based on comparative testing rather than propose a numerical limitation. Therefore, if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the biodegradation of the base fluid should be presented with data, generated in the same series of tests, showing the biodegradation of the internal olefin as a standard. EPA prefers this approach rather than set a numerical limitation at this time because of the small amount of data available to EPA upon which to base a numerical limitation. EPA sees this as an interim solution to the problem of having insufficient information at the time of this proposal to provide a numerical limitation, in that it still provides a limitation based on the performance of available technologies.

Rates of biodegradation for synthetic and mineral oil base fluids have been determined by both the solid phase and the simulated seabed test, and the relative rates of biodegradation among these two tests agree. These tests have found that, the order of degradation, from fastest to slowest, is as follows: vegetable ester > linear alpha olefin > internal olefin > linear paraffin > mineral oil > poly alpha olefin.

EPA has selected the internal olefin as the basis for the biodegradation rate limitation instead of the vegetable ester for two reasons: technical performance and non-water quality environmental impacts. Industry representatives have reported that SBFs using esters currently on the market today are not adequate choices for most deepwater drilling applications. Reportedly, the available esters thicken considerably at the cold temperatures encountered in the riser in deep water. This thickening can cause excessive pressure surges when attempting to re-initiate circulation. These pressure surges can result in breakdown of exposed formations resulting in severe SBF losses to the destabilized formations. In addition to SBF losses, pressure surges can destabilize the formation to the extent of hole collapse and loss of any

drilling tools downhole. EPA solicits comment concerning the maximum depth at which vegetable ester SBFs are practical, the development on new esters with lower viscosity, and if special systems, such as subsea pumping systems, ameliorate the pumping difficulties.

Cost is a factor in encouraging the use of SBFs in place of OBFs. Industry representatives have told EPA that vegetable ester SBF costs about twice as much as internal olefin SBF. EPA believes that if the lower cost internal olefin SBFs can be discharged, then more wells currently drilled with OBF would be encouraged to convert to SBF than if only the more expensive vegetable ester SBFs were available for discharge. This conversion is preferable for the improvements in non-water quality environmental impacts (see section VII below). If future research shows that vegetable esters have a significantly reduced toxicity in addition to the proven faster rate of biodegradation, EPA may consider more stringent stock base fluid limitations to favor the use of vegetable ester SBFs for the final rule.

e. *Economic Achievability of Stock Base Fluid Controls.*—EPA finds that the proposed stock base fluid controls are economically achievable. Industry representatives have told EPA that while the synthetic base fluids are more expensive than diesel and mineral oil base fluids, the savings in discharging the SBF-cuttings versus land disposal or reinjection of OBF-cuttings more than offsets the increased cost of SBFs. Thus, it reportedly costs less for operators to invest in the more expensive SBF provided it can be discharged. The stock base fluid limitations proposed above allow use of the currently popular SBFs based on internal olefins ($195/bbl) and vegetable esters ($380/bbl). For comparison, diesel oil-based drilling fluid costs about $65/bbl, and mineral oil-based drilling fluid costs about $75/bbl. According to industry sources, currently in the Gulf of Mexico the most widely used and discharged SBFs are, in order of use, based on internal olefins, linear alpha olefins, and vegetable esters. Since the stock limitations allow the continued use of the preferred internal olefin and vegetable ester SBFs, EPA attributes no additional cost due to the stock base fluid requirements other than monitoring (testing and certification) costs. EPA expects that these monitoring costs will fall upon the base fluid suppliers as a marketing cost. As further described in Section XII, EPA anticipates that PAH monitoring would occur batchwise, and sediment toxicity and biodegradation monitoring would occur once annually per synthetic base fluid per supplier.

Pursuant to EPA's further research into sediment toxicity and biodegradation, EPA may propose limits for the final rule that are different than the limits proposed today. If the limits were to allow only more expensive SBFs, such as the vegetable ester, EPA would likely estimate a cost to comply with the stock base fluid limits for those operators who currently use and discharge the less expensive SBFs, for instance those based on internal olefins.

2. Discharge Limitations Technical Availability and Economic Achievability

a. *Formation Oil Contamination of SBF-Cuttings.*—Today's proposed formation oil contamination limitation of the SBF adhered to the drill cuttings is ''weighted'' to detect contamination by highly aromatic formation oils at lower concentrations than formation oils with lower aromatic contents. Under the proposed limitation approximately 5 percent of all (all meaning a large representative sampling) formation oils would fail (not comply) at 0.1 percent contamination and 95 percent of all formation oils will fail at 1.0 percent contamination. The majority of formation oils would cause failure when present in SBFs at a concentration of about 0.5 percent (vol/vol).

EPA is proposing two methods for the determination of formation oil in SBFs. Analysis by gas chromatography with mass spectroscopy detection (GC/MS) would apply to any SBF being shipped offshore for drilling to allow discharge of the associated cuttings. During drilling, the SBF would be required to comply with the limitation of formation oil contamination as determined by the reverse phase extraction (RPE) method. SBFs found to be non-compliant by the RPE method could, at the operators discretion, be confirmed by testing with the GC/MS method. Results from the GC/MS method would supersede those of the RPE method.

EPA intends that the limitation proposed on formation (crude) oil contamination in SBF is no less stringent that the limitation imposed on WBF through the static sheen test. A study concerning this issue found that in WBF, the static sheen test detected formation oil contamination in WBF down to 1 percent in most cases, and down to 0.5 percent in some cases.

Currently, only a very small percent of WBF cannot be discharged due to presence of formation oil as determined by the static sheen test. EPA solicits information regarding the frequency of formation oil contamination at this level of control. EPA has received some anecdotal information to the effect that far less than one percent of SBF cuttings would not be discharged due to formation oil contamination at this level of control. Based on the available information, EPA believes that only a very minimal amount of SBF will be non-compliant with this limitation and therefore be required to dispose of SBF-cutting onshore or by injection. EPA thus finds that this limitation is technically available. EPA also finds this option to be economically achievable because there is no reason why formation oil contamination would occur more frequently under this rule than under the current rules which industry can economically afford. For calculation purposes, EPA has determined that no costs are associated with this requirement other than monitoring and reporting costs, which are minimal costs for this test for this industry.

b. *Retention of SBF on Cuttings.*—This limitation considers the technical availability of methods to recover SBF from the cuttings wastestream. EPA evaluated the performance of several technologies to recover SBF from the cuttings wastestream and their costs, as detailed in the Development Document. EPA also considered fuel use, safety, and other considerations.

The solids control system typically consists of, at a minimum, a primary shale shaker to remove the larger cuttings. Typically, all or a portion of the drilling fluid is then passed through a secondary shale shaker or ''mud cleaner'' to remove the small particle cuttings, or ''fines,'' before being recirculated to the active mud system. Greater efficiencies in the use of these currently used technologies through reduced loadings and more even flow across the screens, better maintenance of the screens, and better integration of the solids control system would help operators achieve these proposed discharge limitations. An ancillary or alternative method to reduce SBF discharges is to retain the fines for on shore disposal. Because of their small size and large surface area, the fines retain more drilling fluid than an equal amount of larger cuttings coming off the shale shakers. Therefore, while the bulk of the cuttings may be discharged, retaining the fines for on shore disposal can be used to disproportionately reduce the overall discharges of SBF.

The American Petroleum Institute (API) performed a study in 1997 which gathered data on SBF retention on drill cuttings. Data gathered in the study show the long term average retention

rate of SBF on cuttings, weighted by hole volume, is 10.6 percent from the primary shale shaker and 15.0 percent from the secondary shale shaker, expressed as weight synthetic base fluid per weight of wet cuttings. Industry representatives further estimated that the cuttings from the primary shale shaker comprise 80 percent of the total cuttings wastestream, and the remaining 20 percent is removed by either the secondary shale shaker or other devices to remove very small cuttings, or fines. EPA used this information to calculate a long term average weighted retention of 11.5 percent base fluid on wet cuttings using the current technologies employed in the Gulf of Mexico.

Recently, in the wake of the development of SBFs and discharge limitations in the North Sea, new cuttings cleaning devices have been developed which reduce SBF retained on the cuttings. An effective device consists of a conically shaped vibrating centrifuge, which removes recycle-grade SBF from the cuttings coming off the primary shale shakers. EPA selected this conical vibrating centrifuge as the model technology on which to base its performance and cost calculations. The manufacturer of the device has supplied EPA with detailed performance data and some cost information of this device. The performance has been confirmed by one operator, showing retention data for twelve wells and comparing the vibrating centrifuge with shale shaker technology. In addition, EPA was invited by an operator in the Gulf of Mexico to observe the operation of the vibrating centrifuge. EPA has learned that the operator has written a report concerning the operation of this SBF recovery device, but this report has not been made available to EPA. The operator has informed EPA as to the cost of implementing the vibrating centrifuge, and EPA used this cost information in determining the total cost of implementation. EPA is aware of at least one other company that makes a similar centrifugal device to recover SBFs from drill cuttings, although EPA has not received performance or costs for this machine.

The limitation proposed today for retention of SBF is 10.2 percent base fluid on wet cuttings (weight/weight), averaged by hole volume over the well sections drilled with SBF. Those portions of the cuttings wastestream that are retained for no discharge are factored into the weighted average with a retention value of zero. The limit assumes that SBF-cuttings processed by the vibrating centrifuge technology comprise 80 percent of the wastestream while the remaining 20 percent is comprised of SBF-cuttings from the secondary shale shaker. Thus, from the available data EPA determined that the retention attained for 95 percent of volume-weighted well averages was 7.22 for the vibrating centrifuge and 22.0 for the secondary shale shakers. Applying the assumption of an 80/20 split between the two wastestreams, EPA determined the weighted average retention regulatory limit of 10.2 percent.

Based on current performance of the vibrating centrifuge technology, 95 percent of all volume-weighted average values for retention of drilling fluids over the course of drilling a well are expected to be less than the proposed limit. Some, but not all, of the variability between wells is due to factors under the control of the operators. EPA believes that the proposed limit can be met at all times by providing better attention to the operation of the technology and by keeping track of the weighted average for retention as the well is being drilled. If the trend in weighted average retention appears to the operator as if the average retention for a particular well will exceed the limitation prior to completion of the well then EPA recommends that the operator retain some or all of the remaining cuttings for no discharge. This is feasible because retention of SBF on drill cuttings is generally low in the early stages of drilling a well and it increases as the well goes deeper.

EPA used the same statistical analysis to determine the long term average retention values. These values were used for cost and loadings calculations. For the vibrating centrifuge and the secondary shale shaker, respectively, EPA determined that the long term between-well average percent retention of SBF on cuttings was 5.14 and 15.00. Applying the assumption of an 80/20 split between the two wastestreams, the long term average value for cost and loading calculations is 7.11 percent SBF retained on wet cuttings. Cost and loadings calculations also assumed 7.5 percent washout of the well bore.

EPA finds that a well-average limit of 10.2 percent base fluid on wet cuttings is economically achievable. According to EPA's analysis, in addition to reducing the discharge of SBFs associated with the cuttings, EPA estimates that this control will result in a net savings of $5.0 MM. This savings results because the value of the SBF recovered is greater than the cost of implementation of the technology. This analysis is presented in Section IX of today's notice, and in greater detail in the Development Document.

EPA thinks that this regulatory limitation is necessary to both hasten and broaden the use of improved SBF recovery devices, even though industry may be inclined to implement the SBF recovery technology to save valuable SBF irrespective of the limitation. There could be several reasons why industry does not already use the model SBF recovery technology even though, in EPA's assessment, it saves the operator money. For one, market acceptance and market penetration of the vibrating centrifuge could be a reason. The vibrating centrifuge recovery technology is a new technology that was developed in the North Sea and has only been demonstrated a few times in the United States. Secondly, the cost and resources devoted to retrofitting might only benefit a small portion of the wells drilled by an operator. This is because only a small fraction of wells, about 13 percent in EPA's analysis, are drilled with SBFs. To counter this, however, is the fact that most SBF wells are concentrated in the deep water. EPA projects that 75 percent of all wells drilled in the deepwater would use SBFs. In addition, retrofitting costs and market forces would encourage the dedication of drill platforms equipped with improved SBF recovery technology to the drilling of SBF wells. The use of improved SBF recovery devices in the North Sea is a case in point. Operators have reported to EPA that in the North Sea they were reluctant to use improved SBF recovery devices, and eventually did so only in response to more stringent regulatory requirements. These operators report that their total cost to drill an SBF well actually went down as they implemented the improved SBF recovery devices because of the value of the SBF recovered.

H. NSPS Technology Options Considered and Selected

The general approach followed by EPA for developing NSPS options was to evaluate the best demonstrated SBFs and processes for control of priority toxic, nonconventional, and conventional pollutants. Specifically, EPA evaluated the technologies used as the basis for BPT, BCT and BAT. The Agency considered these options as a starting point when developing NSPS options because the technologies used to control pollutants at existing facilities are fully applicable to new facilities.

EPA has not identified any more stringent treatment technology option which it considered to represent NSPS level of control applicable to the SBF-cuttings wastestream. Further, EPA has made a finding of no barrier to entry based upon the establishment of this

level of control for new sources. See section X, Economic Analysis. Therefore, EPA is proposing that NSPS be established equivalent to BPT and BAT for conventional, priority, and nonconventional pollutants.

VII. Non-Water Quality Environmental Impacts of Proposed Regulations

A. Introduction and Summary

The elimination or reduction of one form of pollution has the potential to aggravate other environmental problems. Under sections 304(b) and 306 of the CWA, EPA is required to consider these non-water quality environmental impacts (including energy requirements) in developing effluent limitations guidelines and NSPS. In compliance with these provisions, EPA has evaluated the effect of this proposed regulation on air pollution, energy consumption, solid waste generation and management, consumptive water use, safety, and vessel traffic.

Based on this evaluation, EPA currently prefers the discharge option over the zero discharge option because of the non-water quality environmental impacts that would occur with zero discharge, compared to the water quality impacts that would occur with discharge as controlled by this proposed rule. Thus, non-water quality environmental impacts are a major consideration for this rule because of the nature of the wastes and where the wastes are generated and disposed.

If SBF-cuttings cannot be discharged, cuttings from SBF wells would have to be transported to shore for treatment and disposal, or made into a slurry and injected on-site. In this case, EPA assumes that most operators will not use SBF in place of OBF, because SBFs cost more than OBFs. On the other hand, if SBF-cuttings can be discharged, not only are non-water quality environmental impacts from current SBF wells drastically reduced, but EPA also estimates that some OBF wells would convert to SBF, further decreasing these impacts. EPA estimates that in the Gulf of Mexico (GOM) 20 percent of OBF wells will convert to SBF wells. EPA also estimates that these GOM OBF wells are in shallow water (less than 1000 feet). In deep water, EPA assumes that those wanting to use SBFs are already doing so and therefore these facilities are not considered to yield non-water quality environmental impacts reductions. In offshore California and Cook Inlet, Alaska, EPA assumes that all OBF wells will convert, because of the greater expense of OBF-cuttings discharge and an ever greater concern for non-water quality environmental impacts in these areas as compared to the GOM. For example, disposal of OBF-cuttings in Cook Inlet, Alaska, would likely require the barging of the waste to the lower 48 States. Air quality in California is a continuing concern and therefore there is pressure to keep air emissions from oil and gas drilling activities in the neighboring offshore waters at a minimum.

In total, for existing and new sources under the discharge option, EPA estimates that air emissions would be reduced by 72 tons per year, based on OBF facilities switching to SBF. If the zero discharge option was selected, however, air emissions would increase by 378 tons per year, based on SBF to OBF conversion. Therefore, in moving from the zero discharge option to the discharge option, air emissions would be reduced by 450 tons per year. In addition, EPA estimates than 29,359 BOE less fuel would be used.

Other favorable non-water quality environmental impacts occur with the elimination of the long term disposal of OBF-cuttings on shore, because the pollutants present in OBF-cuttings may affect ambient air, soil, and groundwater quality. EPA estimates that allowing discharge of SBF-cuttings compared to zero discharge would decrease the amount of OBF-cuttings disposed at land based facilities by 172 MM pounds annually, and the amount injected by 40 MM pounds. The methodology used to arrive at these numbers is described in the sections which follow, and the results are discussed in more detail.

In consideration of the many non-water quality benefits with SBF-discharge, EPA currently prefers to allow the controlled discharge of SBF-cuttings despite some additional SBF-cuttings discharges that may occur as a result of this rule. EPA's authority to consider the non-water quality environmental impacts of its rule, therefore, forms the primary basis in EPA's rejection of zero discharge of SBF-cuttings.

B. Method Overview

EPA estimated annual energy consumption (i.e., fuel usage), air emissions, and solid waste generation rates from information on model well characteristics and current drilling activity gathered from industry, State, and Federal agency sources. This framework is based upon the model well, well count, and control technology data that is detailed in the compliance cost and pollutant reductions discussions of today's notice (Section IX). EPA's calculations are based on the following projections: wells drilled with SBF in the Gulf of Mexico currently discharge SBF-cuttings containing an average 11 percent by weight synthetic base fluid; under the discharge option SBF-cuttings would retain an average 7 percent base fluid on cuttings; and of the wells drilled with OBF 80 percent practice zero discharge by hauling OBF-cuttings to shore for land-based disposal, and the remaining 20 percent inject on-site. In the context of the non-water quality environmental impacts analysis, SBF wells using standard solids control equipment and discharging SBF-cuttings at 11 percent retention are defined as the baseline. Increases or decreases in non-water quality environmental impacts are compared to this baseline. For example, current OBF wells that EPA projects would convert to SBF in the discharge option are assigned baseline impacts because these wells use energy consuming technologies (i.e., transportation for disposal or injection) beyond standard solids control equipment.

After establishing baseline impacts, EPA calculated impacts resulting from compliance with the proposed discharge and zero discharge options, details of which are given in the following discussions. EPA then calculated the incremental impacts by subtracting the compliance impacts from the baseline impacts.

The discussions below adopt the following acronyms for the four model well types developed for well-specific analyses: DWD (deep-water development), DWE (deep-water exploratory), SWD (shallow-water development), and SWE (shallow-water exploratory).

C. Energy Consumption and Air Emissions for Existing Sources

1. Energy Consumption

a. *Baseline Energy Consumption.*— EPA's estimated non-water quality environmental impacts for the discharge and zero discharge options, for existing sources, are presented in Table VII–1. EPA set baseline energy consumption according to SBF wells discharging SBF-cuttings at 11 percent retention of base fluid on wet cuttings. Table VII–1 shows, therefore, that the baseline energy consumption (i.e., fuel usage) is zero for existing Gulf of Mexico SBF wells, because increases or decreases in fuel use and air emissions are compared to this level.

TABLE VII–1.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE, NON-WATER QUALITY ENVIRONMENTAL IMPACTS OF SBF CUTTINGS MANAGEMENT FROM EXISTING SOURCES

Technology basis	Gulf of Mexico		Offshore California		Cook Inlet, Alaska		Total	
	Air emissions (tons/yr)	Fuel usage (BOE/yr) [a]	Air emissions (tons/yr)	Fuel usage (BOE/yr) [a]	Air emissions (tons/yr)	Fuel usage (BOE/yr) [a]	Air emissions (tons/yr)	Fuel usage (BOE/yr) [a]
Baseline Non-Water Quality Environmental Impacts:								
Currently SBF Discharge (11% reten.)	0	0	NA	NA	NA	NA	0	0
Currently OBF Zero Discharge [b]	47.92	3,433	36.61	2,121	2.08	285	86.61	5,839
Compliance Non-Water Quality Environmental Impacts:								
Discharge Option (7% reten.)	12.54	3,035	0.76	187	0.01	4	13.30	3,226
Zero Discharge Option	338.55	24,125	NA	NA	NA	NA	338.55	24,125
Incremental Non-Water Quality Environmental Impacts Reductions (Increases):								
Discharge Option (7% reten.)	35.38	398	35.86	1,934	2.07	281	73.31	2,613
Zero Discharge Option	(338.55)	(24,125)	0	0	0	0	(338.55)	(24,125)

[a] BOE (barrels of oil equivalent) is the total diesel volume required converted to equivalent oil volume (by the factor 1 BOE = 42 gal. diesel) and the volume of natural gas required converted to equivalent oil volume (by the factor 1,000 scf = 0.178 BOE).
[b] Baseline non-water quality environmental impacts from the 23 (20 percent) OBF wells that convert to SBF upon promulgation of today's proposed rule.

Baseline fuel usage rates for OBF wells in offshore California and coastal Cook Inlet, Alaska derive from activities associated with transporting waste drill cuttings to shore and land-disposing the cuttings. For this analysis, EPA used the method developed to estimate zero discharge impacts under the Offshore and Coastal Oil and Gas Rulemakings. EPA used the volumes of drilling waste requiring onshore disposal to estimate the number of supply boat trips necessary to haul the waste to shore. Projections made regarding boat use included types of boats used for waste transport, the distance traveled by the boats, allowances for maneuvering, idling and loading operations at the drill site, and in-port activities at the dock. EPA estimated fuel required to operate the cranes at the drill site and in-port based on projections of crane usage. EPA determined crane usage by considering the drilling waste volumes to be handled and estimates of crane handling capacity. EPA also used drilling waste volumes to determine the number of truck trips required. The number of truck trips, in conjunction with the distance traveled between the port and the disposal site, enabled an estimate of fuel usage. The use of land-spreading equipment at the disposal site was based on the drilling waste volumes and the projected capacity of the equipment. The annual baseline fuel usage in barrels of oil equivalents (BOE) is 2,121 BOE for offshore California, and 285 BOE for coastal Cook Inlet.

In the Gulf of Mexico analysis, EPA projected that 20 percent of OBF wells in shallow water would become SBF wells as a result of this rule, and therefore they are included in the zero discharge analysis. Baseline fuel usage rates (and all other impacts) for OBF wells in the Gulf of Mexico are based on the assumption that 80 percent of these wells use land-disposal for zero discharge and the remaining 20 percent use on-site injection to dispose of OBF-cuttings. This assumption is discussed further in Section IX of this Preamble, and in the Development Document. Baseline fuel usage rates for zero discharge via land-disposal were calculated using the same analysis used in the offshore rule for California wells and coastal rule for Cook Inlet wells. Baseline fuel usage rates for Gulf of Mexico wells that inject waste cuttings onsite were calculated as the sum of the fuel usage for the model turnkey injection system considered for the zero discharge option, which consists of transfer equipment for moving cuttings, grinding and processing equipment, and injection equipment. The per-well fuel usage rates for wells that use on-site injection are weighted averages of diesel usage rates and natural gas usage rates, according to the estimate that 85 percent use diesel and 15 percent use natural gas as primary power sources in the Gulf of Mexico. By multiplying the average per-well baseline fuel usage rates by the projected annual drilling activity for the four model wells in the Gulf of Mexico, EPA calculated an annual baseline fuel usage of 3,433 BOE for the Gulf of Mexico, and 5,839 BOE for all wells in the baseline.

b. *Compliance Energy Consumption*.—Energy consumption for the discharge option was calculated by identifying the equipment and activities associated with the operation of a vibrating centrifuge to reduce the retention of the synthetic base fluid on drill cuttings from an average 11 percent to seven percent, measured on a wet-weight basis. Details regarding the technology basis for this option are presented in Section VI of this Preamble, and in the Development Document. Using the characteristics of the four model wells (see Section IX.B), EPA calculated per-well energy consumption based on the horsepower demand specified for the vibrating centrifuge by its manufacturer. The horsepower demand was multiplied by the fuel usage rate and the hours of operation required to drill the SBF section of the well, specific to each model well type.

Since they are based on the same technology, the discharge option per-well energy consumption rates are the same for the three geographic areas, but vary based on the fuel source employed in each area. In the Gulf of Mexico, industry sources recently estimated that approximately 85 percent of drilling operations use diesel oil as the primary fuel source, and the remaining 15 percent use natural gas. Information regarding fuel sources for the offshore California area indicates a variety of sources, including diesel, natural gas, and for some platforms, submerged electrical cables connected to shore-based power supplies. For this analysis, it was determined that deep water wells in offshore California use diesel as the primary fuel source, and shallow water wells use natural gas. For coastal Cook Inlet wells, natural gas was determined to be the primary fuel source, based on information supplied by the industry both recently and submitted in the Coastal Oil and Gas Rulemaking effort. Based on these determinations and projected drilling activity estimates, EPA calculated the following annual

discharge option fuel usage rates for the three geographic areas: 3,035 BOE for the Gulf of Mexico, 187 BOE for offshore California, and 4 BOE for Cook Inlet, for a total annual fuel usage rate of 3,226 BOE for existing sources in the discharge option.

EPA calculated energy consumption for compliance with the zero discharge option for the Gulf of Mexico wells that EPA estimates currently discharge SBF cuttings, since these wells would need to convert from discharge to zero discharge under this option. EPA estimated fuel usage rates were estimated by identifying the equipment and activities associated with two zero discharge technologies currently in use in the Gulf of Mexico: 1) transporting waste cuttings to shore-based land disposal sites; and 2) on-site injection. The methods developed for calculating fuel usage for both these zero discharge technologies are described above for baseline OBF wells. While the same line-items were used to estimate impacts for the transport and land-disposal technology scenario in all three geographic areas, the per-well fuel usage rates vary between the three geographic areas due to the various distances traveled by and trip frequencies of boats and trucks in these areas. By multiplying the weighted average per-well fuel usage rates by the projected annual drilling activity for the four model wells in the Gulf of Mexico, EPA calculated a total annual fuel usage rate of 24,125 BOE for existing sources in the zero discharge option.

c. *Incremental Compliance Energy Consumption.* Incremental compliance impacts are the difference between the baseline and the compliance impacts, and indicate the amount by which baseline impacts would be reduced with implementation of the compliance technologies considered. Table VII–1 lists the total annual incremental fuel usage rates for each geographic area for both the discharge and zero discharge options. With the implementation of the discharge option, there would be a reduction in fuel use of 2,613 BOE annually for existing sources. This reduction is due to the elimination of transport and land disposal equipment used to manage waste cuttings from baseline OBF wells that switch to SBFs. Under zero discharge, there would be an increase in fuel use of 24,125 BOE per year for existing sources. This increase is due to the addition of transport and land disposal equipment to manage waste cuttings from baseline SBF wells that currently discharge cuttings.

2. Air Emissions

EPA estimated air emissions resulting from the operation of boats, cranes, trucks, and earth-moving equipment necessary to dispose of waste cuttings onshore, or the operation of on-site grinding and injection equipment, by using emission factors relating the production of air pollutants to time of equipment operation and amount of fuel consumed. The baseline emissions, emissions reductions under the discharge option, and emissions increases under the zero discharge option are presented in Table VII–1.

D. Energy Consumption and Air Emissions for New Sources

Based on current drilling activity data and information provided by industry sources, EPA projects that an estimated 19 new source SBF wells will be drilled annually in the Gulf of Mexico, consisting of 18 deep water development wells and 1 shallow water development well. No new source wells are projected for offshore California and coastal Cook Inlet because of the lack of activity in new lease blocks in these areas. New source wells are defined as those requiring substantial new infrastructure, and exclude exploratory wells by definition (EPA, 1993; EPA, 1996).

Table VII–2 lists the annual energy consumption (i.e., fuel usage) and air emissions calculated for baseline, discharge, and zero discharge option for new sources. The methods used to calculate the per-well impacts for new source wells are the same as for existing sources, described above. The analysis indicates that new source wells in the discharge option will marginally increase fuel use and air emissions above the baseline. This increase is due to implementation of the model SBF recovery device such that, instead of discharging waste SBF-cuttings at the baseline control level of 11 percent retention, would discharge at 7 percent retention. In the zero discharge option, applying zero discharge technologies increases fuel use and air emissions. Both increments represent the use of energy-consuming equipment above the baseline. However, the discharge option raises energy consumption only slightly while the zero discharge option leads to a large increase in energy consumption and corresponding air emissions.

TABLE VII–2.—SUMMARY ANNUAL BASELINE, DISCHARGE, AND ZERO DISCHARGE NON-WATER QUALITY ENVIRONMENTAL IMPACTS OF SBF CUTTINGS MANAGEMENT FROM NEW SOURCES

Technology basis	Gulf of Mexico	
	Air emissions (tons/yr)	Fuel usage (BOE/yr) [a]
Baseline: Discharge (11% retention)	0	0
Compliance:		
Discharge (7% retention)	1.28	311
Zero Discharge	39	2,932
Incremental Reductions (Increases):		
Discharge (7% retention)	(1.28)	(311)
Zero Discharge	(39)	(2,932)

[a] BOE (barrels of oil equivalent) is the total diesel volume required converted to equivalent oil volume (by the factor 1 BOE = 42 gal diesel) and the volume of natural gas required converted to equivalent oil volume (by the factor 1,000 scf = 0.178 BOE).

E. Solid Waste Generation and Management

The regulatory options considered for this rule will not cause generation of additional solids as a result of the treatment technology. However, the quantity of SBF-cuttings discharged under the discharge option will be traded for a nearly equal quantity of OBF-cuttings disposed of onshore or injected onsite to comply with the zero discharge option. Implementation of the discharge option will result in reductions of solid waste currently disposed at land-based facilities and by injection, due to the OBF wells converting to SBF wells. For existing sources currently using OBFs, under the discharge option, the annual amount of waste cuttings disposed at land-based facilities would be reduced by 30 MM pounds, and the amount injected would be reduced by 4 MM pounds, for a total of 34 MM pounds. Implementation of the zero discharge option by existing sources would result in an increase of 132 MM pounds of waste cuttings disposed onshore, and 33 MM pounds injected, for a total of 165 MM pounds. Thus, under the discharge option, for existing sources the total reductions in amount of waste cuttings disposed of at land-based facilities would be 162 MM pounds, and the total amount injected would be reduced by 37 MM pounds.

The new sources analysis considers only SBF wells that discharge waste cuttings with 11 percent retention of synthetic base fluid on cuttings, which under the discharge option would discharge at 7 percent. Therefore, under the discharge option the incremental amount of waste cuttings disposed onshore or injected is zero. Under the

zero discharge option, EPA estimated that 10 MM pounds would be transported to shore and 2.6 MM pounds would be injected, for a total of 13 MM pounds disposed annually for new sources.

Combining the reductions from the discharge option with the increases in the zero discharge option, for existing and new sources combined, shows that the total effect of discharge versus zero discharge reduces the amount of OBF-cuttings sent to shore for land disposal by 172 MM pounds annually and reduces the amount injected by 40 MM pounds annually. Thus the total reduction in zero-discharge OBF-cuttings waste is 212 MM pounds annually.

F. Consumptive Water Use

Since little or no additional water is required above that of usual consumption, no consumptive water loss is expected as a result of this rule.

G. Safety

EPA investigated the possibility of an increase in injuries and fatalities that would occur as a result of hauling additional volumes of drilling wastes to shore under the zero discharge option. EPA acknowledges that safety concerns always exist at oil and gas facilities, regardless of whether pollution control is required. EPA believes that the appropriate response to these concerns is adequate worker safety training and procedures as is practiced as part of the normal and proper operation of oil and gas facilities.

EPA believes the preferred discharge option may marginally decrease the number of accidents due to the decrease in supply vessel traffic, as well as the decrease of crane usage to load and unload cuttings boxes. However, EPA finds that these differences are not significant, in light of the analysis of the following section on vessel traffic.

H. Increased Vessel Traffic

EPA estimated the amount of additional vessel traffic that would result from the implementation of the preferred discharge option and the zero discharge option. To measure increases or decreases in vessel traffic, the current baseline level of supply boat frequency for wells currently drilled with OBF was calculated using the numbers of boat trips estimated as part of the energy consumption and air emissions impact analyses described above.

To comply with the zero discharge option, EPA estimates that the 113 existing and new source wells in the Gulf of Mexico (GOM) currently drilled with SBF would implement zero discharge technologies. Based on the assumption that 80 percent of these wells would transport waste drill cuttings to shore, an estimated total of 91 boat trips per year would be required. No additional boat trips would be required in California and Cook Inlet, Alaska, because these regions are currently at zero discharge of SBF-cuttings.

Under the discharge option, 23 (20 percent) GOM wells, the 12 California wells, and the one Cook Inlet well, currently drilled with OBF would convert to SBF usage, thereby eliminating the need for hauling OBF cuttings to shore. Baseline supply boat trips per year were estimated as follows: 18 trips for the 23 wells in the Gulf of Mexico where 18 wells transport drill cuttings to shore and the other 5 inject on-site; 12 trips for the 12 wells in offshore California; and 1 trip for the well in coastal Cook Inlet. Therefore, EPA projects that supply boat traffic would decrease by 31 boat trips per year. Compared to the zero discharge option which led to 91 additional boat trips per year in the GOM, the discharge option reduces boat traffic over the three regions by 122 boat trips per year, and in the GOM by 109 boat trips per year. As cited in the Offshore Oil and Gas Development Document, 10 percent of the total Gulf of Mexico commercial vessel traffic, or approximately 25,000 vessels, service oil and gas operations. Therefore, compared to the zero discharge option, the discharge option decreases commercial boat traffic by 0.04 percent in the GOM. EPA does not consider this decrease a significant impact.

VIII. Water Quality Impacts of Proposed Regulations

A. Introduction

EPA has evaluated the potential effects of the proposed regulation on the receiving water environment. Consistent with the scope of the rule, the analysis covers only those geographic areas where water-based drilling fluids (WBFs) may be discharged under current regulations, i.e., offshore waters beyond three miles from the shoreline, Alaska offshore waters with no three-mile restriction, and the coastal waters of Cook Inlet, Alaska.

Based on performance characteristics, SBFs are considered to be a substitute for traditional oil-based drilling fluids (OBFs) using diesel oil and mineral oil, but not for WBFs. For the water quality impacts analysis, EPA has assumed that the future use of WBFs will be in keeping with current practice, and that SBFs will replace traditional OBFs at 20 percent of the wells where OBFs would otherwise be used. EPA intends that ''whole'' SBFs will not be discharged, and therefore only the drill cuttings and the adherent residual fluid will be discharged. This is in contrast with the current regulation for WBF drilling wastes, which allows for the controlled discharge of both cuttings and whole fluids. Discharge of traditional OBF drilling wastes to water is not allowed by current regulations and permits. OBF drilling wastes are therefore injected into disposal wells or shipped to shore for proper disposal.

Allowing the discharge of SBF-cuttings would make them, in many cases, less expensive to use than OBFs, and thus would encourage the use of SBFs. Changing practices from traditional OBF drilling/offsite disposal to SBF drilling/onsite discharge is expected to produce significant non-water quality environmental benefits (see Section VII). However, since discharge of traditional OBFs is prohibited, switching from OBF drilling/offsite disposal to SBF drilling/onsite discharge would result in additional water quality impacts. Where SBF cuttings are currently being discharged, the proposed discharge controls would reduce the water quality impacts. EPA has evaluated the water quality impacts of SBF discharges, and has used this analysis in balancing today's proposal with non-water quality environmental impacts associated with the use of OBFs. Based on this analysis, EPA prefers to allow the controlled discharge of SBF cuttings and reduce non-water quality environmental impacts.

The chemical composition (and for the most part, toxicity testing) of various existing SBFs indicate that they are considerably less toxic and less hazardous to human health than traditional OBFs. Therefore, the water quality impacts from an accidental spill of SBFs would be expected to be lower compared to a similar spill involving traditional OBFs.

B. Types of Impacts

1. Pollutant Characterization

Although SBFs are not considered to be a replacement for WBFs, it is useful to compare the two types of fluids, since the discharge of WBFs is currently allowed. As with WBF discharges, SBF-cuttings discharges will contain total suspended solids (TSS) associated with the drill cuttings and solids of the drilling fluid, metals associated with the drilling fluid barite and the geologic formation, and priority and nonconventional pollutants associated

with potential contamination by formation (crude) oil. Some pollutants of concern from the barite include priority metals such as arsenic, chromium, copper, lead, mercury, nickel, and zinc, and nonconventional pollutants such as aluminum and tin. Formation oil contamination may include priority organics such as fluorene, naphthalene, phenanthrene, and phenol, and nonconventional pollutants such as alkylated benzenes and total biphenyls.

Compared to WBFs and associated cuttings, SBF-cuttings will have additional pollutants associated with the synthetic base fluids themselves. In general, these pollutants are long-chain hydrocarbons or esters of vegetable fatty acids which present a significant organic loading. They are considered non-conventional pollutants.

The principal water column impacts anticipated from SBF drilling wastes are increased turbidity and toxicity. Turbidity is associated with the discharged solids, and can negatively impact fish and biotic productivity. Toxicity may arise from the waste stream pollutants that leach into the water column. Previous modeling of offshore WBF discharges indicates that these effects are localized and short-term (on the order of hours). The additional organic pollutants comprising the SBFs are not expected to exacerbate water column impacts, since they generally are water non-dispersible and exhibit very low solubility in water.

Laboratory and field studies indicate that the primary impacts from SBF-cuttings discharges are associated with the benthic community. These impacts include those associated with the discharge of WBFs, i.e., smothering of sessile organisms, toxicity, and altered sediment grain size, leading to reductions in abundance and diversity of the benthic biota over a localized area. SBF-cuttings are expected to produce additional impacts associated with the base fluid pollutants, such as organic enrichment, anoxia resulting from biodegradation, and potential increased toxicity. In nutrient-poor deep sea environments, organic enrichment may alter the benthic community by increasing overall biomass density.

Toxicity potential of SBFs seems better assessed through sediment-phase tests than aqueous-phase tests, since SBFs are hydrophobic and have strong self-adherence properties. Based on the chemical composition of SBFs and on limited sediment-phase test data (five sets of test data by different scientists using various sediment-dwelling and water column-dwelling marine organisms), the potential for toxicity varies among fluid types, but generally appears to be low. However, some test results indicate that sediment toxicity of certain SBFs is not reduced compared to OBFs.

Biodegradability is an important SBF parameter, since organic enrichment and ensuing sediment oxygen depletion is expected to be a dominant impact of SBF discharges. All SBFs have high theoretical oxygen demands and are likely to produce a substantial sediment oxygen demand as they degrade in the receiving environment.

The available information on the bioaccumulation potential of SBFs is limited, consisting of six studies on octanol:water partition coefficients (P_{ow}) and two studies on tissue uptake in experimental exposures. The limited data and the chemical composition of SBFs suggest that existing SBFs do not pose a significant bioaccumulation potential.

EPA intends to generate or obtain additional data regarding the potential for toxicity, bioaccumulation, and persistence of SBFs, through laboratory studies and seabed surveys at SBF-cuttings discharge sites. The further work EPA intends to perform on laboratory testing is detailed in Section VI of today's notice. Further intended seabed surveys are discussed at the end of this section under the heading ''Future Seabed Surveys.''

2. Seabed Surveys

Past seabed surveys provide some insight into the fate and effects of SBF discharges. Results of several seabed surveys are described below.

a. *EPA/Industry Seabed Survey.*—In August 1997, EPA and industry jointly conducted a seabed survey in the Gulf of Mexico at three platforms on the central Louisiana continental shelf where SBF-cuttings were discharged. The purpose of the survey was to conduct a preliminary evaluation to determine the areal extent of observable impact. At the Grand Isle site (water depth = 61 meters), 1,315 bbl (167 metric tons) of internal olefin (IO) SBF were discharged on cuttings. Discharge ceased 25 months prior to the survey. At the South Marshall Island site (water depth = 39 meters), 94 bbl (12 metric tons) of linear alpha olefin (LAO) and IO SBF were discharged on cuttings. Discharge ceased 11 months prior to the survey. At the South Timbalier site (water depth = 33 meters), 2,390 bbl (304 metric tons) of IO SBF were discharged on cuttings. Discharge ceased 10 months prior to the survey.

Sediment was sampled at stations from 50 to 150 meters away from the platforms, with reference stations at 2,000 meters. Samples were collected at each station for physical and chemical analysis. Samples for biological analysis and toxicity testing were collected at selected stations. The odor of hydrogen sulfide was observed in seven of the 61 samples collected near the platforms (within 150 meters), indicating anoxic conditions. Although only a small fraction of the available seabed area was sampled, the results indicate that detectable SBF hydrocarbon (SBF-H.C.) concentrations were limited to within 50 to 150 meters of the platforms, with the highest concentrations (on the order of 10,000 ppm) being within 50 meters of the platforms. Elevated SBF-H.C. concentrations appeared to occur in a spotty, mosaic pattern rather than in a continuous unbroken pattern around the platform.

Ten-day acute sediment toxicity tests were performed by the industry coalition on six samples near the platforms. The tests were performed using the amphipods *Leptocheirus plumulosus* and *Ampelisca abdita.* With the exception of one sample, survivals of both organisms exceeded 75 percent (survival of *A. abdita* was 62 percent in a sample taken 100 meters from the Grand Isle platform). For all platforms, *L. plumulosus* survivals were greater than those observed for the control sediment (although control survival was extremely low). Average survivals over all non-reference, non-control sediments were 92 percent and 83 percent for *L. plumulosus* and *A. abdita,* respectively. Average reference station sample survivals were 95 percent and 91 percent for *L. plumulosus* and *A. abdita,* respectively. Average control sample survivals were 65 percent and 83 percent for *L. plumulosus* and *A. abdita,* respectively.

EPA also conducted sediment toxicity tests on the seabed survey samples. Sample locations include the same ones as those tested by the industry coalition, plus three additional locations around the Grand Isle platform. For all platforms, survival of *A. abdita* indicated no adverse toxicity beyond that demonstrated for the control sediment. *L. plumulosus* test results demonstrated a high degree of toxicity (0—65 percent survival) within 150 meters of the Grand Isle platform, with the higher toxicities at locations closer to the platform. Compared to the Grand Isle site, *L. plumulosus* test results indicated much lower toxicity near the South Marshall Island platform (83–92 percent survival) and the South Timbalier platform (83–85 percent survival). Average survival over all non-reference, non-control sediments were 60 percent and 85 percent for *L. plumulosus* and *A. abdita,* respectively.

Average reference station sample survivals were 88 percent and 87 percent for *L. plumulosus* and *A. abdita*, respectively. Average control sample survivals were 95 percent and 87 percent for *L. plumulosus* and *A. abdita*, respectively.

EPA also collected samples at the Grand Isle and South Marshall Island sites for macroinfaunal analysis, but the samples have not yet been analyzed.

b. *Other Seabed Surveys.*—There are limited biological assessment data from seabed surveys around platforms where SBF-cuttings have been discharged. Of the fourteen other sites where seabed surveys have been performed, only five include biological analyses. Two of the sites are in the Gulf of Mexico; the other three are in the North Sea.

One Gulf of Mexico study (1995) was performed at a platform in 39-meter deep water where 354 bbl (45 metric tons) of a poly alpha olefin (PAO) SBF was discharged on cuttings. Surveys were conducted nine days, eight months, and two years after discharge ceased. Sediment was sampled at stations from 25 to 200 meters away from the platform, with reference stations at 2,000 meters. Eight months after discharge, the total petroleum hydrocarbon (TPH) concentration in the sediment decreased substantially (60 percent–98 percent) at all but the closest, 25-meter stations. It is uncertain how much of this decrease is attributable to biodegradation, as opposed to sediment redistribution and reworking. It appears that little further reductions in TPH sediment concentration occurred between the 8th-month post-discharge survey and the second-year post-discharge survey. Limited analysis of the benthic fauna (performed in the second-year post-discharge survey only) indicate significant differences (reduced abundance and richness) at the 25-meter and 50-meter stations compared to reference stations.

Another Gulf of Mexico study (1998) was performed in a relatively deep water environment in the northern Gulf, at a platform in 565-meter deep water. Approximately 5,500 bbls (699 metric tons) of an SBF, using a blend of 90 percent linear alpha olefin and 10 percent vegetable ester as the base fluid, had been discharged on cuttings prior to the first survey, which was conducted approximately four months after discharge ceased. A second survey was performed approximately eight months after the first survey (approximately one year after the first series of discharges ceased). An additional 1,600 bbls (203 metric tons) of SBF were discharged on cuttings two days prior to the second survey.

Sediment was sampled out to 90 meters from the platform. High sediment SBF concentrations (up to 198,000 ppm) suggest that the in-situ biodegradation rate was lower than anticipated. Between the two surveys, densities of polychaetes and nematodes increased significantly, and the dominant taxon shifted from cyclopoid copepods to polychaetes and nematodes. Biomass density was highest in the area where the highest SBF concentrations were found. In the second survey, the densities of polychaetes, cyclopoid copepods, and gastropods in this area were approximately 40, 650, and 3,000 times higher than background levels for northern Gulf of Mexico reference sites at similar water depths. Fish densities in the vicinity of the platform were approximately 3–10 times higher than background levels. The analysis indicates that the SBF may be acting as a nutrient source and thereby supporting increased biomass in a typically nutrient-poor deep sea benthic environment.

One of the North Sea studies (1996) includes an impact study of the discharge of 180 metric tons of an ester SBF at a Dutch well site in 30-meter deep water. Surveys occurred one, four, and eleven months after discharge ceased. In each survey, the SBF was detected in the upper 10 cm of sediment out to a distance of 200 meters from the discharge site (the farthest distance sampled for sediment ester concentration). During the 4th-month post-discharge survey, sediment ester levels appeared to increase, apparently due to resuspension and transport of contaminated sediment. Significant decreases of 65 percent to 99 percent in sediment ester levels occurred between the 4th-month and 11th-month post-discharge surveys. Effects on benthos abundance and richness were more extensive; in the 4th-month post-discharge survey, effects were noted at 500-meter stations (the farthest distance sampled for biological assessment), with ''pronounced'' effects within 200 meters. Benthic analyses from the 11th-month post-discharge survey indicated significant effects only out to 200 meters. Additionally, recolonization and recovery were noted within the study area after 11 months.

Another North Sea study (1991) involved the discharge of 97 metric tons of an ester SBF at a Norwegian well site in 67-meter deep water. Surveys were conducted immediately, one year, and two years after discharge ceased. Samples were taken out to 1,000 meters from the platform. Sediment ester levels fell dramatically between sampling events, with both maximum and average values within 1,000 meters decreasing more than three orders of magnitude between the time-zero and first-year post-discharge surveys, and more than five orders of magnitude between the time-zero and second-year post discharge surveys. Benthic organism abundance and richness were severely impacted out to 100 meters in the first survey (immediately post-discharge). Evidence of minor macrobenthic community changes was seen in the second-year post-discharge survey.

Another North Sea study (1992) examined the effects of the discharge of 160 metric tons of an ether SBF at a Norwegian well site. Surveys were conducted immediately, one year, and two years after discharge ceased. Sediment samples were taken out to 200 meters from the platform. Ether levels appeared to fall continuously, with mean ether levels decreasing by factors of two-fold between the time-zero and first-year post-discharge surveys, and ten-fold between the time-zero and second-year post-discharge surveys. This degree of degradation appears to be considerably less than that noted for the ester SBF site noted above. The author interpreted this as indicating that a lag phase occurred in the biodegradation of the ether SBF. (Laboratory biodegradation testing using the solid phase test also shows that ethers have a much slower degradation rate than vegetable esters.) Benthos were analyzed at only four stations in the second-year post-discharge survey; the author reported that the observed effects were ''remarkably weak''.

c. *Conclusions.*—There is limited field information upon which to base broad conclusions about the potential extent of biological impacts from SBF discharges. Based on seabed surveys, it appears that significant biological impact zones may range from as little as 50 meters to as much as 500 meters from the platform initially, to as much as 200 meters a year later. Generally, severe initial effects seem likely within 200 meters of the discharge. The initiation of benthic recovery seems likely within a year after discharge has ceased, and it seems unlikely that recovery will be complete within two years (to date, no post-discharge surveys have been performed beyond a two-year period). The time scale of complete recovery from SBF discharges (and oil and gas drilling and production platform activity in general) is uncertain. Impact zones and recovery rates will be site-specific, depending on factors such as water depth, current, temperature, and

seafloor energy, all of which affect the rate of degradation and dispersion of the SBF components and drill cuttings. In nutrient-poor benthic environments such as the deep sea, SBFs may serve as a nutrient source and thereby increase overall biomass density.

C. Water Quality Modeling

To assess the water quality impacts of the regulatory options, EPA modeled incremental pollutant concentrations, in the water column and in the sediment pore water, at the edge of the 100-meter radius mixing zone established for offshore discharges by CWA Section 403, Ocean Discharge Criteria, as codified at 40 CFR Part 125 Subpart M. The modeling was performed for the Gulf of Mexico, Offshore California, and Cook Inlet, Alaska discharge regions. The modeling was performed for each model well (shallow water exploratory, shallow water development, deep water exploratory, and deep water development), as appropriate for each discharge region, for current industry practice and each of the two options:

(1) Current Practice = 11 percent base fluid retention on cuttings (by weight on wet cuttings) with 0.2 percent crude contamination (by volume in drilling fluid) .

(2) Discharge Option = seven percent retention on cuttings with 0.2 percent crude contamination.

(3) Zero Discharge.

The seven percent retention above is based on the long-term average with the control technology of today's proposal, as detailed in Section VI of today's notice. The 0.2 percent crude contamination is not based on the regulatory limit but rather a concentration EPA estimates would commonly be found in SBF discharged with cuttings.

EPA compared the modeled values to federal water quality criteria/toxic benchmark recommendations for marine acute effects, marine chronic effects, and human health effects via ingestion of organisms. For the most part, individual modeled pollutant concentrations were compared to the criteria for each pollutant. In the pore (interstitial) water analysis, potential additive toxic effects of six of the metals (cadmium, copper, lead, nickel, silver, and zinc) were accounted for by converting the pore water concentrations to toxic units and summing them. This approach is in accordance with EPA's proposed sediment guidelines for these metals, which indicate that benthic organisms should be acceptably protected if the sum of the Interstitial Water Guidelines Toxic Units (IWGTUs) for these six metals is less than or equal to one. (Alternatively, the benthic organisms should be acceptably protected if the sum of the molar concentrations of simultaneously extracted metals (SEM) for these six metals is less than or equal to the molar concentration of acid volatile sulfide (AVS) from the sediment.) The pollutant-specific IWGTU is defined as the dissolved interstitial water concentration of the pollutant divided by the water quality criterion (chronic value) for that pollutant.

EPA criteria/toxic benchmark recommendations are considered by the States in developing water quality criteria for State waters. The criteria are not steadfast standards in federal offshore waters, but EPA takes them into account in making a determination of whether a discharge will cause unreasonable degradation of the marine environment (See 40 CFR Part 125.122(a)(10)). The modeled pollutants include only those priority and nonconventional pollutants for which EPA has established numeric marine water quality criteria. Concentrations of TSS, synthetic base fluids, and some other constituents have therefore not been modeled. However, EPA emphasizes that much of the anticipated benefits of controlling SBF discharges lies in reducing discharge quantities of TSS and oil and grease (including synthetic base fluids). For example, based on model well scenarios, EPA projects that the controlled discharge option will reduce discharges of total oil and SBF-associated TSS (i.e., TSS associated with SBFs adhering to cuttings) by 43 percent compared to current industry practice where SBFs are currently being discharged. Reducing the discharge quantities of these pollutants at existing SBF discharge sites is expected to decrease the potential impact on the environment (particularly the benthos) by reducing the severity of physical habitat alteration, anoxia, and potential toxicity and bioaccumulation. Where operators switch from OBF drilling/offsite disposal to SBF drilling/onsite discharge, total pollutant loading to the aquatic environment will increase.

EPA recognizes some limitations in this analysis. Due to a lack of adequate modeling tools, the analysis does not quantify the effects of smothering, physical habitat alteration, or anoxia. Additionally, the analysis does not consider background pollutant concentrations or pollutant loadings from other potential discharges, such as WBFs or produced water. The analysis is conservative in that the pollutants are assumed to be fully leached (to the extent that they are leachable in accordance with their partitioning coefficients and leach percentages) into the medium under consideration. That is, for the water column analysis, EPA assumed that all leachable pollutant mass leaches into the water column (with none left over for leaching into the pore water). Likewise, for the pore water analysis, EPA assumed that all of the leachable pollutant mass leaches into the pore water (without any mass lost to the water column).

The modeled water column concentrations are based on existing Offshore Operators Committee modeling of OBF-cuttings discharges, since dispersion behavior of SBF cuttings is expected to be similar to that of OBF-cuttings. EPA used median estimated dilution values (specific to each discharge region) at the 100-meter mixing zone to calculate predicted water column concentrations for pollutant discharges from the model wells. Non-synthetic organic pollutants were assumed to be fully dissolved in the water column. Effluent metal concentrations were adjusted by pollutant-specific mean seawater leach percentage factors to determine water column concentrations. The modeling indicates that neither current industry practice nor the discharge option would result in exceedances of any federal water quality criteria/toxic benchmarks at the edge of the 100-meter mixing zone, for any of the modeled discharge regions.

The modeled sediment pore water concentrations for the Gulf of Mexico are based on sediment pollutant characterizations from five field surveys of 11 wells (ten in the North Sea, one in the Gulf of Mexico) where SBFs have been discharged. The California and Cook Inlet analyses are also based on this approach, but data from two shallow wells were eliminated to better represent discharge conditions in those regions. Sediment synthetic concentrations at 100 meters from the discharge point were taken or interpolated from each of the surveys. An average sediment synthetic concentration was derived for each model well, and the sediment concentration of each pollutant was calculated based on the ratio of each pollutant to the synthetic material. Pore water pollutant concentrations were then calculated based on mean seawater leach percentages (for metals) and partition coefficients (for organics). Organic pollutant partitioning was based on an average fractional organic carbon content for sediment in each discharge region.

Table VIII–1 lists the factors by which projected pore water concentrations of certain pollutants would exceed federal water quality criteria/toxic benchmarks for each regulatory scenario and model well in the modeled discharge regions. EPA notes that these pollutants are associated with the geologic formation and/or the barite used in all drilling fluids, and are not specific to SBF discharges. Modeling of current industry practice (with respect to SBF discharges only) indicates that the pore water pollutant concentrations would exceed some federal criteria/toxic benchmarks at the edge of the 100-meter mixing zone in several model well scenarios. The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant pore water concentrations by 43 percent compared to current industry practice (where SBFs are currently being discharged). The discharge option would thereby reduce the number and magnitude of projected exceedances compared to current industry practice (at existing SBF discharge sites). Zero discharge would obviously eliminate any projected exceedances.

TABLE VIII–1.—FACTORS BY WHICH PORE WATER POLLUTANT CONCENTRATIONS AT THE EDGE OF THE 100-METER MIXING ZONE WOULD EXCEED FEDERAL WATER QUALITY CRITERIA RECOMMENDATIONS FOR EACH REGULATORY OPTION AND MODEL WELL [a]

Discharge region	Pollutant	Shallow water				Deep water			
		Development well		Exploratory well		Development well		Exploratory well	
		Current practice	Discharge option	Current practice	Discharge option	Current practice	Discharge option	Current practice	Discharge option
Gulf of Mexico	Arsenic	1.3	[c]	2.7	.....	1.9	1.1	4.3	2.5
	Chromium	.....	.....	1.7	.....	1.3	.....	2.8	1.6
	Mercury	.....	.....	.....	.....	.....	.....	1.2	.....
	Metals Composite[b].	1.1	.....	2.3	1.3	1.7	.....	3.7	2.1
California	Arsenic	.....	.....	Not applicable		1.2	.....	Not applicable	
	Metals Composite[b].	.....	.....	Not applicable		1.1	.....	Not applicable	
Cook Inlet, Alaska.	Arsenic	.....	.....	Not applicable		Not applicable		Not applicable	
	Metals Composite[b].	.....	.....	Not applicable		Not applicable		Not applicable	

[a] There would be no exceedances for any pollutants with the zero discharge option.
[b] Metals composite includes cadmium, copper, lead, nickel, silver, and zinc.
[c] Blanks indicate no exceedances are predicted.

D. Human Health Effects Modeling

EPA has also evaluated the effects of the current industry practice and regulatory options on human health via consumption of finfish and shrimp from affected fisheries. Pollutant concentrations in finfish tissue (applicable to the Gulf of Mexico, offshore California, and Cook Inlet discharge regions) and shrimp tissue (applicable to the Gulf of Mexico and offshore California) were estimated based on the previously described water quality modeling techniques. As with the water column and pore water analyses, EPA considered only incremental loadings from SBF discharges, irrespective of other discharges and background concentrations. The analysis is based on water-only exposure of organisms (i.e., it does not consider organism exposure through the food web), and includes only those pollutants for which a bioconcentration factor has been established. Thus, the analysis does not project uptake of synthetic compounds or nonconventional pollutants.

In assessing human health impacts, EPA considered a seafood intake rate of 177 grams per day. This value represents the 99th percentile of daily seafood intake (fresh/estuarine and marine, uncooked basis), based on the Combined USDA 1989, 1990, and 1991 Continuing Survey of Food Intakes by Individuals. This intake rate is reflective of high-end consumers in the general population, and is also a reasonable default value for subsistence fishers. For the shrimp analysis, the intake rate was adjusted by the estimated percent of shrimp catch affected by SBF-cuttings discharges. The finfish intake rate was not adjusted, due to lack of data on affected finfish landings. The finfish intake rate is therefore much more conservative than the shrimp intake rate, as all consumed fish are assumed to be affected by SBF-cuttings discharges.

To estimate potential non-cancer (toxic) effects, EPA calculated the Hazard Quotient for each pollutant. The Hazard Quotient is the estimated pollutant intake rate divided by the pollutant-specific oral reference dose, which represents a level that is protective of human health with respect to toxic effects. A Hazard Quotient greater than one indicates that toxic effects may occur in exposed populations. For arsenic (a human carcinogen), EPA also estimated the lifetime marginal risk of developing cancer, using the EPA-developed, pollutant-specific potency slope factor. For purposes of this analysis, a risk level of 1×10^{-6} is considered to be acceptable.

The finfish exposure assessment is based on incremental pollutant exposures within 100 meters of each platform. The spatial extent of exposure within this area was derived using average dilution values (specific to each discharge region) within the mixing zone, based on existing Offshore Operators Committee modeling of OBF-cuttings discharges. Water column pollutant concentrations were projected using leach percentages and partitioning coefficients, and finfish uptake was calculated based on pollutant-specific bioconcentration factors and a catch-weighted average lipid content of 2.14 percent.

The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant tissue concentrations in finfish by 43 percent compared to current industry practice (where SBFs

are currently being discharged). Neither current industry practice nor the discharge option would result in toxic human health impacts or excess cancer risk under a 99th percentile consumption scenario, for any of the modeled discharge regions.

For the shrimp exposure assessment in the Gulf of Mexico and offshore California, EPA estimated an impact area based on field survey data and an assumed threshold concentration of 100 ppm for synthetic fluid in sediment. Sediment pollutant concentrations for each model well were calculated based on one year's worth of cuttings discharges, assuming an affected depth of 5 cm and uniform distribution of cuttings over the impact area. Pore water pollutant concentrations were projected using leach percentages and partitioning coefficients, and shrimp uptake was then calculated based on pollutant-specific bioconcentration factors and a shrimp lipid content of 1.1 percent.

The modeling indicates that, due to discharge limits on drilling fluid retention, the discharge option would reduce pollutant tissue concentrations in shrimp by 43 percent compared to current industry practice (where SBFs are currently being discharged). Neither current industry practice nor the discharge option would result in toxic human health impacts or excess cancer risk under a 99th percentile consumption scenario, for either of the modeled discharge regions.

E. Future Seabed Surveys

1. Ocean Discharge Criteria

Permits authorizing the discharge of SBF-cuttings are required to (a) meet technology-based requirements to set the control floor, and (b) meet section 403(c) of the Clean Water Act (CWA) Ocean Discharge Criteria, or, in state waters of Cook Inlet, Alaska, meet state water quality criteria. Today's notice proposes the technology-based discharge controls. While not a part of today's proposed rule, the following briefly describes the CWA 403(c) requirements and the future seabed surveys EPA thinks should occur, based on currently available information, to satisfy these permit requirements. The seabed surveys that industry has planned to conduct are also presented.

The nature, extent and duration of seabed surveys required by discharge permits may increase or decrease as further information is gathered, and any monitoring requirement shall be decided by the EPA or delegated state permitting authority. A decision that sufficient seabed survey information has been gathered in one region does not constitute grounds that further seabed surveys are no longer required in other regions.

For ocean discharges, the ambient environmental effect information needed to satisfy EPA permit requirements is specified in Clean Water Act section 403(c), Ocean Discharge Criteria, as codified at 40 CFR Part 125, subpart M. This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans. These criteria require that a determination be made whether a discharge will cause unreasonable degradation to the marine environment based on several considerations, including the quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged, and considerations relating to the importance and vulnerability of the potentially exposed biological communities and human health (see 40 CFR Part 125.122).

If there is insufficient information to determine prior to issuing the permit that there will be no unreasonable degradation to the marine environment, the Ocean Discharge Criteria require that a monitoring program be specified. This monitoring program must be sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of bioaccumulative and/or persistent impact on aquatic life (see § 125.123 (d) (2)). According to § 125.123 (c) (1) the discharge may not cause irreparable harm to the marine environment during the period in which monitoring is undertaken. If data gathered through monitoring indicate that continued discharge may cause unreasonable degradation, the discharge must be halted or additional permit limitations established.

2. EPA Suggestions for Monitoring Seabed Effects

EPA thinks that currently there is insufficient information to determine that there will be no unreasonable degradation to the marine environment. The Ocean Discharge Criteria, therefore, require that a monitoring program be specified in permits allowing the discharge of SBF-cuttings. The ambient environmental studies should monitor the rate of seabed recovery around several offshore and coastal platforms where SBF-cuttings have been discharged. Sites should be selected to include both deep water and shallow water locations, and should investigate the different types SBFs, according to base fluid, which the permits may allow.

A detailed study may investigate baseline contaminants and benthic invertebrate analysis, disappearance of SBF base materials over time, toxicity of sediment over time, and rate of recolonization by benthic organisms. Desired endpoints include impacts to benthos, sediment characterization, and contribution to hypoxia.

To characterize the seabed survey site, detailed discharge information should be gathered on the platform level. This information should include the dates, prevailing current during discharge, and amounts, for all discharges: WBF, WBF-cuttings, and SBF-cuttings. The WBF and SBF formulations should also be provided. As a detail to the SBF-cuttings discharge quantities, the determination of quantity of synthetic material discharged should also be provided.

3. Industry's Plans for Seabed Surveys

EPA understands that the industry is planning a cooperative effort to address the CWA 403(c) requirements in the GOM. Industry representatives have told EPA that their cooperative seafloor study would include a review of historical data on SBF usage on the shelf and slope, and these data would be analyzed to select a representative series of platforms. The cooperative effort plans that three cruises would be conducted to evaluate equipment and sampling strategies, delineate cuttings deposition profiles (areal extent as well as thickness profile), determine SBF concentrations with depth and distance from source, and to determine if zone of biological influence can be determined. It is anticipated that most of the study sites (e.g., 6–12) locations would be on the shelf, and one or two would be located in deepwater. However, EPA may recommend that more deepwater surveys be conducted, in proportion to the total number of SBF wells drilled in the deepwater versus the shallow water. Parameters to be considered in platform selection included type and volume of synthetics released, number of wells drilled, water depth, shunt depth, and length of time since last discharge. The cooperative effort plans that a combination of side scan sonar, via remotely operated vehicle cameras, and physical grab sampling would be used to determine cuttings deposition. Mineralogy and sediment chemistry are planned to verify cuttings and SBF presence. Oxygen measurements and relative percent difference layer determinations are planned to evaluate SBF-induced anoxia. Biological sampling would be conducted at

selected sites to evaluate ability to measure community structure changes relative to drilling discharges. The deepwater location(s) (between 500–1,200 m) would be sampled and surveyed by the remotely operated vehicle to assess deepwater deposition and effects.

IX. Cost and Pollutant Reductions Achieved by Regulatory Alternatives

A. Introduction

This section presents EPA's methodology and results for estimating the compliance costs and pollutant reductions for the discharge and zero discharge options. EPA calculated costs and loadings on a model well basis, and determined total costs and loadings by multiplying the model well values by the number of wells. Since this is a differential analysis, the only wells, pollutants, and costs considered are those that are expected to change as a result of this proposed rule were it to become a final rule. Therefore, wells currently drilled with SBF are considered in the analysis, and also OBF wells that EPA anticipates will convert to SBF upon completion of this rule. However, wells currently using OBF and not converting to SBF would not incur costs or realize savings in the analysis. EPA assumed that only those wells using SBF or OBF currently would potentially use SBF in the future, and so wells drilled exclusively with WBF are not treated as incurring any costs or realizing any cost savings in this analysis. Also, of the wells that are in the analysis because they use SBFs or OBFs, the upper sections of the well that are drilled with WBF are not associated with any costs or savings in the analysis.

B. Model Wells and Well Counts

EPA developed model well characteristics from information provided by the American Petroleum Institute (API) to estimate costs to comply with, and pollutant reductions resulting from, the proposed discharge option and the zero-discharge option. API provided well size data for four types of wells currently drilled in the Gulf of Mexico (GOM); development and exploratory in both deep water (i.e., greater or equal to than 1,000 feet) and shallow water (i.e., less than 1,000 feet). The following text refers to these wells by the acronyms DWD (deep-water development), DWE (deep-water exploratory), SWD (shallow-water development), and SWE (shallow-water exploratory).

The model well information from API provided length of hole drilled for successive hole diameters, or intervals. From this, EPA calculated the hole volume for the well intervals that reportedly used SBF or OBF. For the four model wells and assuming 7.5 percent washout of the hole, EPA determined that the volumes of these SBF (or OBF) well intervals were, in barrels, 565 for SWD, 1,184 for SWE, 855 for DWD, and 1,901 for DWE.

EPA gathered information from the Department of Interior Minerals Management Service (MMS), the Texas Railroad Commission and the Alaska Oil and Gas Commission, to estimate the number of wells drilled annually in each of the three regions where drilling is currently active and drilling wastes may be discharged. To forecast the number of wells drilled annually EPA averaged the number of wells drilled in 1995, 1996, and 1997. Based on information from the industry, MMS, and DOE, EPA then applied the following projections to determine the number of wells drilled by drilling fluid type:

(i) On a drilling performance basis SBF is equivalent to OBF.

(ii) Development and exploratory wells have equal requirements for SBF/OBF performance.

(iii) In GOM as a whole, 10 percent of all wells use SBF, 10 percent use OBF, and 80 percent use WBF exclusively. However, no OBF is used in the deepwater due to the potential of spills, and due to higher performance requirements 75 percent of all wells in GOM deep water are drilled with SBF. The remaining 25 percent are drilled exclusively with WBF.

(iv) In offshore California and coastal Cook Inlet, Alaska, OBF is used in the same frequency as SBF/OBF in the GOM (75 percent of wells in deep water and 13.2 percent of wells in shallow water). The remainder of wells use WBF exclusively and no SBF is used.

Also based on information from the industry, MMS, and DOE, EPA determined the following concerning the conversion of SBF to OBF and vice versa:

(i) For the discharge option, 20 percent of GOM OBF wells convert to SBF, and all OBF wells are in the shallow water. All offshore California and Cook Inlet, Alaska OBF wells convert to SBF.

(ii) For the zero discharge option, shallow water GOM SBF wells convert to OBF. However, deep water GOM SBF wells do not convert, because SBFs provide advantages in terms of eliminating OBF spills in the event of riser disconnect. Offshore California and Cook Inlet, Alaska OBF wells remain OBF wells.

Details of the how EPA made these determinations are provided in the Development Document.

Table IX–1 presents the total number of wells that EPA estimates will be drilled annually, by drilling fluid, for both the discharge option and the zero discharge option. EPA has distinguished wells as either ''existing'' sources of drill cuttings for BPT, BCT and BAT cost and pollutant reductions analysis, or ''new'' sources of drill cuttings for NSPS cost and reductions analysis.

TABLE IX–1.—ESTIMATED NUMBER OF WELLS DRILLED ANNUALLY PER REGULATORY OPTION BY DRILLING FLUID

Type of well	Shallow water (<1,000 ft)		Deep water (>1,000 ft)		Total
	Develop.	Explor.	Develop.	Explor.	
Gulf of Mexico:					
Baseline All Wells[1]	645	358	48	76	1127
Baseline SBF Wells	13	7	36	57	113
Discharge Option SBF Wells	[2]28	15	[3]36	57	136
Zero Discharge Option SBF Wells	0	0	36	57	93
Offshore California:[4]					
Baseline All Wells	11	0	15	0	26
Baseline OBF Wells	1	0	11	0	12
Discharge Option SBF Wells	1	0	11	0	12
Coastal Cook Inlet, Alaska:[4]					
Baseline All Wells	7	1	0	0	8
Baseline OBF Wells	1	0	0	0	1

TABLE IX–1.—ESTIMATED NUMBER OF WELLS DRILLED ANNUALLY PER REGULATORY OPTION BY DRILLING FLUID—Continued

Type of well	Shallow water (<1,000 ft)		Deep water (>1,000 ft)		Total
	Develop.	Explor.	Develop.	Explor.	
Discharge Option SBF Wells	1	0	0	0	1

[1] While this table lists total number of wells, the only wells included in the analysis are those affected by this rule: SBF wells or wells converting from OBF to SBF in discharge option or converting from SBF to OBF in zero discharge option.
[2] EPA assumes that 95 percent of GOM shallow water development wells of this analysis are existing sources, and 5 percent are new sources (equals one new source well).
[3] EPA assumes that 50 percent of GOM deep water development wells of this analysis are existing sources, and 50 percent are new sources (equals 18 new source wells).
[4] EPA assumes all offshore California and Cook Inlet, Alaska, wells are existing sources, and in discharge option all OBF wells convert to SBF wells.

By multiplying the compliance costs and discharge loadings determined from the model well analysis, EPA calculated the total cost to the industry and the reduction in pollutant loadings, as detailed in the following sections.

C. Method for Estimating Compliance Costs

1. Introduction and Summary

The costs considered as part of the compliance cost analysis are only those that EPA believes will be incurred as a result of today's rule. These include costs and savings associated with the discharge, disposal, and recovery of SBF and OBF, costs associated with the technologies used to control and manage waste drill cuttings under the discharge and zero discharge options, and monitoring costs.

For each option and each geographic area, EPA estimated baseline costs from current industry waste management practices. Following this, EPA estimated the cost to comply with each option of today's rule. EPA then calculated the incremental compliance costs, or the difference between baseline costs and estimated compliance costs. Table IX–2 lists the total annual baseline, compliance, and incremental compliance costs calculated in each geographic area for both the discharge and zero discharge regulatory options.

As the values in Table IX–2 show, EPA estimates that today's proposed discharge option provides a savings to the industry of over $7 MM annually. Savings occur in the GOM among wells currently using SBF because, according to information available to the EPA, the value of SBF recovered by the model solids separation technology is $8.1 MM, while the cost of implementing this technology is only $3.1 MM. Thus, this regulatory requirement leads to an annual net savings of $5.0 MM.

Savings in the GOM also occur for the OBF wells that switch to SBF, because the increased cost of SBF is less than the savings in disposal costs for OBF-cuttings. However, EPA has assumed that only 20 percent to the wells currently drilled with OBF in the GOM will switch to SBF because of the risk of losing more valuable SBF downhole. These OBF wells that convert are in the shallow water. EPA determined that any deep water well operating in the Gulf of Mexico that prefers to use SBFs has already converted to SBF. Savings also result in offshore California and Cook Inlet, Alaska when OBF wells convert to SBF wells, again because the increased cost of SBF is less than the savings in disposal cost of OBF-cuttings. In these areas, EPA assumed that all OBF wells switch to SBF because of more difficult and expensive zero discharge options for OBFs in these areas, and air quality considerations in California.

TABLE IX–2.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE COSTS FOR MANAGEMENT OF SBF CUTTINGS, EXISTING AND NEW SOURCES

[1997$/year]

Technology basis	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline Costs:				
Discharge with 11% retention of base fluid on cuttings	$21,315,375	(1)	(1)	$21,315,375
Zero Discharge (current OBF-drilled wells only)	2,821,816	$2,157,023	$207,733	5,186,572
Total Baseline Costs per Area	21,935,466	2,157,023	207,733	24,300,222
Compliance Costs:				
Discharge with 7% retention of base fluid on cuttings	17,582,675	1,647,883	115,467	19,346,025
Zero Discharge via land disposal or on-site injection	29,873,689	0	0	29,873,689
Incremental Compliance Costs (Savings):				
Discharge Option	(6,554,516)	(509,140)	(92,265)	(7,155,921)
Zero Discharge Option	8,558,314	0	0	8,558,314

[1] Not applicable.

To summarize the effects of today's proposed rule, the values listed in Table IX–2 above include both existing and new sources. The values for new sources alone are provided below in Table IX–3. The values for existing sources alone may be obtained by subtracting these values from the corresponding values in Table IX–2.

As shown in Table IX–1, EPA estimated that new source wells are located only in the Gulf of Mexico because of the lack of activity in new lease blocks in offshore California and coastal Cook Inlet. New source wells are defined in the offshore guidelines, 40 CFR Part 435.11(q), and exclude exploratory wells by definition (EPA, 1993; EPA, 1996).

TABLE IX–3.—SUMMARY ANNUAL BASELINE, COMPLIANCE, AND INCREMENTAL COMPLIANCE COSTS FOR MANAGEMENT OF SBF CUTTINGS FROM NEW SOURCES

[1997/year]

	Technology basis	Costs (savings)
Baseline Costs	Discharge with 11% retention of base fluid on cuttings	$2,201,725
NSPS Compliance Costs	Discharge with 7% retention of base fluid on cuttings	1,632,125
	Zero Discharge via land disposal or on-site injection	3,796,143
Incremental NSPS Compliance Costs	Discharge with 7% retention of base fluid on cuttings	(569,600)
	Zero Discharge via land disposal or on-site injection	1,594,418

The NSPS cost analysis consists of the same line-item costs as in the analysis for existing sources, with the exception that retrofit is not necessary on new platforms. The baseline for NSPS costs differs from the baseline for existing sources in that it includes only SBF wells that discharge cuttings and does not include any OBF wells practicing zero discharge.

2. Baseline Costs: Current Industry Practice

As noted above, the only cost elements included in the baseline are those that EPA anticipates will change as a result of the rule. The line items in the baseline cost analysis for those Gulf of Mexico wells that currently drill with SBF consist of the cost of SBF lost with the discharged cuttings and the cost of the currently-required SPP toxicity monitoring test. The baseline analysis for currently discharging wells assumes the cuttings are being treated by standard solids control equipment to an average 11 percent retention of synthetic material (base fluid) on the cuttings, on a wet-weight basis. As detailed in Section VI of today's notice and the Development Document, this baseline level of treatment is derived from data submitted in a report prepared for the American Petroleum Institute (API) (Annis, 1997). No baseline costs are attributed to the operation of solids control equipment that are standard in all drilling operations.

For existing sources, the unit baseline cost for wells that currently use SBF is $82/bbl. The unit baseline costs for SWD and SWE wells currently drilled with OBF are $96/bbl and $91/bbl, respectively. The development of the baseline costs for OBF wells is detailed under Section IX.C.4 ''Zero Discharge Compliance Costs.'' Table IX–2 lists the total baseline costs for each geographic area.

The unit baseline cost for the new source wells is $82/bbl for both DWD and SWD wells, and the total baseline cost is $2.2 MM.

In offshore California and coastal Cook Inlet, Alaska, current industry practice is zero discharge of OBF-cuttings. The line-item costs of these wells include costs for transporting and disposing of waste drill cuttings at commercial land-based disposal facilities, and the cost of the drilling fluid that adheres to and is disposed with the cuttings. EPA assumes that the drilling fluid lost with OBF-cuttings is a mineral oil-based fluid. For current industry practice, transportation of OBF-cuttings in the offshore California analysis consists of hauling via supply boat followed by trucking to a land-based facility. Transportation for the Cook Inlet analysis also consists of supply boats followed by trucks that haul the waste cuttings to a land-based disposal facility. However, due to the limited availability of disposal facilities in the Cook Inlet area, costs were developed for hauling the waste to a facility in Oregon. This approach to zero-discharge cost estimating for Cook Inlet was adopted from the Coastal Oil and Gas Rulemaking effort (EPA, 1996).

The unit baseline costs in offshore California are $128/bbl for DWD wells and $131/bbl for the SWD wells. The unit baseline cost for the model Cook Inlet well is $218/bbl. Again, multiplying the unit costs by the volume of waste cuttings for each model well type and by the numbers of wells estimated to be drilled annually in each category provides the total annual baseline costs for each region. The total annual baseline costs for offshore California and Cook Inlet are $2.2 MM and $0.2 MM, respectively (see Table IX–2).

3. Discharge Option Compliance Costs

The discharge option compliance cost analysis estimates the cost to discharge SBF-cuttings following secondary treatment by a solids control device that, when added on to other standard solids control equipment, reduces the average retention from 11 percent to 7 percent base fluid on wet cuttings. Line-item costs in the discharge option analysis consist of: a) costs associated with the use of an add-on solids control device, b) cost to retrofit platform space to accommodate the device, c) the value of the SBF discharged with the cuttings, and d) the cost of performing the waste monitoring analyses of today's proposal.

The wells in the discharge analysis for the Gulf of Mexico consist of those that are currently drilled with SBF and discharging SBF-cuttings, and those currently drilled using OBF that EPA estimates will convert to SBF. The cost of the add-on technology is the daily rental cost for the vibrating centrifuge device on which the seven percent retention is based. The rental cost includes all equipment, labor and materials, and was quoted by a Gulf of Mexico operator who used the device in an offshore demonstration project (Pechan-Avanti, 1998). Retrofit costs were assigned to all existing sources but not to new sources. Analytical monitoring costs are included for the proposed crude oil contamination of drill cuttings test and retort analysis for SBF retention on cuttings.

For existing sources, based on the above line-item costs, the unit discharge option costs for DWD and DWE wells are $74/bbl and $72/bbl, respectively. The unit discharge option costs for the SWD and SWE wells are $77/bbl and $74/bbl, respectively. The total annual discharge compliance cost for existing source Gulf of Mexico wells is $16 MM (see Table IX–2). The discharge option unit costs for new source wells are $73/bbl for DWD wells and $75/bbl for SWD wells, and the total discharge option cost is $1.6 MM.

The compliance cost analyses for offshore California and coastal Cook Inlet, Alaska consist of the same line items: daily rental of the add-on vibrating centrifuge, retrofit space to accommodate the add-on equipment, cost of SBF lost with discharged cuttings, and analytical costs for proposed waste monitoring tests. The costs for these items are the same as those estimated for the Gulf of Mexico adjusted higher using geographic area cost multipliers developed in the Offshore Oil and Gas Rulemaking effort (EPA, 1993). Geographic area cost multipliers are the ratio of equipment installation costs in a particular region compared to the costs for the same equipment installation in the Gulf of

Mexico. The cost multipliers for offshore California and Cook Inlet are 1.6 and 2, respectively. The unit discharge option costs for offshore California wells are $118/bbl for DWD wells and $122 for SWD wells. The unit discharge option cost for the Cook Inlet SWD well is $147/bbl. The total annual discharge option compliance costs for offshore California and Cook Inlet are $1.6 MM and $0.1 MM, respectively, and the total annual industry-wide compliance cost for the discharge option is $17.7 MM, as shown in Table IX–2.

4. Zero Discharge Option Compliance Costs

The zero discharge compliance cost analysis includes Gulf of Mexico wells identified as currently being drilled with SBF. The method presented in this section was also applied to baseline OBF wells, as mentioned in the baseline costs section. The wells included in the offshore California and Cook Inlet analyses, and some shallow water Gulf of Mexico wells (i.e., those wells currently drilled with OBF) do not incur costs in the zero discharge option because they are at zero discharge in the baseline. Furthermore, the population of wells currently drilled with SBF is divided into those that are assumed to continue using SBF under zero discharge requirements due to other concerns (i.e., spills as a result of riser disconnect), and those that would convert to OBF under zero discharge requirements due to the economic incentive of a less costly waste management practice (i.e., all shallow water wells). This division is shown in Table IX–1.

Per-well zero discharge costs incorporate the assumption that, of all zero discharge cuttings generated in the Gulf of Mexico, 80 percent is hauled to shore for land-based disposal and 20 percent is injected on-site. Preliminary information gathered regarding the use of on-site injection in the Gulf of Mexico is inconsistent between sources, ranging from an estimated 10 percent to as much as 66 percent (Veil, 1998). Additional information indicates that, while some operators have expressed concern over uncertainties related to injection (e.g., the ultimate fate of the injected wastes and the costs associated with unsuccessful injection projects), interest in on-site injection has increased throughout the industry since the time of the Offshore Oil and Gas Rulemaking, and continues to grow. The Agency therefore solicits information regarding the number of wells that use on-site injection, the volume of drilling waste injected, the per-well and per-barrel costs, and the frequency of unsuccessful injection projects.

Line-item costs in the land disposal zero discharge analysis include commercial disposal facility costs, container rental costs, supply boat costs, and value of drilling fluid retained on cuttings. Commercial disposal facility costs were obtained from the major oil field waste management companies serving the Gulf of Mexico industry. Cuttings container size and rental rate were obtained from vendors. All wells in the analysis are assumed to have acquired the retrofit space needed to store an average of 12 cuttings boxes as part of the Offshore Oil and Gas Rulemaking effort (EPA, 1993), and therefore do not incur retrofit costs in this analysis. The value of retained drilling fluid is based on mineral oil OBF ($75/bbl) for shallow water wells (assuming they all convert to OBF under zero discharge requirements), and internal olefin SBF (at $200/bbl) for deep water wells (assuming they all still use SBF under zero discharge requirements). The unit land-disposal cost varies by model well type: $148/bbl for DWD wells, $106/bbl for DWE wells, $102/bbl for SWD wells, and $96/bbl for SWE wells. Unit disposal costs vary by well type because the amount of time it takes to fill the disposal ship varies by well type, and the cost for the disposal ship is per daily rate.

Line-item costs in the on-site injection zero discharge analysis include the day rate rental cost for a turnkey injection system, and lost drilling fluid costs. The injection system cost includes all equipment, labor, and associated services. The unit on-site injection cost is $121/bbl for deep water wells, and $71/bbl for shallow water wells.

The zero discharge compliance cost is the weighted average assuming 80 percent of wells use land disposal and 20 percent of wells use on-site injection to achieve zero discharge. For existing sources, the weighted average unit cost for zero discharge for the model wells is as follows: $143/bbl for DWD wells, $109/bbl for DWE wells, $96/bbl for SWD wells, and $91/bbl for SWE wells. The total annual zero discharge compliance cost resulting from this analysis is $26.1 MM (see Table IX–2).

For new sources, the weighted average unit costs are the same as for existing sources: $143/bbl for DWD wells and $96/bbl for SWD wells. The total zero discharge cost for new sources is $3.8 MM/year.

5. Incremental Compliance Cost

The incremental compliance cost is the difference between the baseline and the compliance cost, as presented in Table IX–2. The overriding factor in the Gulf of Mexico incremental discharge option cost is that, according to EPA analysis of SBF baseline wells, the value of the recovered SBF is greater than the cost of implementing the vibrating centrifuge model technology. This gives a net savings of $5.0 MM/year. A saving of $0.94 MM/year is also realized when existing wells currently using OBF convert to using SBF. EPA assumed for this calculation that 23 of the 112 OBF wells, or 20 percent, would convert. All of these are considered existing sources. Combining these two gives a total savings of $5.9 MM for Gulf of Mexico existing source wells in the discharge option.

Incremental discharge option costs for existing sources in offshore California and coastal Cook Inlet, Alaska include savings incurred as wells move from the zero discharge baseline to discharge, and increased cost of SBF over the baseline OBF cost. For both of these areas, the net incremental discharge compliance cost is negative, resulting in savings of $509,000/year for offshore California and $92,000/year for coastal Cook Inlet. Combined with the Gulf of Mexico savings, the total annual savings for existing sources in the discharge option is $6.6 MM.

The incremental new source compliance cost for the discharge option is $-0.57 MM/year, or a savings of $570,000.

For existing sources, the costs under the zero discharge option (total annual = $7.0 MM/year) are the costs that Gulf of Mexico baseline SBF wells incur moving from discharge to zero discharge. For new sources, the incremental cost for the zero discharge option is $1.6 MM/year.

As a sensitivity analysis, EPA performed two additional discharge option compliance cost analyses by varying the fraction of current Gulf of Mexico shallow water OBF wells that would convert to SBF after the rule. In the analysis presented above, EPA used an estimate of 20 percent, based on information provided by industry sources. Due to the uncertainty of predicting future industry activity, the Agency investigated the range of discharge option compliance costs that would result assuming that either zero percent of the OBF wells would convert to SBF use (maintain at 113 SBF wells) or 100 percent of the OBF wells would convert to SBF use (increase to 225 SBF wells). The ''zero percent convert'' analysis resulted in an annual incremental cost savings of $5.6 MM industry wide, and the ''100 percent convert'' analysis resulted in an annual incremental savings of $10.2 MM. The

savings for the ''20 percent convert'' analysis falls between these values, at $6.6 MM (see Table IX–2). Thus, regardless of the number of wells assumed to convert from OBF to SBF, the discharge option results in industry-wide incremental cost savings.

D. Method for Estimating Pollutant Reductions

The methodology for estimating pollutant loadings and incremental pollutant reductions effectively parallels that of the compliance cost analyses. The pollutant reduction analyses are based on the size and number of the four model wells identified in Table IX–1, as well as pollutant characteristics of the cuttings wastestream compiled from previous rulemaking efforts and from industry sources.

For wells that currently use SBFs and discharge SBF-cuttings in the Gulf of Mexico, EPA projects that the discharge option of this rule will decrease the discharges of SBFs by over 15.4 MM pounds annually due to the retention limit. However, EPA projects that certain OBF wells will convert to SBF wells, and these SBF wells would discharge 3.6 M pounds of SBFs annually. Therefore, EPA calculated that including this increased number of SBF wells, the discharge of SBF would be reduced just 11.8 MM pounds annually. Specifically, EPA projects that all OBF wells in offshore California and Cook Inlet, Alaska, and 20 percent, or 23 wells, of the OBF wells in the Gulf of Mexico, will convert to SBF. Also because of this conversion from OBF wells to SBF wells, EPA projects an increase in the annual discharge of dry drill cuttings of 25.9 MM pounds. With dry drill cuttings discharges increasing 25.9 MM pounds and SBF discharges decreasing 11.8 MM pounds, EPA projects that the discharge option of this rule would lead to an overall increase in discharges of 14.1 MM pounds annually.

Table IX–4 lists the total annual baseline pollutant loadings, compliance pollutant loadings, and incremental pollutant reductions calculated for existing and new sources.

TABLE IX–4.—SUMMARY ANNUAL POLLUTANT LOADINGS AND INCREMENTAL REDUCTIONS FOR EXISTING AND NEW SOURCES

[Lbs/year] [1]

	Gulf of Mexico	Offshore California	Cook Inlet, Alaska	Total
Baseline Technology Loadings:				
Discharge with 11% retention of base fluid on cuttings	177,390,660	0	0	177,390,660
Zero Discharge (current OBF-drilled wells only)	0	0	0	0
Compliance Option Loadings:				
Discharge with 7% retention of base fluid on cuttings	180,527,712	10,420,876	590,550	191,539,138
Zero Discharge via land disposal or on-site injection	0	0	0	0
Incremental Pollutant Loadings (Reductions):				
Discharge with 7% retention of base fluid on cuttings	3,137,028	10,420,876	590,550	[1] 14,148,454
Zero Discharge via land disposal or on-site injection	(177,390,660)	0	0	(177,390,660)

[1] Consists of 11.8 MM pounds decreased discharge of SBF, 17,366 pounds decreased discharge of formation oil, and 25.9 MM pounds increased discharge of drill cuttings.

In order to act as a summary, the values in Table IX–4 above combine the effects of both existing and new sources. The values for existing sources alone may be determined by subtracting the corresponding values for new sources that are presented in Table IX–5.

In the calculation of per-well pollutant loadings and incremental pollutant reductions, a list of pollutant characteristics was developed in the same manner as the pollutant reduction analyses performed in the Coastal Oil and Gas Rulemaking effort (EPA, 1996). The pollutant list consists of conventional, priority, and non-conventional pollutants. Conventional pollutants include total suspended solids (TSS) and oil and grease. The TSS derives from two sources: the drill cuttings and the barite in the adhering drilling fluid. The drilling fluid is assumed to contain an average 33 percent (by weight) barite and 47 percent (by weight) synthetic base fluid (drilling fluid formulation data were calculated from data provided in the 1997 API report by Annis). Metals, both priority and non-conventional, derive from the barite in the adhering drilling fluid. In the Offshore Oil and Gas Rulemaking, EPA concluded that barite is the primary source of metals in drilling fluid (EPA, 1993). The metal concentrations from the Offshore analysis were adopted for this analysis. In terms of loadings the synthetic base fluid adhering to the cuttings, plus an assumed 0.2 percent (by volume) of formation oil contamination, are considered oil and grease. EPA recognizes, however, that there are nonconventional components of the SBF base fluids and formation oil. The 0.2 percent (vol.) of formation oil in the wastestream is assumed because EPA believes that this concentration would occasionally be found in drilling fluids, and would meet the effluent limitation in today's proposal. The organic pollutants, both priority and non-conventional, derive from the formation oil contamination. The specific organic pollutant concentrations were obtained from analytical data presented in the Offshore Oil and Gas Development Document for Gulf of Mexico diesel (EPA, 1993). The SBF base fluids are considered non-conventional pollutants.

In the discharge option, for each model well two sets of calculations were developed, based on 11 percent and 7 percent retention, to determine the per-well volumes of synthetic base fluid, water, barite, dry cuttings and formation oil in the wastestream. The calculations were based upon the assumed drilling fluid formulation of 47% (wt.) synthetic base fluid, 20% (wt.) water, and 33% (wt.) solids as barite, the retention values, and the 0.2% (vol.) formation oil contamination. Details of these calculations are presented in the Development Document.

The waste volume estimates resulting from the above calculations were applied to the pollutant concentrations to determine the per-well pollutant loadings and incremental pollutant reductions. As in the compliance cost analysis, the per-well values were then multiplied by the numbers of wells in each option and each geographic area (see Table IX–1) to determine the total industry-wide pollutant loadings and reductions. For baseline SBF wells that discharge, baseline pollutant loadings were calculated at 11 percent retention, according to information gathered by

the industry using currently available technology. EPA calculated the incremental pollutant reduction as these wells move to the discharge option at an average SBF base fluid retention on cuttings of 7 percent.

For baseline OBF wells that do not discharge, the baseline loadings are zero. As baseline wells that do not discharge move to the discharge option, EPA calculated a loading increase at seven percent retention. This occurs for wells in offshore California, coastal Cook Inlet, and a fraction of OBF wells in the Gulf of Mexico that EPA assumes will convert to SBF subsequent to this rulemaking.

EPA projected that balancing the reductions in per-platform discharge due to the retention limit with the increased number of platforms discharging SBF-cuttings leads, annually, to the decrease in discharge of SBFs of 11.8 MM pounds, the decrease in formation oil discharge of 17,366 pounds, and the increase in drill cuttings discharge of 25.9 MM pounds. This yields a net increase of 14.1 MM pounds discharged annually in the discharge option.

The incremental pollutant reduction for the zero discharge option is elimination of the baseline loading of currently discharging wells at 11 percent retention. Table IX–4 shows the annual incremental pollutant reduction for the zero discharge option is 159 MM pounds.

As stated in section IX.C.4, EPA investigated the range of incremental compliance costs and pollutant reductions assuming that, in the discharge option, either zero percent or 100 percent of current OBF wells in the GOM would convert to SBF. EPA further assumed that all OBF wells in the GOM are in the shallow water. The analysis above is based on 20 percent of the OBF wells converting to SBF. The ''zero percent convert'' analysis resulted in an annual incremental pollutant reduction of 3 MM pounds industry wide, and the ''100 percent convert'' analysis resulted in an annual increase of discharges of 89.0 MM pounds per year. The increased discharges for the ''20 percent convert'' analysis falls between these values, at 15.8 MM pounds (see Table IX–4). In the 100 percent convert scenario, the 89 MM pounds consists of 76 MM pounds of dry cuttings and 13 MM pounds of associated SBFs.

The method of estimating pollutant loadings and reductions for new sources is the same as that for existing sources. As discussed in section IX.C.5, EPA estimated that 19 new source wells are located in the Gulf of Mexico, including one in the shallow water and 18 in the deep water (see also Table IX–1). For new sources, no OBF wells are in the baseline, because new sources would be projected to occur mainly in deep water, where operators generally prefer to use SBFs for cost, performance, and to minimize liability. In the new source analysis, there are pollutant discharge reductions for both the discharge option and the zero discharge option because all new source wells move from a baseline of discharge at an average 11 percent retention of synthetic base fluid on cuttings to discharge at seven percent retention under the discharge option or to zero discharge under the zero discharge option. The total annual NSPS incremental pollutant reductions are 1.6 MM pounds for the discharge option and 18.3 MM pounds for the zero discharge option. The discharge option reduction consists of 1.6 MM pounds of SBF, and a small amount (2,800 pounds) of formation oil.

TABLE IX–5.—SUMMARY ANNUAL POLLUTANT LOADINGS AND INCREMENTAL REDUCTIONS FOR MANAGEMENT OF SBF CUTTINGS FROM NEW SOURCES

[Lbs/year]

	Technology basis	Loadings/reductions
Baseline Loadings	Discharge with 11% retention of base fluid on cuttings	18,286,914
NSPS Pollutant Loadings	Discharge with 7% retention of base fluid on cuttings	16,676,538
	Zero Discharge via land disposal or on-site injection	0
Incremental NSPS Pollutant Reductions	Discharge with 7% retention of base fluid on cuttings	1,610,394
	Zero Discharge via land disposal or on-site injection	18,286,914

E. BCT Cost Test

The BCT cost test, described in section VI.E of today's notice, was not performed for either of the regulatory options investigated for this rulemaking. The BCT cost test evaluates the reasonableness of BCT candidate technologies as measured from BPT level compliance costs and pollutant reductions. In today's rulemaking, the proposed BCT level of regulatory control is equivalent to the BPT level of control for both the preferred discharge option and the zero discharge option. If there is no incremental difference between BPT and BCT, there is no cost to BCT and thus the option passes both BCT cost tests.

X. Economic Analysis

A. Introduction and Profile of the Affected Industry

This section presents EPA's estimates of the economic impacts that would occur under the regulatory options proposed here. The results of this analysis are described in more detail in the Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category (EPA–821–B–98–020).

Under the preferred discharge option, the proposed effluent guidelines would provide a cost savings to industry. This cost savings would be experienced by wells currently discharging cuttings contaminated with SBFs and by wells currently using OBF and switching to SBF as a result of this rule. As discussed in Section IX, the cost savings for current SBF dischargers result from the use of improved solids control equipment, allowing operators to recycle additional volumes of expensive SBFs, which more than offsets the costs of the improved solids control equipment. For wells that would have been drilled with OBF, the cost savings result from switching to SBF and discharging, thus avoiding higher disposal costs of zero discharge. Operations using and discharging WBFs would not incur costs or realize costs savings under this rule because EPA does not expect operators to convert from WBFs to SBFs, as discussed above. This section of today's notice describes the segment of the oil and gas industry that would benefit from this rule (i.e.,

the number of firms and number of wells per year that would incur costs or realize savings under the proposed rule), the financial condition of the potentially affected firms, the aggregate cost savings to that segment, and any impacts that might arise as a result of the rule. The Agency also discusses impacts on small entities, presents a cost-benefit analysis, and discusses cost-effectiveness. EPA also evaluated a zero-discharge option, which was considered but not selected for proposal, and found it would have a minor impact on a few entities (large and small) operating in the affected offshore and coastal regions. This discussion will form the basis for EPA's findings on regulatory flexibility, presented in Section XI.B.

For this profile, EPA is relying on information developed by Minerals Management Service (MMS) for EPA. This information includes wells drilled in federal waters during 1995, 1996, and 1997, along with the MMS-assigned numbers identifying the operators. These data were summarized by MMS from MMS's Technical Information Management System. MMS grouped wells by location (Pacific and Gulf drilling operations were tallied separately), water depth (up to 999 ft and 1,000 ft or more), and by type (exploratory or development). MMS also provided a list of operators by operator number. EPA linked the name of the operators to wells drilled using the operator number. Names of all operators who had drilled any well in any of the three years were then compiled. EPA used the Security and Exchange Commission's (SEC's) Edgar database, which provides access to various filings by publicly held firms, such as 8Ks and 10Ks. The former documents are useful for determining mergers and acquisitions in more detail, and 10Ks provide annual balance sheet and income statements, as well as listing corporate subsidiaries. The information in the Edgar database was used to identify parent companies or recent changes of ownership. EPA also used a database maintained by Dun & Bradstreet (D&B), which provides estimates of employment and revenue for many privately held firms, and financial data compiled by Oil and Gas Journal on publicly held firms.

Other sources of data used in the economic analysis include the Development Document for this proposed rule; EPA, 1993, Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry (EPA 821/R–93–004); and EPA, 1995, Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category (EPA 821/R95–013).

For profiling purposes in all regions, EPA divided the potentially affected firms identified using the MMS, SEC, and D&B data into two basic categories. The first category consists of the major integrated oil companies, which are characterized by a high degree of vertical integration (i.e., their activities encompass both ''upstream'' activities—oil exploration, development, and production—and ''downstream'' activities—transportation, refining, and marketing). The second category of affected firms consists of independents engaged primarily in exploration, development, and production of oil and gas and not typically involved in downstream activities. Some independents are strictly producers of oil and gas, while others maintain some service operations, such as contract drilling and well servicing. EPA used the U.S.A. Oil Industry Directory, 37th Edition, 1998, published by PennWell Publishing Co., Houston, Texas, to identify firms as majors, independents, or foreign-owned.

The two types of oil and gas firms, majors and independents, are very different types of entities, in most cases. The major integrated oil companies are generally larger than the independents, and are often among the largest corporations in the world. As a group, the majors typically produce more oil and gas, earn significantly more revenue and income, and have considerably more assets and greater financial resources than most independents. Furthermore, majors tend to be relatively homogeneous in terms of size and corporate structure. Majors do not meet the definition of small firm under the Regulatory Flexibility Act (RFA). Most majors are C corporations (i.e., the corporation pays income taxes).

Independents vary greatly by size and corporate structure. Larger independents tend to be C corporations; small firms might also pay corporate taxes, but they also can be organized as S corporations (which elect to be taxed at the shareholder level rather than the corporate level under subchapter S of the Internal Revenue Code). Small firms also might be organized as limited partnerships, or sole proprietorships, whose owners, not the firms, pay taxes.

2. Profile of the Potentially Affected Oil and Gas Regions

a. *Gulf of Mexico.*—As discussed in Sections IV and IX of this notice, the Gulf of Mexico beyond 3 miles from shore is the most active of the four oil and gas regions concerning this proposed rule. Nearly all exploration and development activities in the Gulf are taking place in the Western Gulf of Mexico, that is, the regions off the Texas and Louisiana shores. Very little drilling is occurring off Mississippi, Alabama, and Florida. The Western Gulf Region also is associated with the majority of the current use and discharge of SBF cuttings.

As stated above, the rule would apply only where WBFs and associated drill cuttings may be discharged, i.e., 3 miles or more from shore. Using the MMS, SEC, and D&B data discussed above, EPA accounted for the various corporate relationships and transactions to determine the total number of firms actively drilling in the affected regions of the Gulf. EPA counted 96 potentially affected firms at the parent company level in the Gulf of Mexico, of which 15 are considered majors. Twelve of the 96 firms are identified as foreign-owned (not including U.S. majors such as Shell Oil, which is affiliated with Royal Dutch/Shell Group), and these firms are included in the analysis. Non-foreign independents are estimated to total 69 firms.

Financially, the potentially affected operators are a healthy group of firms. Among publicly held firms, median return on assets for the group is 4.3 percent, median return on equity is 10.2 percent, and median profit margin (net income/revenues) is 6.6 percent, according to 1997 financial data. Among these publicly held firms, 60 out of 69 firms, or 87 percent, reported positive net income for 1997.

As discussed above in Section IX, EPA estimates that an average of 1,127 wells are drilled each year in the Gulf of Mexico, of which 1,108 are considered to be existing wells and 19 are considered to be new sources. EPA estimates (see Section IX) that each year 113 wells are drilled using SBFs and 112 are drilled using OBFs for at least a portion of the drilling operation. Of the 112 wells drilled with OBFs, EPA estimates that 20 percent, or 23 wells, would convert from OBF to SBF as a result of this rule. These wells are all assumed to be located in shallow water (see Table IX–1 in Section IX). The remaining 902 wells that are drilled annually in the Gulf of Mexico are assumed to be drilled exclusively using WBFs and would not incur costs or realize savings under the proposed rule.

b. *Offshore California.*—Most production activity in the Offshore California region is occurring in an area 3 to 10 miles from shore off of Santa Barbara and Long Beach, California. There are five operators actively drilling

(1995–1997) in the California Offshore Continental Shelf (OCS) region. These operators are Chevron; Aera Energy, LLC; Exxon; Torch Energy Advisors; and Nuevo Energy Co. Detailed information on Torch Energy Advisors (other than employment and revenues) and Aera Energy is not available. Among the remaining firms, median return on assets is 9.0 percent, median return on equity is 18.6 percent, and median profit margin is 5.7 percent. No operators reported negative net income among publicly held firms. Thus, the California firms, like the Gulf firms, generally appear to be financially healthy.

As discussed in Section IX, EPA estimates that an average of 26 development wells and no exploratory wells are drilled in the California OCS each year. EPA further estimates that no wells are currently drilled using SBFs and 12 wells are drilled each year using OBFs. EPA assumes that all 12 of these OBF wells convert to SBF as a result of this rule. All wells are considered existing sources. EPA assumes the remaining 14 wells are drilled exclusively using WBFs and are thus would not incur costs or realize savings under this proposed rule (see Table IX–1 in Section IX).

c. *Cook Inlet, Alaska.*—Cook Inlet, Alaska, is divided into two regions, Upper Cook Inlet, which is in state waters and is governed by the Coastal Oil and Gas Effluent Guidelines, and Lower Cook Inlet, which is considered Federal OCS waters and is governed by the Offshore Oil and Gas Effluent Guidelines. Lower Cook Inlet is discussed as part of the Alaska Offshore region in Section X.A.2.d below. All references to Cook Inlet mean Upper Cook Inlet unless otherwise identified.

Three operators are currently active in Cook Inlet: Unocal, Phillips, and Shell (as Shell Western). All three are major integrated oil firms, and all three also operate in the Gulf of Mexico. In addition, ARCO also has been involved in exploratory drilling in the Sunfish Field, but Alaska state data indicate that Phillips bought ARCO's interests in this field and will pursue any drilling from its Tyonek platform. Median return on assets for this group is 7.1 percent, median return on equity is 14.1 percent, and median profit margin is 7.3 percent. No firm reported negative net income in 1997. Again, these firms appear financially healthy.

Over the past three years (1995–1997) operators have drilled an average of about 7 wells per year (see Table IX–2 in Section IX). EPA estimates that no off-platform drilling will be undertaken in Cook Inlet. Thus for the purpose of estimating impacts for today's proposal, EPA assumes seven wells per year will be drilled in Cook Inlet, and all are considered existing sources. No operators currently use SBFs in Cook Inlet. Of the seven wells drilled in Cook Inlet, EPA estimates that one well per year might be drilled annually using OBFs, and as a result of this rule, this OBF well would convert to SBF.

d. *Offshore Alaska.* The offshore Alaska region comprises several areas, which are located both in state waters and in federal OCS areas. The most active area for exploration has been the Beaufort Sea, the northernmost offshore area on the Alaska coastline. Other areas where some exploration has occurred include Chukchi Sea to the northwest, Norton Sound to the West, Navarin Basin to the west, St. George Basin to the southwest, Lower Cook Inlet to the south, and Gulf of Alaska, along the Alaska panhandle. The only commercial production is occurring in the Beaufort Sea region.

To EPA's knowledge, no operations are discharging any drilling fluids or cuttings in the offshore Alaska region. No discharge is occurring in state waters due to state law requiring operators to meet zero discharge. In the federal offshore region, the Offshore Guidelines do not specifically prohibit discharge of SBF cuttings, but all operators historically have injected their drilling wastes. No commercial production has occurred in any federal offshore area. Some promising finds have been made in federal offshore waters in recent years, but development may be several years off. These fields include the Liberty (Tern Island) Field and the Northstar Field, both in the Beaufort Sea. Currently a draft Environmental Impact Statement (EIS) is being prepared for the Liberty Field. The Northstar Field has encountered significant resistance to development. The operator (BP) halted construction for over one year as a result of a recently resolved lawsuit and has just begun the task of preparing a final environmental impact statement, which must be finalized before any production operations can proceed.

Since the beginning of exploration in the Alaska Offshore region, 82 exploratory wells have been drilled in Federal Offshore waters, primarily in the Beaufort Sea, where nearly 40 percent of all exploratory wells in the Alaska federal offshore region have been drilled. Exploratory well drilling in federal waters has slacked off significantly in recent years. From a peak of about 20 wells per year in 1985, no wells were drilled in 1994, 1995, and 1996, and two were drilled in 1997, for an average of less than one well drilled per year. EPA assumes that no significant drilling activity will be occurring in the Federal Offshore regions of Alaska. Offshore Alaska, therefore, is within the scope of the regulation but is not expected to be associated with costs or savings as a result of the proposed effluent guidelines, either in state offshore waters (because of state law) or in federal waters (due to historic practice and lack of drilling activity). Wells drilled in this region are not included in the count of potentially affected wells.

3. Summary of Well Counts and Operators

EPA estimates that a total of 1,160 wells, on average, are drilled each year in the regions potentially affected by the SBF Guidelines. Of these, EPA estimates that 113 wells are drilled, on average, each year using SBFs in the Gulf (none in California and none in Cook Inlet). EPA further estimates that a total of 125 wells are drilled annually using OBFs, of which 112 are drilled in the Gulf, 12 in California, and 1 in Cook Inlet. EPA estimates that the remaining 922 wells drilled annually in the affected regions are drilled exclusively with WBFs and would not incur costs or realize savings under the proposed rule. EPA assumes that a total of 23 wells in shallow water locations, 12 wells in California, and 1 well in Cook Inlet, for a total of 36 wells, would switch from OBFs to SBFs if the SBF effluent guidelines allow discharge.

The number of operators currently drilling wells in the regions total 99 firms. These operators include the 96 operators in the Gulf of Mexico and 3 additional operators in the Pacific (2 Pacific operators also drill in the Gulf). All Cook Inlet operators also drill in the Gulf. These counts will be used as baseline data for the economic analysis.

B. Costs and Costs Savings of the Regulatory Options

EPA considered two options for the proposed rule for both BAT and NSPS, a discharge option and a zero discharge option. Table X–1 summarizes the costs and costs savings of each alternative considered in this rule under both BAT and NSPS. This information was presented in more detail in Section IX. For additional information, see Tables IX–2 and IX–3 in Sections IX.C.

TABLE X–1.—COSTS AND COST SAVINGS OF THE REGULATORY OPTIONS

Option	BAT	NSPS	Total
Discharge	($6,586,322)	($569,600)	($7,155,922)
Zero Discharge	$6,963,896	$1,594,418	$8,558,314

As Table X–1 shows, the preferred discharge option is associated with a cost savings of $6.6 million per year for BAT and $0.6 million per year for NSPS, for a total cost savings of $7.2 million per year. The cost estimates for the zero discharge option are $7.0 million per year under BAT and $1.6 million per year under NSPS, for a total of $8.6 million per year.

C. Impacts from BAT Options

For each regulatory option, EPA estimated the change in the cost of drilling wells, impacts on operating a production unit (typically a platform), impacts on firms, both large and small (impacts on small firms specifically are discussed in Section X.F), employment impacts in the oil and gas industry, and impacts on related industries (e.g., drilling contractors, drilling fluid companies, mud cleaning equipment rental firms, transport and disposal firms, etc.) as a result of the proposed BAT requirements. The results of these analyses are summarized below. EPA concludes that, for the preferred option, nearly all economic impacts are positive and finds the preferred option to be economically achievable in the regions analyzed, as well as for any other region where discharge would be allowed.

1. Impacts on Costs of Drilling Wells

In this section, EPA shows the impacts of the costs associated with this rule by comparing per-well costs with the total average cost to drill a well. Table X–2 shows the four model well types defined in Section IX and provides estimates of potential costs or cost savings as a percentage of total costs to drill a well associated with various subsets of these well types. Costs and cost savings vary depending on the region, the type of fluid currently used, and the operator's choice of zero discharge (under the zero discharge option only)—hauling to shore for disposal or injecting the waste (the latter, less expensive option is not technically feasible at all locations). See the Development Document for detailed information on how the numbers of wells were estimated in each category and the Economic Analysis report for how the aggregate costs of each well type were disaggregated to estimate a per well cost.

TABLE X–2.—COST SAVINGS OF THE IMPROVED DISCHARGE OPTION AS A PERCENTAGE OF BASELINE DRILLING COSTS

[$1997]

Type of well	Number of wells	Incremental cost of discharge option (per well)	Incremental cost of zero discharge option (per well)	Total baseline cost of drilling well ($MM)	Cost as a percentage of total drilling cost	
					Discharge option	Zero discharge option
Gulf of Mexico:						
Deep Water SBF Developmental (haul)	14	($29,302)	$95,507	$2.9	−1.0	3.3
Deep Water SBF Developmental (inject)	4	(29,302)	57,205	2.9	−1.0	2.0
Shallow Water SBF Developmental (haul)	10	(17,502)	19,113	2.9	−0.6	0.7
Shallow Water SBF Developmental (inject)	2	(17,502)	[1] (10,555)	2.9	−0.6	−0.4
Shallow Water OBF Developmental (haul)	12	(36,615)	0	2.9	−1.3	0.0
Shallow Water OBF Developmental (inject)	3	(6,947)	0	2.9	−0.2	0.0
Deep Water SBF Exploratory (haul)	46	(70,502)	79,813	3.9	−1.8	2.0
Deep Water SBF Exploratory (inject)	11	(70,502)	127,825	3.9	−1.8	3.3
Shallow Water SBF Exploratory (haul)	6	(41,502)	28,315	4.9	−0.8	0.6
Shallow Water SBF Exploratory (inject)	1	(41,502)	[1] (21,950)	4.9	−0.8	−0.4
Shallow Water OBF Exploratory (haul)	6	(69,817)	0	4.9	−1.4	0.0
Shallow Water OBF Exploratory (inject)	2	(19,552)	0	4.9	−0.4	0.0
California:						
Deep Water OBF Developmental	11	(43,658)	0	1.6	−2.7	0.0
Shallow Water OBF Developmental	1	(28,899)	0	1.6	−1.8	0.0
Alaska:						
Shallow Water OBF Developmental	1	(92,266)	0	2.8	−3.3	0.0

[*] See Development Document for explanation of cost savings.

Note: Negative values or values in parentheses represent a cost savings.

Table X–2 shows that most cost savings under the preferred discharge option would be about 1 to 2 percent of total well drilling costs, with a few exceptions. Deep water development wells using OBFs in California would realize cost savings of as much as 2.7 percent of total costs, and the estimated one Alaska well using OBFs in Cook Inlet would realize a cost savings of 3.3 percent of total well drilling costs. In general, these cost savings are not a large portion of costs to drill and therefore should act as no incentive to at most a small incentive on well drilling activity.

Under zero discharge, wells currently using OBFs would incur no incremental costs of compliance since they already meet zero discharge requirements. Among those currently using SBFs, the median percentage of compliance costs to the total cost of drilling wells is 2.0 percent. EPA believes these results indicate that the rule would be economically achievable, but has selected the discharge option instead in

order to mitigate non-water quality environmental impacts; see Section VI above.

2. Impacts on Platforms and Production

Neither the discharge option nor the zero discharge option would have a significant impact on production decisions on platforms. As noted above, cost savings among operations currently using SBFs are a small fraction of the overall cost to drill a well in the offshore, so the cost savings associated with the preferred discharge option would have a small effect on an operator's decisions to drill, although some small encouragement to drilling may result.

Under EPA's zero discharge option, EPA investigated potential impacts based on previous work performed as part of the offshore oil and gas effluent guidelines rule. The costs of such an option, compared to the baseline costs of drilling wells in the Gulf are presented in Table X–2. EPA previously investigated the impact of zero discharge of all drilling fluids and cuttings on platform-based production operations in the offshore regions of the Gulf and found, at that time, that ''none of the options considered * * * [including zero discharge] for drilling fluids and drill cuttings has an adverse impact on hydrocarbon production.'' (58 FR 12,454–12,152). Furthermore, as stated in the economic impact analysis prepared for the rule (Economic Impact Analysis of Final Effluent Limitations Guidelines and Standards of Performance for the Offshore Oil and Gas Industry, EPA 821/R–93–004), EPA estimated no change in the total production for any project analyzed under any regulatory scenario for drilling wastes (including zero discharge). EPA believes that a similar impact would occur today and thus zero discharge would be economically achievable.

3. Impacts on Firms

EPA estimated impacts on firms by assessing the costs and cost savings of the regulatory options as a percentage of revenues. The cost savings associated with the preferred discharge option would have from no impact to a very small impact on the investment decisions by the majority of the firms affected by the proposed rule. EPA assumes that the likeliest users of SBF in shallow water locations are the same operators who use SBF in deep water operations. EPA solicits comments on this assumption. In the Gulf of Mexico, a total of 18 firms (19 percent of the 96 firms considered potentially affected in the Gulf) drilled in deepwater locations over the period 1995–1997. Total cost savings among these firms would probably be at most nearly 0.3 percent of revenues.

Among the 18 firms likely to be using SBFs (the 18 deepwater drilling firms), costs of zero discharge of SBF cuttings would be at most 0.4 percent of revenues among these firms. Section X.F discusses costs for zero discharge as a percent of revenues for each potentially affected small firm currently drilling with SBFs and discharging cuttings.

4. Secondary Impacts

a. *Employment and Output.*—EPA anticipates no negative impacts on employment and output (revenues) from the preferred option because, in the aggregate, cost savings are realized. Changes in employment and output are directly proportional to costs of compliance (that is, higher costs lead to lower employment and output) thus cost savings would minimally increase employment and output in the oil and gas industry, but these gains would be offset by losses elsewhere in the economy (e.g., waste disposal firms). Under zero discharge, the costs of compliance would minimally decrease employment and output, but these decreases would be offset by gains elsewhere in the economy (e.g., waste disposal firms).

The gross effects of the preferred option (that is, without considering losses in other industries that were not quantified) would total 93 full-time equivalents (FTE) gained in the U.S. economy (1 FTE = 2,080 hours and can be equated with one full-time job) and $13.9 million in additional output per year throughout the U.S. economy as a whole. The zero discharge option is estimated to result in a loss (unadjusted for gains in other industries, which EPA did not quantify) of 111 FTEs and a loss of $16.6 million in output per year in the U.S. economy. These losses occur within the oil and gas industry as well as in other industries. The net effect of the rule (once adjustments for changes in other industries are accounted for) on the U.S. economy under either option is likely to be close to zero.

To the extent that any costs savings might be reinvested in additional drilling or otherwise encourage additional drilling, employment and output could increase in the oil and gas industry by more than that associated with the cost savings alone. EPA has not quantified this potentially positive, albeit very small, effect.

b. *Secondary Impacts on Associated Industries.*—EPA qualitatively analyzed the secondary impacts on associated industries from the preferred option. Impacts on drilling contractors should be neutral to positive, with some increase in employment in these firms occurring if they reinvest the cost savings. Impacts on firms supplying drilling fluids should be neutral to positive, since most firms supplying drilling fluids stock both OBFs and SBFs. To the extent that SBFs have, at a minimum, the same profit margin as OBFs, there would be little to no impacts on these firms, because SBFs would replace OBFs in some instances under the preferred discharge option. If drilling increases as a result of reinvestment, some positive impacts might occur.

Firms that provide rental of solids separation systems presumably would purchase and provide improved solids separation systems once demand for these systems developed with the promulgation of the rule. Because these more efficient systems would most likely be rented in addition to, rather than in place of, less efficient systems, impacts on these firms would be positive.

Firms that manufacture the improved solids separation equipment and firms that manufacture equipment or provide services needed to comply with the new testing requirements would prosper.

The firms providing transport and landfilling or injection of OBF-contaminated cuttings would sustain economic losses as a result of the rule. Under the preferred option, for wells currently using OBFs, EPA estimates that waste generated for disposal by landfill and injection would be reduced by 34 million pounds per year (see Section VII.E and Section X.E). Under a zero discharge option, these firms would experience potential economic gains, because more waste (178 million pounds per year) would be generated for land disposal or injection than is currently generated (see Section VII.E and Section X.E).

c. *Other Secondary Impacts.*—There would be no measurable impacts on the balance of trade or inflation as the result of this proposed rule. EPA projects insignificant impacts on domestic drilling and production, and therefore insignificant impacts on the U.S. demand for imported oil. Additionally, even if there were costs associated with this rule, the industry has no ability to pass on costs to consumers as price takers in the world oil market, and thus this rule would have no impact on inflation.

D. Impacts From NSPS Options

The proposed NSPS option is the same discharge option proposed for BAT. Under the definitions of new

source in the Offshore Oil and Gas Effluent Guidelines, an oil and gas operation is considered a new source only when significant site preparation work and other criteria are met (see 40 CFR Part 435.11). Individual exploratory wells, wells drilled from existing platforms and wells drilled and connected to an existing separation/treatment facility without substantial construction of additional infrastructure are not new sources.

As discussed above, the lack of negative economic impacts from allowing SBF discharge leads EPA to the conclusion that the effluent guidelines are economically achievable for both existing and new sources. Additionally, on a per-well basis, NSPS is expected to result in greater cost savings than BAT because new platforms do not require the retrofit costs to enable the improved solids control equipment to be placed on existing platforms. Because the preferred NSPS option results in cost savings and those cost savings are greater than those realized by existing operations, there are no barriers to entry. In fact, the rule might act as an small incentive to new source development (see discussion in Section X.C.4).

E. Cost-Benefit Analysis

Pursuant to E.O. 12866, EPA chose to quantitatively and qualitatively compares the costs and benefits of the preferred discharge option. The total annual cost savings of the rule in pretax dollars are $7.2 million, including the costs to both existing and new operations. Benefits also include 72.03 tons of air emissions reduced from both existing and new sources per year (including nitrogen oxides and sulfur dioxides, and other ozone precursors). These reductions arise because operators are encouraged to use SBFs and discharge cuttings rather than use OBFs and transport wastes to shore for disposal or grind and inject cuttings). SBF use also results in an energy savings of 2,302 barrels of oil equivalent per year when the cuttings are no longer hauled to shore for disposal or ground up for injection. An additional 14.1 million pounds per year of pollutants, however, would be discharged to surface waters annually, but due to pollution prevention technology, this discharge prevents 34 million pounds of wastes from being land disposed or injected each year. See Table X–3 for a summary of the costs and benefits of BAT and NSPS requirements under the discharge option.

Under the zero discharge option, costs would be $8.6 million, and 178 million pounds per year of pollutants would no longer be discharged, but an additional 34 million pounds of waste would be land disposed or injected each year. Furthermore, compared to current practice, 380 tons of air emissions would be generated annually, and energy consumption would increase by 27,000 barrels of oil equivalent per year. See Table X–3 for a summary of the costs and benefits of BAT and NSPS requirements under the zero discharge option. Note that these costs and benefits are incremental to the current baseline, not incremental to the discharge option, which is how many of these numbers are presented in the text in Section VII.

TABLE X–3.—SUMMARY OF COSTS AND BENEFITS UNDER THE DISCHARGE OPTION AND ZERO DISCHARGE OPTION

Cost or benefit category	Discharge option			Zero discharge option		
	BAT	NSPS	Total	BAT	NSPS	Total
Cost ($million) [1]	−$6.6	−$0.6	−$7.2	+$7.0	+$1.6	+$8.6
Energy (barrels of oil equivalent) [2]	−2,613	+311	−2,302	+24,125	+2,932	+27,057
Solid Waste (MM lbs) [3]	−34	0	−34	+165	+13	+178
Air Emissions (tons per year) [2]	−73.3	+1.28	−72.02	+338.55	+41	+379.55
Water Pollutants (MM lb/yr) [4]	+15.8	−1.6	+14.1	−159.1	−18.3	−177.4

Note: minus signs indicate a cost savings or benefit; plus signs indicate a cost or an impact.
[1] See Table X–1.
[2] See Tables VII–1 and VII–2.
[3] See Section VII.E.
[4] See Tables IX–4 and IX–5.

F. Small Business Analysis

Pursuant to the requirements of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA performed a small business analysis to determine if an Initial Regulatory Flexibility Analysis (IRFA) must be performed. The analysis undertaken here is used to determine if the rule would have a significant impact on a substantial number of small entities. This section discusses the number of small entities estimated to be affected by the rule and analyzes the potential magnitude of impact on these entities. Under the preferred option, no wells are expected to incur costs, thus no firms are affected in any negative way by the proposed effluent guidelines. These results will be discussed as they apply to the RFA and SBREFA requirements in Section XI.B of today's notice.

Although well drilling and platform operations have not changed significantly in the intervening years since the offshore rule was promulgated, many of the operators have changed. When the offshore rule was promulgated, EPA believed no small firms were likely to be affected by that rule. As the offshore region of the Gulf, in particular, has matured, smaller firms have begun drilling and producing. In EPA's experience (see Economic Impact Analysis for Final Effluent Limitations Guidelines and Standards for the Coastal Subcategory of the Oil and Gas Extraction Point Source Category, EPA 821/R95–13), as an oil and gas region matures the majors can no longer earn returns meeting their requirements and sell their operations to other firms, usually smaller independents who have lower overheads, more limited access to capital, and fewer means and opportunity to take on higher risk or overseas activities. Because of this change in the size of firms operating in the offshore region, EPA re-evaluated the earlier conclusion about small firms operating in offshore regions and estimated impacts on small business.

The first step of this analysis was to separate the actively drilling firms into small and large firms. The Small Business Administration (SBA) characterizes an oil and gas production operator as small if it employs fewer than 500 employees and an oil and gas services provider as small if it generates less than $5 million per year in revenues. Because many small firms in this industry are partly or wholly owned by larger firms, EPA traced ownership of

small firms to determine whether their parent companies also were small businesses. Generally, EPA characterized a firm at the higher level of organization if it was majority owned by the larger entity (except in a few instances when the subsidiary was a large business and publicly available information was available for that level of the corporation; e.g., Vastar, which is about 80 percent owned by ARCO). This approach is consistent with SBA's definition of affiliation. Small firms that are affiliated (e.g., 51 percent owned) by firms not defined as small by SBA's standards (13 CFR Part 121) are not considered small for the purposes of regulatory flexibility analysis.

EPA determined that a total of 42 small firms might be subject to the requirements of the SBF Effluent Guidelines. These 42 small firms, although meeting SBA's definition of small for this industry, are generally larger than firms typically considered small in other industries. The median assets for this group (among publicly held firms) is about $263 million, median equity is about $127 million, median revenues are about $16 million, and median net income is about $2.8 million. Median return on assets is about 1.5 percent, median return on equity is about 3.3 percent, and net income to revenues (net profit margin) is about 6.8 percent. Although returns are not as strong as those associated with the affected industry as a whole, profit margin is generally about the same as typical margins for the affected industry, regardless of size of firm. Revenues range from a high of $383 million to a low of $160,000. Actual or Dun & Bradstreet estimated revenue figures were identified for nearly all small firms, although other financial information was available for only about half of the small firms. Employment at these small firms ranges from a high of 400 to a low of 2. Median employment is approximately 38 persons.

As noted above, under the discharge option, no wells are expected to incur costs, thus no firms would be affected in any negative way by the proposed effluent guidelines.

EPA also looked at the impacts of the zero-discharge option, or other options that would incur costs, in which case those small firms using SBFs potentially would incur compliance costs. As in the analysis of all firms discussed above in Section X.C.3, EPA has determined that the likeliest users of SBF in shallow water locations would be the same operators who use SBF in deep water operations. Thus the firms with both deep water and shallow water operations would be the potentially affected firms. Only one firm meets this definition as well as the SBA definition of small entity and thus would be an affected small firm under the zero discharge option. EPA finds that one firm is not a substantial number of small entities. Further, EPA estimated costs for zero discharge on this firm and compared these costs to the firm's revenues. The costs would be less than one percent of revenues under the zero discharge option, and EPA finds this is not a significant impact.

G. Cost-Effectiveness Analysis

Cost-effectiveness analysis evaluates the relative efficiency of options in removing toxic pollutants and nonconventional pollutants. Cost-effectiveness results are expressed in terms of the incremental and average costs per pound-equivalent removed. A pound equivalent is a measure that addresses differences in the toxicity of pollutants removed. Total pound-equivalents are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor. EPA calculates the toxic weighting factor using ambient water quality criteria and toxicity values. The toxic weighting factors are then standardized by relating them to a particular pollutant, in this case copper.

For the purpose of evaluating most effluent guidelines, EPA's standard procedure is to rank the options considered for each subcategory in order of increasing pounds-equivalent removed. The Agency calculates incremental cost-effectiveness as the ratio of the incremental annual costs to the incremental pounds-equivalent removed under each option, compared to the previous (less effective) option. Average cost-effectiveness is calculated for each option as a ratio of total costs to total pounds-equivalent removed.

While cost-effectiveness results are usually reported in the Notice of Proposed Rule for effluent guidelines, those results are not presented in today's notice because there are no incremental costs attributed to the proposed option, and EPA did not calculate a cost-effectiveness ratio for the proposed option. In the rulemaking record, EPA presents a more detailed discussion of cost-effectiveness analysis and reports results for the zero discharge option.

XI. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Executive Order 12866: OMB Review

Under Executive Order 12866, [58 Federal Register 51,735 (October 4, 1993)] the Agency must determine whether the regulatory action is ''significant'' and therefore subject to 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 proposed rule is not a ''significant regulatory action,'' and is therefore not subject to OMB review.

B. Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* as amended by the Small Business Regulatory Enforcement Fairness Act, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities as a part of rulemaking. However, under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA has prepared an analysis equivalent to an IRFA.

Using the U.S. Small Business Administration's definition for small business for this industry (i.e., firms with fewer than 500 employees for oil and gas production operators and less than $5 million per year in revenues for oil and gas services providers), EPA estimates the proposed rule would apply to 42 small firms. As explained in Sections IX and X of this notice, none of these small firms are expected to incur any costs as a result of this rule. Thus, EPA projects no adverse economic impacts to the small firms. To the contrary, if these firms use SBF, they are likely to experience cost savings.

Based on the assessment of the economic impact of regulatory options being considered for the proposed rule

as discussed in Section X, the Administrator therefore certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Therefore, the Agency did not prepare an IRFA.

While EPA has so certified today's proposed rule, the Agency nonetheless prepared a small business analysis, incorporating many of the features of the assessment required by the RFA. The small business analysis for the proposed rule is summarized in Section X.F of this notice.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule would impose no enforceable duty on any State, local, or tribal governments or require any expenditure of $100 million or more to the private sector. Thus today's proposed rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

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 intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements. As this rule has no effect on small governments, this rule would not significantly or uniquely affect small governments and Section 203 of the UMRA does not apply.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

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, 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 proposed rule would not create a mandate on State, local or tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

E. 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 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. As previously discussed this proposed rule does not impose any mandates on Tribal governments. Further, the only Indian communities in proximity to the activities addressed by this proposed rule are in Cook Inlet, Alaska. EPA does not project, however, that these communities would be affected by this rule. EPA projects that on average, 8 wells will be drilled in Cook Inlet annually. EPA further projects that of these 8 wells, one well would be drilled with OBF in the absence of this rule, and this one OBF well would convert to using SBF with today's proposed discharge option. EPA concludes that this effect of one well annually converting from OBF to SBF is minor, and would not significantly or uniquely affect the communities of Indian tribal governments. Further, today's proposed rule would not impose substantial direct compliance costs on such communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Paperwork Reduction Act

The proposed synthetic-based drilling fluids effluent guidelines contain no new information collection activities and, therefore, no information collection request will be submitted to OMB for review under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

G. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business 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 (OMB), an explanation of the reasons for not using such standards. The following discussion summarizes EPA's response to the requirements of the NTTAA.

EPA performed a search of the technical literature to identify any applicable analytical test methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. EPA's search revealed that there are consensus standards for many of the analytes specified in the tables at 40 CFR Part 136.3. Even prior to enactment of the NTTAA, EPA has traditionally included any applicable consensus test methods in its regulations. Consistent with the requirements of the CWA, those applicable consensus test methods are incorporated by reference in the tables at 40 CFR Part 136.3. The consensus test methods in these tables include American Society for Testing and Materials (ASTM) and Standard Methods.

Today's proposal would require dischargers to monitor for five additional parameters with up to six additional methods: polynuclear aromatic hydrocarbon (PAH) content of the base fluid, biodegradation rate of the base fluid, sediment toxicity, formation (crude) oil contamination in drilling fluid (two methods), and quantity of drilling fluid discharged with cuttings. EPA plans to approve use of test methods for these parameters in conjunction with the promulgation of the final rule. In addition, EPA is considering a requirement for bioaccumulation of the base fluid. EPA has identified applicable consensus methods for two parameters, ASTM Method E–1367–92 for sediment toxicity and American Petroleum Institute Retort Method (Recommended Practice 13B–2) for quantity of drilling fluid discharged with cuttings. For PAH content of the base fluid, EPA is proposing the use of EPA Method 1654A which was validated with assistance from a voluntary consensus standards body. With stakeholder support in data gathering activities, EPA intends to develop or encourage voluntary consensus standards bodies to develop appropriate methods for oil contamination in drilling fluid and biodegradation rate.

H. Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health risk or safety risk that the Agency has reason to believe may have a disproportionate effect on children. If a regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' because this is not an ''economically significant'' regulatory action as defined by E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory activities that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. Thus, this rule is not subject to E.O. 13045 because it is based on technology performance and not on health or safety risks.

XII. Regulatory Implementation

A. Analytical Methods

Section 304(h) of the Clean Water Act directs EPA to promulgate guidelines establishing test procedures for the analysis of pollutants. These test procedures (methods) are used to determine the presence and concentration of pollutants in wastewater, and are used for compliance monitoring and for filing applications for the NPDES program under 40 CFR Parts 122.21, 122.41, 122.44 and 123.25, and for the implementation of the pretreatment standards under 40 CFR Part 403.10 and 403.12. To date, EPA has promulgated methods for conventional pollutants, toxic pollutants, and for some nonconventional pollutants. The five conventional pollutants are defined at 40 CFR Part 401.16. Table I–B at 40 CFR Part 136 lists the analytical methods approved for these pollutants. The 65 toxic metals and organic pollutants and classes of pollutants are defined at 40 CFR Part 401.15. From the list of 65 classes of toxic pollutants EPA identified a list of 126 ''Priority Pollutants.'' This list of Priority Pollutants is shown, for example, at 40 CFR Part 423, Appendix A. The list includes non-pesticide organic pollutants, metal pollutants, cyanide, asbestos, and pesticide pollutants.

Currently approved methods for metals and cyanide are included in the table of approved inorganic test procedures at 40 CFR Part 136.3, Table I–B. Table I–C at 40 CFR Part 136.3 lists approved methods for measurement of non-pesticide organic pollutants, and Table I–D lists approved methods for the toxic pesticide pollutants and for other pesticide pollutants. Dischargers must use the test methods promulgated at 40 CFR Part 136.3 or incorporated by reference in the tables, when available, to monitor pollutant discharges from the oil and gas industry, unless specified otherwise in part 435 or by the permitting authority.

As part this rulemaking, EPA is proposing to allow use of analytical methods for determining additional parameters that are specific to characterizing SBFs and other non-aqueous drilling fluids. These additional parameters include polynuclear aromatic hydrocarbon (PAH) content of the base fluid, biodegradation rate of the base fluid, sediment toxicity, formation (crude) oil contamination in drilling fluid, and quantity of drilling fluid discharged with cuttings.

EPA worked with stakeholders to identify methods for determining these parameters. For PAH content, EPA is proposing the use of EPA Method 1654A. For biodegradation rate, EPA is proposing the use a solid phase test developed in the United Kingdom. For sediment toxicity, EPA is proposing the use of American Society for Testing and Material (ASTM) Method E–1367–92 supplemented with sediment preparation procedures. For formation (crude) oil contamination in drilling fluid, EPA is proposing the use of two methods, a reverse phase fluorescence test and a gas chromatography/mass spectrometry (GC/MS) test. The reverse phase fluorescence test is a screening method that provides a quick and inexpensive determination of oil contamination for use on offshore well drilling sites, while the GC/MS test provides a definitive identification and quantitation of oil contamination for baseline analysis. For determining the quantity of drilling fluid discharged with cuttings, EPA is proposing the use of the American Petroleum Institute Retort Method (Recommended Pratice 13B–2). EPA Method 1654A and ASTM E–1367–92 are incorporated by reference into 40 CFR Part 435 because they are published methods that are widely available to the public. Supplemental sediment preparation procedures for ASTM E–1367–92 are

provided in Appendix 3 to 40 CFR Part 435. The text of the four other proposed methods are provided in Appendices 4–7 to 40 CFR Part 435. Subpart A.

EPA currently is conducting additional development and validation of the proposed methods and researching the possible inclusion of additional or alternate methods. EPA intends to publish a notice of data availability to solicit comments on the selected methods prior to publication of a final rule.

On March 28, 1997, EPA proposed a means to streamline the method development and approval process (62 FR 14975) and on October 6, 1997, EPA published a notice of intent to implement a performance-based measurement system (PBMS) in all of its programs to the extent feasible (62 FR 52098). The Agency is currently determining the specific steps necessary to implement PBMS in all of its regulatory programs and has approved a plan for implementation of PBMS in the water programs. Under PBMS, regulated entities will be able to modify methods without prior approval and will be able to use new methods without prior EPA approval provided they notify the regulatory authority to which the data will be reported. EPA expects a final rule implementing PBMS in the water programs by the end of calendar year 1998. When the final rule takes effect, regulated entities will be able to select methods for monitoring other than those approved at 40 CFR Parts 136 and 435 provided that certain validation requirements are met. Many of the details were provided at proposal (62 FR 14975) and will be finalized in the final PBMS rule.

B. Diesel Prohibition for SBF-Cuttings

Under today's proposed rule, drill cuttings that have come in contact with SBF containing any amount of diesel oil are prohibited from discharge. A certain amount of formation oil contamination, however, would be allowed under this proposed rule. Since diesel oil and formation oil have many components in common, it would be nearly impossible to analytically determine the absence, or presence, of diesel when SBFs are contaminated with allowable levels of formation oil. For this reason, operators are to certify that the SBFs in use are free of diesel oil if the SBF-cuttings are to be allowed for discharge.

C. Monitoring of Stock Base Fluid

Under today's proposed rule, SBF-cuttings would be allowed for discharge only if the base fluids used to formulate the SBFs meet requirements in terms of PAH content, sediment toxicity, and biodegradation rate. The PAH content should be determined on a batchwise basis, or production lot basis. This is due to the fact that, at least for some of the base fluid manufacturing processes, PAH contamination may occur. Also, the analytical method is rapid and relatively inexpensive. The sediment toxicity and biodegradation rate should be determined once per year per base fluid trade name. These are parameters that EPA does not expect to change on a batch to batch or lot to lot basis. Also, the methods used to determine the parameters of sediment toxicity and biodegradation are longer term and more elaborate tests to conduct.

D. Upset and Bypass Provisions

A recurring issue of concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of ''upsets'' or ''bypasses''. The reader is referred to the Offshore Guidelines (58 FR 12501) for a discussion on upset and bypass provisions.

E. Variances and Modifications

Once this regulation is in effect, the effluent limitations must be applied in all NPDES permits thereafter issued to discharges covered under this effluent limitations guideline subcategory. Under the CWA certain variances from BAT and BCT limitations are provided for. A section 301(n) (Fundamentally Different Factors) variance is applicable to the BAT and BCT and pretreatment limits in this rule. The reader is referred to the Offshore Guidelines (58 FR 12502) for a discussion on the applicability of variances.

F. Best Management Practices

Sections 304(e) and 402 (a) of the Act authorizes the Administrator to prescribe ''best management practices'' (BMPs). EPA may develop BMPs that apply to all industrial sites or to a designated industrial category and may offer guidance to permit authorities in establishing management practices required by unique circumstances at a given plant.

EPA is considering the use of BMPs as part of the final rule to address the requirement of zero discharge of SBF not associated with drill cuttings. EPA understands that there are occasional instances when spills of SBF occur, and that the location and perhaps even the timing of these spills is predictable. EPA solicites comments from industry indicating the types of BMPs that would minimize or prevent SBF spills. EPA solicites comments from all stakeholders whether the zero discharge requirement should be controlled in these guidelines using BMPs or other means, such as a specific limitation.

G. Sediment Toxicity and Biodegradation Comparative Limitations

In lieu of a numerical limitation, between the time of today's proposal and the final rule, EPA recommends that if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the toxicity of the base fluid should be presented with data, generated in the same series of tests, showing the toxicity of the internal olefin and the vegetable ester as standards. Base fluids determined to have LC_{50} values greater than or equal to the LC_{50} value determined for C_{16}–C_{18} internal olefins, in the same series of test, would be acceptable for discharge.

For biodegradation testing also, in the interim period between today's proposed rule and the final rule, EPA recommends that if SBFs based on fluids other than internal olefins and vegetable esters are to be discharged with drill cuttings, data showing the biodegradation of the base fluid should be presented with data, generated in the same series of tests, showing the biodegradation of the internal olefin as a standard.

EPA prefers this approach for the sediment and biodegradation limitations rather than set numeric limitations at this time because of the small amount of data available to EPA upon which to base these numerical limits. EPA sees this as an interim solution to provide a limitation based on the performance of available technologies.

XIII. Solicitation of Data and Comments

EPA encourages public participation in this rulemaking. The Agency asks that comments address any perceived deficiencies in the record supporting this proposal and that suggested revisions or corrections be supported by data. In addition, EPA requests comments on the various ways of handling the applicability of these proposed guidelines, as this relates to the definitions for water-based drilling fluids and non-aqueous drilling fluids.

The Agency invites all parties to coordinate their data collection activities with EPA to facilitate mutually beneficial and cost-effective data submissions. Please refer to the ''For Further Information'' section at the beginning of this preamble for technical contacts at EPA.

To ensure that EPA can properly respond to comments, the Agency prefers that commenters cite, where

possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Please submit an original and two copies of your comments and enclosures (including references).

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments and data will also be accepted on disks in WordPerfect format or ASCII file format.

Comments may also be filed electronically to ''daly.joseph@epa.gov.'' Electronic comments must be submitted as an ASCII or Wordperfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–98–26 and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

List of Subjects in 40 CFR Part 435

Environmental protection, Non-aqueous drilling fluids, Oil and gas extraction, Synthetic based drilling fluids, Waste treatment and disposal, Water non-dispersible drilling fluids, Water pollution control, Pollution prevention.

Dated: December 29, 1998

Carol M. Browner,

Administrator.

Appendix A To The Preamble—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—Clean Water Act
Agency—U.S. Environmental Protection Agency
API—American Petroleum Institute
ASTM—American Society of Testing and Materials
BADCT—The best available demonstrated control technology, for new sources under section 306 of the Clean Water Act
BAT—The best available technology economically achievable, under section 304(b)(2)(B) of the Clean Water Act
bbl—barrel, 42 U.S. gallons
BCT—Best conventional pollutant control technology under section 304(b)(4)(B)
BMP—Best management practices under section 304(e) of the Clean Water Act
BOD—Biochemical oxygen demand
BOE—Barrels of oil equivalent
BPJ—Best Professional Judgement
BPT—Best practicable control technology currently available, under section 304(b)(1) of the Clean Water Act
CFR—Code of Federal Regulations
Clean Water Act—Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*)
Conventional pollutants—Constituents of wastewater as determined by section 304(a)(4) of the Act, including, but no limited to, pollutants classified as biochemical oxygen demanding, suspended solids, oil and grease, fecal coliform, and pH
CWA—Clean Water Act
Direct discharger—A facility which discharges or may discharge pollutants to waters of the United States
D&B—Dun & Bradstreet
DOE—Department of Energy
DWD—Deep-water development model well
DWE—Deep-water exploratory model well
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GC—Gas Chromatography
GC/FID—Gas Chromatography with Flame Ionization Detection
GC/MS—Gas Chromatography with Mass Spectroscopy Detection
GOM—Gulf of Mexico
Indirect discharger—A facility that introduces wastewater into a publicly owned treatment works
IRFA—Initial Regulatory Flexibility Analysis
LC_{50} (or LC50)—The concentration of a test material that is lethal to 50 percent of the test organisms in a bioassay
mg/l—milligrams per liter MMS—Department of Interior Minerals Management Service Nonconventional pollutants—Pollutants that have not been designated as either conventional pollutants or priority pollutants
NOIA—National Ocean Industries Association
NOW—Nonhazardous Oilfield Waste
NPDES—The National Pollutant Discharge Elimination System
NRDC—Natural Resources Defense Council, Incorporated
NSPS—New source performance standards under section 306 of the Clean Water Act
NTTAA—National Technology Transfer and Advancement Act
OBF—Oil-Based Drilling Fluid
OCS—Offshore Continental Shelf
OMB—Office of Management and Budget
PAH—Polynuclear Aromatic Hydrocarbon
PBMS—Performance Based Measurement System
POTW—Publicly Owned Treatment Works
ppm—parts per million
PPA—Pollution Prevention Act of 1990
Priority pollutants—The 65 pollutants and classes of pollutants declared toxic under section 307(a) of the Clean Water Act
PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act
PSNS—Pretreatment standards for new sources of indirect discharges, under sections 307(b) and (c) of the Act
RFA—Regulatory Flexibility Act
RPE—Reverse Phase Extraction
SBA—Small Business Administration
SBF—Synthetic Based Drilling Fluid
SBF Development Document—Development Document for Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBF Economic Analysis—Economic Analysis of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBF Environmental Assessment—Environmental Assessment of Proposed Effluent Limitations Guidelines and Standards for Synthetic-Based Drilling Fluids and other Non-Aqueous Drilling Fluids in the Oil and Gas Extraction Point Source Category
SBREFA—Small Business Regulatory Enforcement Fairness Act
SEC—Security and Exchange Commission
SIC—Standard Industrial Classification
SPP—Suspended particulate phase
SWD—Shallow-water development model well
SWE—Shallow-water exploratory model well
TSS—Total Suspended Solids
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code
WBF—Water-Based Drilling Fluid

For the reasons set forth in the preamble, 40 CFR Part 435 is proposed to be amended as follows:

PART 435—OIL AND GAS EXTRACTION POINT SOURCE CATEGORY

1. The authority citation for Part 435 is revised to read as follows:

Authority: (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342 and 1361).

Subpart A—Offshore Subcategory

2. Section 435.11 is revised to read as follows:

§ 435.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in this section, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term *base fluid retained on cuttings* shall refer to American Petroleum Institute Recommended Practice 13B–2 supplemented with the specifications, sampling methods, and averaging of the retention values provided in appendix 7 of 40 CFR part 435, subpart A.

(d) The term *biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the test procedure presented in appendix 4 of 40 CFR part 435, subpart A.

(e) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(f) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and

runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(g) The term *percent degraded at 120 days* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment relative to the intial concentration of base fluid in sediment at the start of the test on day zero.

(h) The term *percent stock base fluid degraded at 120 days minus percent* C_{16}-C_{18} *internal olefin degraded at 120 days shall not be less than zero* shall mean that the percent base fluid degraded at 120 days of any single sample of base fluid shall not be less than the percent C_{16}-C_{18} internal olefin degraded at 120 days as a control standard.

(i) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(j) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. 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 the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(k) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(l) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid.

(m) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) A water-based drilling fluid has water or a water miscible fluid as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) A non-aqueous drilling fluid is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhanced mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

(3) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase. Oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(4) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase. Enhanced mineral oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(5) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase. Synthetic-based drilling fluids are a subset of non-aqueous drilling fluids.

(n) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(o) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(p) The term *no discharge of formation oil* shall mean that cuttings contaminated with non-aqueous drilling fluids (NAFs) may not be discharged if the NAFs contain formation oil, as determined by the GC/MS baseline method as defined in appendix 5 to 40 CFR part 435, subpart A, to be applied before NAFs are shipped offshore for use, or the RPE method as defined in appendix 6 to 40 CFR part 435, subpart A, to be applied at the point of discharge. At the discretion of the permittee, detection of formation oil by the RPE method may be assured by the GC/MS method, and the results of the GC/MS method shall supercede those of the RPE method.

(q) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content, or as measured in any single sample of base fluid for determination of PAH content.

(r) The term *maximum weighted average for well* for BAT effluent limitations and NSPS for base fluid retained on cuttings shall mean the weighted average base fluid retention as determined by API RP 13B–2, using the methods and averaging calculations presented in appendix 7 of 40 CFR part 435, subpart A.

(s) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(t) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream. The term *minimum* as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(u) The term *M9IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(v) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(w) The term *new source* means any facility or activity of this subcategory that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(1) The term *water area* as used in the term ''site'' in 40 CFR 122.29 and 122.2 shall mean the water area and ocean floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(2) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the ocean floor for the purpose of constructing or placing a development or production facility on or over the site. ''New Source'' does *not* include facilities covered by an existing NPDES

permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(x) The term *no discharge of free oil* shall mean that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, e.g., deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

(y) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(z) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(aa) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations.

(bb) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(cc) The term *sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

(dd) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(ee) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C_6-C_{14} alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ff) The term *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(gg) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(hh) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(ii) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(jj) The term *10-day* LC_{50} shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment that is lethal to 50 percent of the test organisms exposed to that concentration of the base fluids after 10-days of constant exposure.

(kk) The term *10-day* LC_{50} *of stock base fluid minus 10-day* LC_{50} *of* C_{16}-C_{18} *internal olefin shall not be less than zero* shall mean that the 10-day LC_{50} of any single sample of the base fluid shall not be less than the LC_{50} of C_{16}-C_{18} internal olefin as a control standard.

(ll) The term *96-hour* LC_{50} shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

3. In § 435.12 the table is amended by removing the entries ''Drilling muds'' and ''Drill cuttings'' and by adding new entries (after ''Deck drainage'') for ''Water based'' and ''Non-aqueous'' to read as follows:

§ 435.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * *	*	* *	*
Water-based:			
Drilling fluids	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA

BPT EFFLUENT LIMITATIONS—OIL AND GREASE—Continued

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
Non-aqueous:			
Drilling fluids	No discharge	No discharge	NA
Drill cuttings	(1)	(1)	NA
* * * * * * *			

[1] No discharge of free oil.

* * * * *

4. In § 435.13 the table is amended by revising entry B under the entry for ''Drilling fluids and drill cuttings'' and by revising footnote 2 and adding footnotes 5–9 to read as follows:

§ 435.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BAT effluent limitation
* * * * * * *		
Drilling fluids and drill cuttings		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP shall be 3% by volume [2].
	Free oil	No discharge [3].
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH)	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid [5].
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero [6].
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero [7].
Discharge Limitations	Diesel oil	No discharge.
	Formation Oil	No discharge [8].
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent [9].
* * * * * * *		

* * * * * * *

[2] As determined by the suspended particulate phase toxicity test (Appendix 2).

[3] As determined by the static sheen test (Appendix 1).

* * * * * * *

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in Appendix 3.

[7] As determined by the biodegradation test (Appendix 4).

[8] As determined by the GC/MS baseline and assurance method (Appendix 5), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (Appendix 6).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (Appendix 7).

5. In § 435.14 the table is amended by revising entry B under the entry for ''Drilling fluids and drill cuttings'' to read as follows:

§ 435.14 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BCT EFFLUENT LIMITATIONS

Waste source	Pollutant parameter	BCT effluent limitation
* * * * * * *		
Drilling fluids and drill cuttings		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	Free oil	No discharge [2].
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids	Free oil	No discharge [2].
* * * * * * *		

[2] As determined by the static sheen test (Appendix 1).

6. In § 435.15 the table is amended by revising entry B under the entry for ''Drilling fluids and drill cuttings'' and by revising footnote 2 and adding footnotes 5–9 to read as follows:

§ 435.15 Standards of performance for new sources (NSPS).

* * * * *

NEW SOURCE PERFORMANCE STANDARDS

Waste source	Pollutant parameter	NSPS
* * * * * * *		
Drilling fluids and drill cuttings		
* * * * * * *		
(B) For facilities located beyond 3 miles from shore		
Water-based drilling fluids and drill cuttings	SPP Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume [2].
	Free oil	No discharge [3].
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
Non-aqueous drilling fluids		No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH)	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid [5].
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of $C_{16}-C_{18}$ internal olefin shall not be less than zero [6].
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent $C_{16}-C_{18}$ internal olefin degraded at 120 days shall not be less than zero [7].
Discharge Limitations	Diesel oil	No discharge.
	Free oil	No discharge [3].
	Formation oil	No discharge [8].
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent [9].

NEW SOURCE PERFORMANCE STANDARDS—Continued

Waste source	Pollutant parameter	NSPS
* * * * * * *		

* * * * *

[2] As determined by the suspended particulate phase toxicity test (Appendix 2).

[3] As determined by the static sheen test (Appendix 1).

* * * * *

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in Appendix 3.

[7] As determined by the biodegradation test (Appendix 4).

[8] As determined by the GC/MS baseline and assurance method (Appendix 5), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (Appendix 6).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (Appendix 7).

7. Subpart A is amended by adding Appendices 3 through 7 as follows:

Appendix 3 to Subpart A of Part 435—Procedure for Mixing Base Fluids with Sediments

This procedure describes a method for amending uncontaminated and nontoxic (control) sediments with the base fluids that are used to formulate synthetic-based drilling fluids and other non-aqueous drilling fluids. Initially, control sediments shall be press-sieved through a 2000 micron mesh sieve to remove large debris. Then press-sieve the sediment through a 500 micron sieve to remove indigenous organisms that may prey on the test species or otherwise confound test results. Homogenize control sediment to limit the effects of settling that may have occurred during storage. Sediments should be homogenized before density determinations and addition of base fluid to control sediment. Because base fluids are strongly hydrophobic and do not readily mix with sediment, care must be taken to ensure base fluids are thoroughly homogenized within the sediment. All concentrations are weight-to-weight (mg of base fluid to kg of dry control sediment). Sediment and base fluid mixing should be accomplished by using the following method.

1. Determine the wet to dry ratio for the control sediment by weighing approximately 10 g subsamples of the screened and homogenized wet sediment into tared aluminum weigh pans. Dry sediment at 105°C for 18–24 h. Remove sediment and cool in a desiccator until a constant weight is achieved. Re-weigh the samples to determine the dry weight. Determine the wet/dry ratio by dividing the net wet weight by the net dry weight:

$$\frac{\text{Wet Sediment Weight (g)}}{\text{Dry Sediment Weight (g)}} = \text{Wet to Dry Ratio} \qquad [1]$$

2. Determine the density (g/mL) of the wet control or dilution sediment. This will be used to determine total volume of wet sediment needed for the various test treatments.

$$\frac{\text{Mean Wet Sediment Weight (g)}}{\text{Mean Wet Sediment Volume (mL)}} = \text{Wet Sediment Density (g/mL)} \qquad [2]$$

3. To determine the amount of base fluid needed to obtain a test concentration of 500 mg base fluid per kg dry sediment use the following formulas:

Determine the amount of wet sediment required:

$$\text{Wet Sediment Density (g/mL)} \times \text{Volume of Sediment Required per Concentration (mL)} = \text{Weight Wet Sediment Required per Conc. (g)} \qquad [3]$$

Determine the amount of dry sediment in kilograms (kg) required for each concentration:

$$\frac{\text{Wet Sediment per Concentration (g)}}{\text{(Mean Wet to Dry Ratio)}} \times \frac{1\text{kg}}{1000\text{g}} = \text{Dry Weight Sediment (kg)} \qquad [4]$$

Finally, determine the amount of base fluid required to spike the control sediment at each concentration:

$$\text{Conc. Desired (mg/kg)} \times \text{Dry Weight Sediment (kg)} = \text{Base Fluid Required (mg)} \qquad [5]$$

4. For primary mixing, place appropriate amounts of weighed base fluid into stainless mixing bowls, tare the vessel weight, then add sediment and mix with a high-shear dispersing impeller for 9 minutes. The concentration of base fluid in sediment from this mix , rather than the nominal concentration, shall be used in calculating LC50 values.

5. Tests for homogeneity of base fluid in sediment are to be performed during the procedure development phase. Because of difficulty of homogeneously mixing base fluid with sediment, it is important to demonstrate that the base fluid is evenly mixed with sediment. The sediment should be analyzed for total petroleum hydrocarbons (TPH) using EPA Methods 3550A and 8015M, with samples taken both prior to and after distribution to replicate test containers. Base-fluid content is measured as TPH. After mixing the sediment, a minimum of three replicate sediment samples should be taken prior to distribution into test containers. After the test sediment is distributed to test containers, an additional three sediment samples should be taken from three test containers to ensure proper distribution of base fluid within test containers. Base-fluid content results should be reported within 48 hours of mixing. The coefficient of variation (CV) for the replicate samples must be less than 20%. If base-fluid content results are not within the 20% CV limit, the test sediment should be remixed. Tests should not begin until the CV is determined to be below the maximum limit of 20%. During the test, a minimum of three replicate containers should be sampled to determine base-fluid content during each sampling period.

6. Mix enough sediment in this way to allow for its use in the preparation of all test concentrations and as a negative control. When commencing the sediment toxicity test, range-finding tests may be required to determine the concentrations that produce a toxic effect if these data are otherwise unavailable. The definitive test should bracket the LC50, which is the desired endpoint. The results for the base fluids will be reported in mg of base fluid per kg of dry sediment.

References

American Society for Testing and Materials (ASTM). 1996. Standard Guide for Collection, Storage, Characterization, and Manipulation of Sediments for Toxicological Testing. ASTM E 1391–94. Annual Book of ASTM Standards, Volume 11.05, pp. 805–825.

Ditsworth, G.R., D.W. Schults and J.K.P. Jones. 1990. Preparation of benthic substrates for sediment toxicity testing, Environ. Toxicol. Chem. 9:1523–1529.

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U.S. EPA. 1994. Methods for Assessing the Toxicity of Sediment-associated Contaminants with Estuarine and Marine Amphipods. EPA/600/R–94/025. Office of Research and Development, Washington, DC.

Appendix 4 to Subpart A of Part 435—Determination of Biodegradation of Synthetic Base Fluids in a Solid-Phase Test System

Summary of Method

This analytical method determines the biodegradation potential of mineral, paraffinic, and diesel oils as well as synthetic materials that are used as base fluids in the formulation of drilling fluids. The base fluids are mixed with sediment at an initial concentration of 500 mg/kg dry sediment, and placed under flowing seawater at 12°C. Base fluid concentration measurements are made at Days 0, 14, 28, 56, and 120. This method uses two parameters, base-fluid content and redox potential in both poisoned and unpoisoned sediment, to assess the rate of biodegradation of base fluids.

Sample Requirements

1. The exposure system is a flowing seawater system providing a laminar flow over replicate test containers for a test duration of 120 days. For each base fluid there are two treatments: (1) base fluid-dosed sediment; and (2) base fluid-dosed sediment poisoned with biocide (used to measure the abiotic degradation of the base fluids).

2. To prevent cross-contamination, individual exposure tables should be used for each treatment and control. Exposure tables should be constructed of non-contaminating material and should be large enough to hold the required number of replicate test containers. Seawater should enter one end of the table, flow uniformly over test containers, and exit the opposite end of the table.

3. Sampling should be conducted on Days 0, 14, 28, 56, and 120. Sampling consists of three replicate samples taken on each sampling day for determination of redox potential and base-fluid content.

4. For Day 0 sampling, all samples should be taken from the initial batch of test treatment sediment prior to distribution into replicate exposure containers. Sufficient test treatment sediment must be made for a minimum of 30 replicate samples to be taken throughout the study (see Table 1).

TABLE 1.—REPLICATE REQUIREMENTS PER TREATMENT AND CONTROL TESTS

[Replication per sampling period]

Sampling period	Unpoisoned sediment		Poisoned sediment	
	Redox potential	Base-fluid content*	Redox potential	Base-fluid Content*
DAY 0	3	3	3	3
DAY 14	3**	3	3**	3
DAY 28	↓	3	↓	3
DAY 56	↓	3	↓	3
DAY 120	↓	3	↓	3
Totals Samples	6	15	6	15

*Sampling for base-fluid content is destructive, therefore samples must be taken from a different replicate set of three sampling containers for each sampling date.

**Sampling for redox potential is non-destructive, therefore samples may be taken from the same replicate set of three sample containers for each sampling date after Day 0.

Mixing Methods

Because base fluids are strongly hydrophobic and do not readily mix with sediments, care must be taken to ensure base fluids are thoroughly homogenized within the sediment. All concentrations are weight-to-weight (mg of base fluid to kg of dry control sediment). Sediment and base fluid mixing will be accomplished by using the following method.

1. Determine the wet to dry ratio for the control sediment by weighing approximately 10 g subsamples of the screened and homogenized wet sediment into tared aluminum weigh pans. Dry sediment at 105°C for 18–24 h. Remove sediment and cool in a desiccator until a constant weight is achieved. Re-weigh the samples to determine the dry weight. Determine the wet/dry ratio by dividing the net wet weight by the net dry weight using Formula 1. This is required to determine the weight of wet sediment needed to prepare the test concentration of 500 mg of base fluid per kg of dry sediment (500 ppm).

$$\frac{\text{Wet Sediment Weight (g)}}{\text{Dry Sediment Weight (g)}} = \text{Wet to Dry Ratio} \qquad [1]$$

2. Determine the density (g/mL) of the wet control or dilution sediment. This will be used to determine total volume of wet sediment needed for the various test treatments.

$$\frac{\text{Mean Wet Sediment Weight (g)}}{\text{Mean Wet Sediment Volume (mL)}} = \text{Wet Sediment Density (g/mL)} \qquad [2]$$

3. To determine the amount of base fluid needed to obtain a test concentration of 500 mg base fluid per kg dry sediment use the following formulas:

Determine the amount of wet sediment required:

$$\text{Wet Sediment Density (g/mL)} \times \text{Volume of Sediment Required per Concentration (mL)} = \text{Weight Wet Sediment Required per Conc. (g)} \quad [3]$$

Determine the amount of dry sediment in kilograms (kg) required for each concentration:

$$\frac{\text{Wet Sediment per Concentration (g)}}{\text{(Mean Wet to Dry Ratio)}} \times \frac{1\text{kg}}{1000\text{g}} = \text{Dry Weight Sediment (kg)} \quad [4]$$

Finally, determine the amount of base fluid to provide the initial test concentration of 500 mg/kg dry sediment:

$$(500\ \text{mg/kg}) \times \text{Dry Weight Sediment (kg)} = \text{Base Fluid Required (mg)} \quad [5]$$

4. Based on the required number (42) and size (approximately 500 mL) of samples, the approximate volume of sediment needed is 25 L. Mixing should be performed in 5 L batches, then combined and remixed. For primary mixing, place appropriate amounts of weighed base fluid into stainless mixing bowls, tare the vessel weight, then add sediment and mix with a high-shear dispersing impeller for 9 minutes.

5. Secondary mixing should be conducted in a large container (i.e., cement mixer) and mixing should be for a minimum of 10 minutes. Day 0 samples will be taken from this batch of test sediment.

6. Biocide additions are to be mixed after all other mixing is complete.

Base-Fluid Content

Because of difficulty of homogeneously mixing base fluid with sediment, it is important to demonstrate that the base fluid is evenly mixed with sediment. The sediment should be analyzed for total petroleum hydrocarbons (TPH) using EPA Methods 3550A and 8015M, with samples taken both prior to and after distribution to replicate test containers. Base-fluid content is measured as TPH. After mixing the 25L batch of sediment test concentration, a minimum of three replicate sediment samples will be taken prior to distribution into test containers. After the test sediment is distributed to test containers, an additional three sediment samples shall be taken from three test containers to ensure proper distribution of base fluid within test containers. Base-fluid content results should be reported within 48 hours of mixing. Measured and nominal concentrations should be reported for initial test concentrations. The coefficient of variation (CV) for the replicate samples must be less than 20%. If base-fluid content results are not within the 20% CV limit, the test sediment should be remixed. Tests should not begin until the CV is determined to be below the maximum limit of 20%. During the test, a minimum of three replicate containers should be sampled to determine base-fluid content during each sampling period.

Water Quality Measurements

The following water quality measurements of the overlying water should be taken daily: dissolved oxygen (DO), pH, temperature, and salinity.

Measurement of Redox Potential

1. The oxidation-reduction (redox) potential of a sediment is a quantitative expression of its oxidizing or reducing tendency. Redox potential is expressed as an E_h value, E_h being the electron motive force (in mV) of an oxidation-reduction system referred to as a standard hydrogen half-cell. Positive E_h values are characteristic of well oxygenated, coarse sediments or those with very low concentrations of organic matter. Conversely, negative E_h values occur in deoxygenated sediments rich in organic matter and largely consisting of fine particles. A redox profile follows changes in redox potential at increasing depths from the sediment surface.

2. The redox potential should be measured using a combination platinum/reference (Ag/AgCL) electrode held in an adjustable retort stand, one revolution resulting in a lowering of the probe by 5 mm. Readings should be taken after one minute and values for Zobell's solution (g L^{-1}; potassium ferrocyanide, 1.399; potassium ferricyanide, 1.087; potassium chloride, 7.456) and sea water should be monitored after each depth profile. Actual readings should be adjusted to E_h by adding 198.

Appendix 5 to Subpart A of Part 435—Determination of Crude Oil Contamination in Non-Aqueous Drilling Fluids by Gas Chromatography/Mass Spectrometry (GC/MS)

1.0 Scope and Application

1.1 This method determines crude (formation) oil contamination, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs) by comparing the gas chromatography/mass spectrometry (GC/MS) fingerprint scan and extracted ion scans of the test sample to that of an uncontaminated sample.

1.2 This method can be used for monitoring oil contamination of NAFs or monitoring oil contamination of the base fluid used in the NAF formulations.

1.3 Any modification of this method beyond those expressly permitted shall be considered as a major modification subject to application and approval of alternative test procedures.

1.4 The gas chromatography/mass spectrometry portions of this method are restricted to use by, or under the supervision of analysts experienced in the use of GC/MS and in the interpretation of gas chromatograms and extracted ion scans. Each laboratory that uses this method must generate acceptable results using the procedures described in Sections 7, 9.2, and 12 of this method.

2.0 Summary of Method

2.1 Analysis of NAF for crude oil contamination is a step-wise process. Qualitative assessment of the presence or absence of crude oil is performed first. If crude oil is detected in this qualitative assessment, quantitative analysis of the crude oil concentration is performed.

2.2 A sample of NAF is centrifuged, to obtain a solids free supernate.

2.3 The sample to be tested is prepared by removing an aliquot of the solids free supernate, spiking it with internal standard, and analyzing it using GC/MS techniques. The components are separated by the gas chromatograph and detected by the mass spectrometer.

2.4 Qualitative identification of crude oil contamination is performed by comparing the Total Ion Chromatograph (TIC) scans and Extracted Ion Profile (EIP) scans of test sample to that of uncontaminated base fluids, and examining the profiles for chromatographic signatures diagnostic of oil contamination.

2.5 The presence or absence of crude oil contamination observed in the full scan profiles and selected extracted ion profiles determines further sample quantitation and reporting.

2.6 If crude oil is detected in the qualitative analysis, quantitative analysis is performed by calibrating the GC/MS using a designated NAF spiked with known concentrations of a designated oil.

2.7 Quality is assured through reproducible calibration and testing of GC/MS system and through analysis of quality control samples.

3.0 Definitions

3.1 A NAF is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).
3.2 TIC—Total Ion Chromatograph.
3.3 EIP—Extracted Ion Profile.
3.4 TCB—1,3,5–trichlorobenzene is used as the internal standard in this method.
3.5 SPTM—System Performance Test Mix standards are used to establish retention times and monitor detection levels.

4.0 Interferences and Limitations

4.1 Solvents, reagents, glassware, and other sample processing hardware may yield artifacts and/or elevated baselines causing misinterpretation of chromatograms.
4.2 All Materials used in the analysis shall be demonstrated to be free from interferences by running method blanks. Specific selection of reagents and purification of solvents by distillation in all-glass systems may be required.
4.3 Glassware is cleaned by rinsing with solvent and baking at 400°C for a minimum of 1 hour.
4.4 Interferences may vary from source to source, depending on the diversity of the samples being tested.
4.5 Variations in and additions of base fluids and/or drilling fluid additives (emulsifiers, dispersants, fluid loss control agents, etc.) might also cause interferences and misinterpretation of chromatograms.
4.6 Difference in light crude oils, medium crude oils, and heavy crude oils will result in different responses and thus different interpretation of scans and calculated percentages.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however each chemical should be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level.
5.2 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a fume hood to limit the potential exposure to harmful contaminates.
5.3 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional references to laboratory safety can be found in References 16.1 through 16.3.
5.4 NAF base fluids may cause skin irritation, protective gloves are recommended while handling these samples.

6.0 Apparatus and Materials

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance meeting the requirements of this method is the responsibility of the laboratory.
6.1 Equipment for glassware cleaning.
6.1.1 Laboratory sink with overhead fume hood.
6.1.2 Kiln—Capable of reaching 450°C within 2 hours and holding 450°C within ±10°C, with temperature controller and safety switch (Cress Manufacturing Co., Santa Fe Springs, CA B31H or X31TS or equivalent).
6.2 Equipment for sample preparation.
6.2.1 Laboratory fume hood.
6.2.2 Analytical balance—Capable of weighing 0.1 mg.
6.2.3 Glassware.
6.2.3.1 Disposable pipettes—Pasteur, 150 mm long by 5 mm ID (Fisher Scientific 13–678–6A, or equivalent) baked at 400°C for a minimum of 1 hour.
6.2.3.2 Glass volumetric pipettes or gas tight syringes—1.0-mL ±1% and 0.5-mL ±1%.
6.2.3.3 Volumetric flasks—Glass, class A, 10-mL, 50-mL and 100-mL.
6.2.3.4 Sample vials—Glass, 1- to 3-mL (baked at 400°C for a minimum of 1 hour) with PTFE-lined screw or crimp cap.
6.2.3.5 Centrifuge and centrifuge tubes—Centrifuge capable of 10,000 rpm, or better, (International Equipment Co., IEC Centra MP4 or equivalent) and 50-mL centrifuge tubes (Nalgene, Ultratube, Thin Wall 25×89 mm, #3410–2539).
6.3 Gas Chromatograph/Mass Spectrometer (GC/MS):
6.3.1 Gas Chromatograph—An analytical system complete with a temperature-programmable gas chromatograph suitable for split/splitless injection and all required accessories, including syringes, analytical columns, and gases.
6.3.1.1 Column—30 m (or 60 m) × 39 0.32 mm ID (or 0.25 mm ID) 1µm film thickness (or 0.25µm film thickness) silicone-coated fused-silica capillary column (J&W Scientific DB–5 or equivalent).
6.3.2 Mass Spectrometer—Capable of scanning from 35 to 500 amu every 1 sec or less, using 70 volts (nominal) electron energy in the electron impact ionization mode (Hewlett Packard 5970MS or comparable).
6.3.3 GC/MS interface—the interface is a capillary-direct interface from the GC to the MS.
6.3.4 Data system—A computer system must be interfaced to the mass spectrometer. The system must allow the continuous acquisition and storage on machine-readable media of all mass spectra obtained throughout the duration of the chromatographic program. The computer must have software that can search any GC/MS data file for ions of a specific mass and that can plot such ion abundance versus retention time or scan number. This type of plot is defined as an Extracted Ion Current Profile (EIP). Software must also be available that allows integrating the abundance in any total ion chromatogram (TIC) or EIP between specified retention time or scan-number limits. It is advisable that the most recent version of the EPA/NIST Mass Spectral Library be available.

7.0 Reagents and Standards

7.1 Methylene chloride—Pesticide grade or equivalent. Used when necessary for sample dilution.
7.2 Standards—Prepare from pure individual standard materials or purchased as certified solutions. If compound purity is 96% or greater, the weight may be used without correction to compute the concentration of the standard.
7.2.1 Crude Oil Reference—Obtain a sample of a crude oil with a known API gravity. This oil will be used in the calibration procedures.
7.2.2 Synthetic Base Fluid—Obtain a sample of clean internal olefin (IO) Lab drilling fluid (as sent from the supplier—has not been circulated downhole). This drilling fluid will be used in the calibration procedures.
7.2.3 Internal standard—Prepare a 0.01 g/mL solution of 1,3,5-trichlorobenzene (TCB). Dissolve 1.0 g of TCB in methylene chloride and dilute to volume in a 100-mL volumetric flask. Stopper, vortex, and transfer the solution to a 150-mL bottle with PTFE-lined cap. Label appropriately, and store at −5°C to 20°C. Mark the level of the meniscus on the bottle to detect solvent loss.

7.2.4 GC/MS system performance test mix (SPTM) standards—The SPTM standards should contain octane, decane, dodecane, tetradecane, tetradecene, toluene, ethylbenzene, 1,2,4-trimethylbenzene, 1-methylnaphthalene and 1,3-dimethylnaphthalene. These compounds can be purchased individually or obtained as a mixture (i.e. Supelco, Catalog No.4–7300). Prepare a high concentration of the SPTM standard at 62.5 mg/mL in methylene chloride. Prepare a medium concentration SPTM standard at 1.25 mg/mL by transferring 1.0 mL of the 62.5 mg/mL solution into a 50 mL volumetric flask and diluting to the mark with methylene chloride. Finally, prepare a low concentration SPTM standard at 0.125 mg/mL by transferring 1.0 mL of the 1.25 mg/mL solution into a 10-mL volumetric flask and diluting to the mark with methylene chloride.

7.2.5 Crude oil/drilling fluid calibration standards—Prepare a 4-point crude oil/drilling fluid calibration at concentrations of 0% (no spike—clean drilling fluid), 0.5%, 1.0%, and 2.0% by weight according to the procedures outlined below using the Reference Crude Oil:

7.2.5.1 Label 4 jars with the following identification: Jar 1—0%Ref-IOLab, Jar 2—0.5%Ref-IOLab, Jar 3—1%Ref-IOLab, and Jar 4—2%Ref-IOLab.

7.2.5.2 Weigh 4, 50-g aliquots of well mixed IO Lab drilling fluid into each of the 4 jars.

7.2.5.3 Add Reference Oil at 0.5%, 1.0%, and 2.0% by weight to jars 2, 3, and 4 respectively. Jar 1 will not be spiked with Reference Oil in order to retain a ''0%'' oil concentration.

7.2.5.4 Thoroughly mix the contents of each of the 4 jars, using clean glass stirring rods.

7.2.5.5 Transfer (weigh) a 30-g aliquot from Jar 1 to a labeled centrifuge tube. Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate. Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial. Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (see 7.2.3), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.

7.2.5.6 Repeat step 7.2.5.5 except use an aliquot from Jar 2.

7.2.5.7 Repeat step 7.2.5.5 except use an aliquot from Jar 3.

7.2.5.8 Repeat step 7.2.5.5 except use an aliquot from Jar 4.

7.2.5.9 These 4 crude/oil drilling fluid calibration standards are now used for qualitative and quantitative GC/MS analysis.

7.2.6 Precision and recovery standard (mid level crude oil/drilling fluid calibration standard)—Prepare a mid point crude oil/drilling fluid calibration using IO Lab drilling fluid and Reference Oil at a concentration of 1.0% by weight. Prepare this standard according to the procedures outlined in Section 7.2.5.1 through 7.2.5.5, with the exception that only ''Jar 3'' needs to be prepared. Remove and spike with internal standard, as many 0.5-g aliquots as needed to complete the GC/MS analysis (see Section 11.6—bracketing authentic samples every 12 hours with precision and recovery standard) and the initial demonstration exercise described in Section 9.2.

7.2.7 Stability of standards

7.2.7.1 When not used, standards are stored in the dark, at −5 to −20°C in screw-capped vials with PTFE-lined lids. A mark is placed on the vial at the level of the solution so that solvent loss by evaporation can be detected. The vial is brought to room temperature prior to use.

7.2.7.2 Solutions used for quantitative purposes shall be analyzed within 48 hours of preparation and on a monthly basis thereafter for signs of degradation. Standard will remain acceptable if the peak area remains within ±15% of the area obtained in the initial analysis of the standard.

8.0 Sample Collection Preservation and Storage

8.1 NAF samples and base fluid samples are collected in 100–to 200–mL glass bottles with PTFE–or aluminum foil lined caps.

8.2 Samples collected in the field will be stored refrigerated until time of preparation.

8.3 Sample and extract holding times for this method have not yet been established. However, based on tests experience samples should be analyzed within seven to ten days of collection and extracts analyzed within seven days of preparation.

8.4 After completion of GC/MS analysis, extracts should be refrigerated at ca. 4°C until further notification of sample disposal.

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.4). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and ongoing analysis of standards, and blanks as a test of continued performance, analyses of spiked samples to assess accuracy and analysis of duplicates to assess precision. Laboratory performance is compared to established performance criteria to determine if the results of analyses meet the performance characteristics of the method.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2.

9.1.2 The analyst is permitted to modify this method to improve separations or lower the cost of measurements, provided all performance requirements are met. Each time a modification is made to the method, the analyst is required to repeat the calibration (Section 10.4) and to repeat the initial demonstration procedure described in Section 9.2.

9.1.3 Analyses of blanks are required to demonstrate freedom from contamination. The procedures and criteria for analysis of a blank are described in Section 9.3.

9.1.4 An analysis of a matrix spike sample is required to demonstrate method accuracy. The procedure and QC criteria for spiking are described in Section 9.4.

9.1.5 Analysis of a duplicate field sample is required to demonstrate method precision. The procedure and QC criteria for duplicates are described in Section 9.5.

9.1.6 Analysis of a sample of the clean NAF(s) (as sent from the supplier—has not been circulated downhole) used in the drilling operations is required.

9.1.7 The laboratory shall, on an ongoing basis, demonstrate through calibration verification and the analysis of the precision and recovery standard (Section 7.2.6) that the analysis system is in control. These procedures are described in Section 11.6.

9.1.8 The laboratory shall maintain records to define the quality of data that is generated.

9.2 Initial precision and accuracy—The initial precision and recovery test is performed using the precision and recovery standard (1% by weight Reference Oil in IO Lab drilling fluid). The laboratory shall generate acceptable precision and recovery by performing the following operations.

9.2.1 Prepare four separate aliquots of the precision and recovery standard using the procedure outlined in Section 7.2.6. Analyze these aliquots using the procedures outlined in Section 11.

9.2.2 Using the results of the set of four analyses, compute the average recovery (X) in weight percent and the standard deviation of the recovery (s) for each sample.

9.2.3 If s and X meet the acceptance criteria of 80% to 110%, system performance is acceptable and analysis of samples may begin. If, however, s exceeds the precision limit or X falls outside the range for accuracy, system performance is unacceptable. In this event, review this method, correct the problem, and repeat the test.

9.2.4 Accuracy and precision—The average percent recovery (P) and the standard deviation of the percent recovery (S_p) Express the accuracy assessment as a percent recovery interval from $P-2S_p$ to $P+2S_p$. For example, if P=90% and S_p=10% for four analyses of crude oil in NAF, the accuracy interval is expressed as 70% to 110%. Update the accuracy assessment on a regular basis.

9.3 Blanks—Rinse glassware and centrifuge tubes used in the method with ca. 30 mL of methylene chloride, remove a 0.5-g aliquot of the solvent, spike it with the 500 µL of the internal standard solution (Section 7.2.3) and analyze a 1-µL aliquot of the blank sample using the procedure in Section 11. Compute results per Section 12.

9.4 Matrix spike sample—Prepare a matrix spike sample according to procedure outlined in Section 7.2.6. Analyze the sample and calculate the concentration (% oil) in the drilling fluid and % recovery of oil from the spiked drilling fluid using the methods described in Sections 11 and 12.

9.5 Duplicates—A duplicate field sample is prepared according to procedures outlined in Section 7.3 and analyzed according to Section 11. The relative percent difference (RPD) of the calculated concentrations should be less than 15%.

9.5.1 Analyze each of the duplicates per the procedure in Section 11 and compute the results per Section 12.

9.5.2 Calculate the relative percent difference (RPD) between the two results per the following equation:

$$RPD = \frac{D_1 - D_2}{(D_1 + D_2)/2} \times 100$$

where:

D_1 = Concentration of crude oil in the sample
D_2 = Concentration of crude oil in the duplicate sample

9.5.3 If the RPD criteria are not met, the analytical system shall be judged to be out of control, and the problem must be immediately identified and corrected and the sample batch reanalyzed.

9.6 Preparation of the clean NAF sample is performed according to procedures outlined in Section 7.3 except that the clean NAF (drilling fluid that has not been circulated downhole) is used. Ultimately the oil-equivalent concentration from the TIC or EIP signal measured in the clean NAF sample will be subtracted from the corresponding authentic field samples in order to calculate the true contaminant concentration (% oil) in the field samples (see Section 12).

9.7 The specifications contained in this method can be met if the apparatus used is calibrated properly, then maintained in a calibrated state. The standards used for initial precision and recovery (Section 9.2) and ongoing precision and recovery (Section 11.6) shall be identical, so that the most precise results will be obtained. The GC/MS instrument will provide the most reproducible results if dedicated to the setting and conditions required for the analyses given in this method.

9.8 Depending on specific program requirements, field replicates and field spikes of crude oil into samples may be required when this method is used to assess the precision and accuracy of the sampling and sample transporting techniques.

10.0 Calibration

10.1 Establish gas chromatographic/mass spectrometer operating conditions given in Table 1 below. Perform the GC/MS system hardware-tune as outlined by the manufacture. The gas chromatograph is calibrated using the internal standard technique.

Note: Because each GC is slightly different, it may be necessary to adjust the operating conditions (carrier gas flow rate and column temperature and temperature program) slightly until the retention times in Table 2 are met.

TABLE 1.—GAS CHROMATOGRAPH/MASS SPECTROMETER (GC/MS) OPERATING CONDITIONS

Parameter	Setting
Injection port	280°C.
Transfer line	280°C.
Detector	280°C.
Initial Temperature	50°C.
Initial Time	5 minutes.
Ramp	50 to 300°C @ 5 C per minute.
Final Temperature	300°C.
Final Hold	20 minutes or until all peaks have eluted.
Carrier Gas	Helium.
Flow rate	As required for standard operation.
Split ratio	As required to meet performance criteria (~1:100).
Mass range	35 to 600 amu.

TABLE 2.—APPROXIMATE RETENTION TIMES FOR COMPOUNDS

Compound	Approximate Retention Time (minutes)
Toluene	5.6
Octane, n-C_8	7.2
Ethylbenzene	10.3
1,2,4-Trimethylbenzene	16.0
Decane, n-C_{10}	16.1
TCB (Internal Standard)	21.3
Dodecane, n-C_{12}	22.9
1-Methylnaphthalene	26.7
1-Tetradecene	28.4
Tetradecane, n-C_{14}	28.7
1,3-Dimethylnaphthalene	29.7

10.2 Internal standard calibration procedure—1,3,5-trichlorobenzene (TCB) has been shown to be free of interferences from diesel and crude oils and is a suitable internal standard.

10.3 The system performance test mix standards prepared in Section 7.2.4 are primarily used to establish retention times and establish qualitative detection limits.

10.3.1 Spike a 500-mL aliquot of the 1.25 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.

10.3.2 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS in order to demonstrate proper retention times. For the GC/MS used in the development of this method the ten compounds in the mixture had typical retention times shown in Table 2 above. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 400,000.

10.3.3 Spike a 500-mL aliquot of the 0.125 mg/mL SPTM standard with 500 µL of the TCB internal standard solution.

10.3.4 Inject 1.0 µL of this spiked SPTM standard onto the GC/MS to monitor detectable levels. For the GC/MS used in the development of this test all ten compounds showed a minimum peak height of three times signal to noise. Extracted ion scans for m/z 91 and 105 showed a maximum abundance of 40,000.

10.4 GC/MS crude oil/drilling fluid calibration —There are two methods of quantification: Total Area Integration (C_8—C_{13}) and EIP Area Integration using m/z's 91 and 105. The Total Area Integration method can be used as the primary technique for quantifying crude oil in NAFs. The EIP Area Integration method can be used as a confirmatory technique for NAFs. The EIP Area Integration method should be used as the primary method for quantifying oil in enhanced mineral oil (EMO) based drilling fluid. Inject 1.0 µL of each of the four crude oil/drilling fluid calibration standards prepared in Section 7.2.5 into the GC/MS. The internal standard should elute approximately 21–22 minutes after injection. For the GC/MS used in the development of this method, the internal standard peak was (35 to 40)% of full scale at an abundance of about 3.5e+07.

10.4.1 Total Area Integration Method—For each of the four calibration standards obtain the following: Using a straight baseline integration technique, obtain the total ion chromatogram (TIC) area from C_8 to C_{13}. Obtain the TIC area of the internal standard (TCB). Subtract the TCB area from the C_8—C_{13} area to obtain the true C_8—C_{13} area. Using the C_8—C_{13} and TCB areas, and known internal standard concentration, generate a linear regression calibration using the internal standard method. The r^2 value for the linear regression curve should be ≥ 0.998. Some synthetic fluids might have peaks that elute in the window and would interfere with the analysis. In this case the integration window can be shifted to other areas of scan where there are no interfering peaks from the synthetic base fluid.

10.4.2 EIP Area Integration—For each of the four calibration standards generate Extracted Ion Profiles (EIPs) for m/z 91 and 105. Using straight baseline integration techniques, obtain the following EIP areas:

10.4.2.1 For m/z 91 integrate the area under the curve from approximately 9 minutes to 21—22 minutes, just prior to but not including the internal standard.

10.4.2.2 For m/z 105 integrate the area under the curve from approximately 10.5 minutes to 26.5 minutes.

10.4.2.3 Obtain the internal standard area from the TCB in each of the four calibration standards, using m/z 180.

10.4.2.4 Using the EIP areas for TCB, m/z 91 and m/z105, and the known concentration of internal standard, generate linear regression calibration curves for the target ions 91 and 105 using the internal standard method. The r^2 value for the each of the EIP linear regression curves should be ≥ 0.998.

10.4.2.5 Some base fluids might produce a background level that would show up on the extracted ion profiles, but there should not be any real peaks (signal to noise ratio of 1:3) from the clean base fluids.

11.0 Procedure

11.1 Sample Preparation—

11.1.1 Mix the authentic field sample (drilling fluid) well. Transfer (weigh) a 30-g aliquot of the sample to a labeled centrifuge tube.

11.1.2 Centrifuge the aliquot for a minimum of 15 min at approximately 15,000 rpm, in order to obtain a solids free supernate.

11.1.3 Weigh 0.5 g of the supernate directly into a tared and appropriately labeled GC straight vial.

11.1.4 Spike the 0.5-g supernate with 500 µL of the 0.01g/mL 1,3,5-trichlorobenzene internal standard solution (see 7.2.3), cap with a Teflon lined crimp cap, and vortex for ca. 10 sec.

11.1.5 The sample is ready for GC/MS analysis.

11.2 Gas Chromatography.

Table 1 summarizes the recommended operating conditions for the GC/MS. Retention times for the n-alkanes obtained under these conditions are given in Table 2. Other columns, chromatographic conditions, or detectors may be used if initial precision and accuracy requirements (Section 9.2) are met. The system is calibrated according to the procedures outlined in Section 10, and verified every 12 hours according to Section 11.6.

11.2.1 Samples should be prepared (extracted) in a batch of no more than 20 samples. The batch should consist of 20 authentic samples, 1 blank (Section 9.3), 1 matrix spike sample (9.4), and 1 duplicate field sample (9.5), and a prepared sample of the corresponding clean NAF used in the drilling process.

11.2.2 An analytical sequence is run on the GC/MS where the 3 SPTM standards (Section 7.2.4) containing internal standard are analyzed first, followed by analysis of the four GC/MS crude oil/drilling fluid calibration standards (Section 7.2.5), analysis of the blank, matrix spike sample, the duplicate sample, the clean NAF sample, followed by the authentic samples.

11.2.3 Samples requiring dilution due to excessive signal should be diluted using methylene chloride.

11.2.4 Inject 1.0 µL of the test sample or standard into the GC, using the conditions in Table 1.

11.2.5 Begin data collection and the temperature program at the time of injection.

11.2.6 Obtain a TIC and EIP fingerprint scans of the sample (Table 3).

11.2.7 If the area of the C_8 to C_{13} peaks exceeds the calibration range of the system, dilute a fresh aliquot of the test sample weighing < 0.50-g and reanalyze.

11.2.8 Determine the C_8 to C_{13} TIC area, the TCB internal standard area, and the areas for the m/z 91 and 105 EIPs. These are used in the calculation of oil concentration in the samples (see Section 12).

TABLE 3.—RECOMMENDED ION MASS NUMBERS

Selected ion mass numbers	Corresponding aromatic compounds	Typical retention times (in minutes)
91	Methylbenzene	6.0
	Ethylbenzene	10.3
	1,4-Dimethylbenzene	10.9
	1,3-Dimethylbenzene	10.9
	1,2-Dimethylbenzene	11.9
105	1,3,5-Trimethylbenzene	15.1
	1,2,4-Trimethylbenzene	16.0
	1,2,3-Trimethylbenzene	17.4
156	2,6-Dimethylnaphthalene	28.9
	1,2-Dimethylnaphthalene	29.4

TABLE 3.—RECOMMENDED ION MASS NUMBERS—Continued

Selected ion mass numbers	Corresponding aromatic compounds	Typical retention times (in minutes)
	1,3-Dimethylnaphthalene	29.7

11.2.9 Observe the presence of peaks in the EIPs that would confirm the presence of any target aromatic compounds. Using the EIP areas and EIP linear regression calibrations compare the abundance of the aromatic peaks, and if appropriate, determine approximate crude oil contamination in the sample for each of the target ions.

11.3 Qualitative Identification—See Section 17 for schematic flowchart.

11.3.1 Qualitative identification is accomplished by comparison of the TIC and EIP area data from an authentic sample to the TIC and EIP area data from the calibration standards (Section 12.4). Crude oil is identified by the presence of C_{10} to C_{13} n-alkanes and corresponding target aromatics.

11.3.2 Using the calibration data, establish the identity of the C_8 to C_{13} peaks in the chromatogram of the sample. Using the calibration data, establish the identity of any target aromatics present on the extracted ion scans.

11.3.3 Crude oil is not present in a detectable amount in the sample if there are no target aromatics seen on the extracted ion scans. The experience of the analyst shall weigh heavily in the determination of the presence of peaks at a signal-to-noise ratio of 3 or greater.

11.3.4 If the chromatogram shows n-alkanes from C_8 to C_{13} and target aromatics to be present, contamination by crude oil or diesel should be suspected and quantitative analysis should be determined. If there are no n-alkanes present that are not seen on the blank, and no target aromatics are seen, the sample can be considered to be free of contamination.

11.4 Quantitative Identification—

11.4.1 Determine the area of the peaks from C_8 to C_{13} as outlined in the calibration section (10.4.1). If the area of the peaks for the sample is greater than that for the clean NAF (base fluid) use the crude oil/drilling fluid calibration TIC linear regression curve to determine approximate crude oil contamination.

11.4.2 Using the EIPs outlined in Section 10.4.2 determine the presence of any target aromatics. Using the integration techniques outlined in Section 10.4.2 to obtain the EIP areas for m/z 91 and 105. Use the crude oil/drilling fluid calibration EIP linear regression curves to determine approximate crude oil contamination.

11.5 Complex Samples—

11.5.1 The most common interferences in the determination of crude oil can be from mineral oil, diesel oil, and proprietary additives in drilling fluids.

11.5.2 Mineral oil can typically be identified by it lower target aromatic content, and narrow range of strong peaks.

11.5.3 Diesel oil can typically be identified by low amounts of n-alkanes from C_7 to C_9, and the absence of n-alkanes greater than C_{25}.

11.5.4 Crude oils can usually be distinguished by the presence of high aromatics, increased intensities of C_8 to C_{13} peaks, and/or the presence of higher hydrocarbons of C_{25} and greater (which may be difficult to see in some synthetic fluids at low contamination levels).

11.5.4.1 Oil condensates from gas wells are low in molecular weight and will normally produce strong chromatographic peaks in the C8–C_{13} range. If a sample of the gas condensate crude oil from the formation is available, the oil can be distinguished from other potential sources of contamination by using it to prepare a calibration standard.

11.5.4.2 Asphaltene crude oils with API gravity <20 may not produce chromatographic peaks strong enough to show contamination at levels of the calibration. Extracted ion peaks should be easier to see than increased intensities for the C_8 to C_{13} peaks. If a sample of asphaltene crude from the formation is available, a calibration standard should be prepared.

11.6 System and Laboratory Performance—

11.6.1 At the beginning of each 8-hour shift during which analyses are performed, GC crude oil/drilling fluid calibration and system performance test mixes are verified. For these tests, analysis of the medium-level calibration standard (1-% Reference Oil in IO Lab drilling fluid, and 1.25 mg/mL SPTM with internal standard) shall be used to verify all performance criteria. Adjustments and/or re-calibration (per Section 10) shall be performed until all performance criteria are met. Only after all performance criteria are met may samples and blanks be analyzed.

11.6.2 Inject 1.0 µL of the medium-level GC/MS crude oil/drilling fluid calibration standard into the GC instrument according to the procedures in Section 11.2. Verify that the linear regression curves for both TIC area and EIP areas are still valid using this continuing calibration standard.

11.6.3 After this analysis is complete, inject 1.0 µL of the 1.25 mg/mL SPTM (containing internal standard) into the GC instrument and verify the proper retention times are met (see Table 2).

11.6.4 Retention times—Retention time of the internal standard. The absolute retention time of the TCB internal standard should be within the range 21.0 ± 0.5 minutes. Relative retention times of the n-alkanes: The retention times of the n-alkanes relative to the TCB internal standard shall be similar to those given in Table 2.

12.0 Calculations

The concentration of oil in NAFs drilling fluids is computed relative to peak areas between C_8 and C_{13} (using the Total Area Integration method) or total peak areas from extracted ion profiles (using the Extracted Ion Profile Method). In either case, there is a measurable amount of peak area, even in clean drilling fluid samples, due to spurious peaks and electrometer ''noise'' that contributes to the total signal measured using either of the quantitation methods. In this procedure, a correction for this signal is applied, using the blank or clean sample correction technique described in American Society for Testing Materials (ASTM) Method D–3328–90, Comparison of Waterborne Oil by Gas Chromatography. In this method, the ''oil equivalents'' measured in a blank sample by total area gas chromatography are subtracted from that determined for a field sample to arrive at the most accurate measure of oil residue in the authentic sample.

12.1 Total Area Integration Method

12.1.1 Using C_8 to C_{13} TIC area, the TCB area in the clean NAF sample and the TIC linear regression curve, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the clean NAF. Note: The actual TIC area of the C_8 to C_{13} is equal to the C_8 to C_{13} area minus the area of the TCB.

12.1.2 Using the corresponding information for the authentic sample, compute the oil equivalent concentration of the C_8 to C_{13} retention time range in the authentic sample.

12.1.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

12.2 EIP Area Integration Method

12.2.1 Using either m/z 91 or 105 EIP areas, the TCB area in the clean NAF sample, and the appropriate EIP linear regression curve, compute the oil equivalent concentration of the in the clean NAF.

12.2.2 Using the corresponding information for the authentic sample, compute its oil equivalent concentration.
12.2.3 Calculate the concentration (% oil) of oil in the sample by subtracting the oil equivalent concentration (% oil) found in the clean NAF from the oil equivalent concentration (% oil) found in the authentic sample.

13.0 Method Performance

13.1 Specification in this method are adopted from EPA Method 1663, Differentiation of Diesel and Crude Oil by GC/FID (Reference 16.5).
13.2 Single laboratory method performance using an Internal Olefin (IO) drilling fluid fortified at 0.5% oil using a 35 API gravity oil was:

Precision and accuracy 94±4%
Accuracy interval—86.3% to 102%
Relative percent difference in duplicate analysis—6.2%

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all federal, state, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from fume hoods and bench operations. Compliance with all sewage discharge permits and regulations is also required.
15.2 All authentic samples (drilling fluids) failing the RPE (fluorescence) test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.
15.3 For further information on waste management, consult ''The Waste Management Manual for Laboratory Personnel'', and ''Less is Better: Laboratory Chemical Management for Waste Reduction'', both available form the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street NW, Washington, D.C. 20036.

16.0 References

16.1 Carcinogens—''Working With Carcinogens.'' Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control [available through National Technical Information Systems, 5285 Port Royal Road, Springfield, VA 22161, document no. PB–277256]: August 1977.
16.2 ''OSHA Safety and Health Standards, General Industry [29 CFR 1910], Revised.'' Occupational Safety and Health Administration, OSHA 2206. Washington, DC: January 1976.
16.3 ''Handbook of Analytical Quality Control in Water and Wastewater Laboratories.'' USEPA, EMSSL–CI, EPA–600/4–79–019. Cincinnati, OH: March 1979.
16.4 ''Method 1663, Differentiation of Diesel and Crude Oil by GC/FID, Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA 821–R–92–008, Office of Water Engineering and Analysis Division, Washington, DC: December 1992.

Appendix 6 to Subpart A of Part 435—Reverse Phase Extraction (RPE) Method for Detection of Oil Contamination in Non-Aqueous Drilling Fluids (NAF)

1.0 Scope and Application

1.1 This method is used for determination of crude or formation oil, or other petroleum oil contamination, in non-aqueous drilling fluids (NAFs).
1.2 This method is intended as a positive/negative test to determine a presence of crude oil in NAF prior to discharging drill cuttings from offshore production platforms.
1.3 This method is for use in the Environmental Protection Agency's (EPA's) survey and monitoring programs under the Clean Water Act, including monitoring of compliance with the Gulf of Mexico NPDES General Permit for monitoring of oil contamination in drilling fluids.
1.4 This method has been designed to show positive contamination for 5% of representative crude oils at a concentration of 0.1% in drilling fluid (vol/vol), 50% of representative crude oils at a concentration of 0.5%, and 95% of representative crude oils at a concentration of 1%.
1.5 Any modification of this method, beyond those expressly permitted, shall be considered a major modification subject to application and approval of alternate test procedures under 40 CFR Parts 136.4 and 136.5.
1.6 Each laboratory that uses this method must demonstrate the ability to generate acceptable results using the procedure in Section 9.2.

2.0 Summary of Method

2.1 An aliquot of drilling fluid is extracted using isopropyl alcohol.
2.2 The mixture is allowed to settle and then filtered to separate out residual solids.
2.3 An aliquot of the filtered extract is charged onto a reverse phase extraction (RPE) cartridge.
2.4 The cartridge is eluted with isopropyl alcohol.
2.5 Crude oil contaminates are retained on the cartridge and their presence (or absence) is detected based on observed fluorescence using a black light.

3.0 Definitions

3.1 A NAF is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhance mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

4.0 Interferences

4.1 Solvents, reagents, glassware, and other sample-processing hardware may yield artifacts that affect results. Specific selection of reagents and purification of solvents may be required.
4.2 All materials used in the analysis shall be demonstrated to be free from interferences under the conditions of analysis by running laboratory reagent blanks as described in Section 9.5.

5.0 Safety

5.1 The toxicity or carcinogenicity of each reagent used in this method has not been precisely determined; however, each chemical should be treated as a potential health hazard. Exposure to these chemicals should be reduced to the lowest possible level. Material Safety Data Sheets (MSDSs) should be available for all reagents.

5.2 Isopropyl alcohol is flammable and should be used in a well-ventilated area.

5.3 Unknown samples may contain high concentration of volatile toxic compounds. Sample containers should be opened in a hood and handled with gloves to prevent exposure. In addition, all sample preparation should be conducted in a well-ventilated area to limit the potential exposure to harmful contaminants. Drilling fluid samples should be handled with the same precautions used in the drilling fluid handling areas of the drilling rig.

5.4 This method does not address all safety issues associated with its use. The laboratory is responsible for maintaining a safe work environment and a current awareness file of OSHA regulations regarding the safe handling of the chemicals specified in this method. A reference file of material safety data sheets (MSDSs) should be available to all personnel involved in these analyses. Additional information on laboratory safety can be found in References 16.1–16.2.

6.0 Equipment and Supplies

Note: Brand names, suppliers, and part numbers are for illustrative purposes only. No endorsement is implied. Equivalent performance may be achieved using apparatus and materials other than those specified here, but demonstration of equivalent performance that meets the requirements of this method is the responsibility of the laboratory.

6.1 Sampling equipment.

6.1.1 Sample collection bottles/jars—New, pre-cleaned bottles/jars, lot-certified to be free of artifacts. Glass preferable, plastic acceptable, wide mouth approximately 1–L, with Teflon-lined screw cap.

6.2 Equipment for glassware cleaning.

6.2.1 Laboratory sink.

6.2.2 Oven—Capable of maintaining a temperature within ±5° C in the range of 100–250° C.

6.3 Equipment for sample extraction.

6.3.1 Vials—Glass, 25 mL and 4 mL, with Teflon-lined screw caps, baked at 200–250° C for 1-h minimum prior to use.

6.3.2 Gas-tight syringes—Glass, various sizes, 0.5 mL to 2.5 mL (if spiking of drilling fluids with oils is to occur).

6.3.3 Auto pipetters—various sizes, 0.1 mL, 0.5 mL, 1 to 5 mL delivery, and 10 mL delivery, with appropriate size disposable pipette tips, calibrated to within ±0.5%.

6.3.4 Glass stirring rod.

6.3.5 Vortex mixer.

6.3.6 Disposable syringes—Plastic, 5 mL.

6.3.7 Teflon syringe filter, 25-mm, 0.45µm pore size—Acrodisc® CR Teflon (or equivalent).

6.3.8 Reverse Phase Extraction C_{18} Cartridge—Waters Sep-Pak®Plus, C_{18} Cartridge, 360 mg of sorbent (or equivalent).

6.3.9 SPE vacuum manifold—Supelco Brand, 12 unit (or equivalent). Used as support for cartridge/syringe assembly only. Vacuum apparatus not required.

6.4 Equipment for fluorescence detection.

6.4.1 Black light—UV Lamp, Model UVG 11, Mineral Light Lamp, Shortwave, 254 nm, 15 volts, 60 Hz, 0.16 amps (or equivalent).

6.4.2 Black box—cartridge viewing area. A commercially available ultraviolet viewing cabinet with viewing lamp, or alternatively, a cardboard box or equivalent, approximately 14″x7.5″x7.5″ in size and painted flat black inside. Lamp positioned in fitted and sealed slot in center on top of box. Sample cartridges sit in a tray, ca. 6″ from lamp. Cardboard flaps cut on top panel and side of front panel for sample viewing and sample cartridge introduction, respectively.

6.4.3 Viewing platform for cartridges. Simple support (hand made vial tray—black in color) for cartridges so that they do not move during the fluorescence testing.

7.0 Reagents and Standards

7.1 Isopropyl alcohol—99% purity.

7.2 NAF—Appropriate NAF as sent from the supplier (has not been circulated downhole). Use the clean NAF corresponding to the NAF being used in the current drilling operation.

8.0 Sample Collection, Preservation, and Storage

8.1 Collect approximately one liter of representative sample (NAF, which has been circulated downhole) in a glass bottle or jar. Cover with a Teflon lined cap. To allow for a potential need to re-analyze and/or re-process the sample, it is recommended that a second sample aliquot be collected.

8.2 Label the sample appropriately.

8.3 All samples must be refrigerated at 0–4°C from the time of collection until extraction (40 CFR Part 136, Table II).

8.4 All samples must be analyzed within 28 days of the date and time of collection (40 CFR Part 136, Table II).

9.0 Quality Control

9.1 Each laboratory that uses this method is required to operate a formal quality assurance program (Reference 16.3). The minimum requirements of this program consist of an initial demonstration of laboratory capability, and ongoing analyses of blanks and spiked duplicates to assess accuracy and precision and to demonstrate continued performance. Each field sample is analyzed in duplicate to demonstrate representativeness.

9.1.1 The analyst shall make an initial demonstration of the ability to generate acceptable accuracy and precision with this method. This ability is established as described in Section 9.2.

9.1.2 Preparation and analysis of a set of spiked duplicate samples to document accuracy and precision. The procedure for the preparation and analysis of these samples is described in Section 9.4.

9.1.3 Analyses of laboratory reagent blanks are required to demonstrate freedom from contamination. The procedure and criteria for preparation and analysis of a reagent blank are described in Section 9.5.

9.1.4 The laboratory should maintain records to define the quality of the data that is generated.

9.1.5 Accompanying QC for the determination of oil in NAF is required per analytical batch. An analytical batch is a set of samples extracted at the same time, to a maximum of 10 samples. Each analytical batch of 10 or fewer samples must be accompanied by a laboratory reagent blank (Section 9.5), corresponding NAF reference blanks (Section 9.6), a set of spiked duplicate samples blank (Section 9.4), and duplicate analysis of each field sample. If greater than 10 samples are to be extracted at one time, the samples must be separated into analytical batches of 10 or fewer samples.

9.2 Initial demonstration of laboratory capability. To demonstrate the capability to perform the test, the analyst should analyze two representative unused drilling fluids (e.g., internal olefin-based drilling fluid, vegetable ester-based drilling fluid), each prepared separately containing 0.1%, 1%, and 2% or a representative oil. Each drilling fluid/concentration combination will be analyzed 10 times, and successful demonstration will yield the following average results for the data set:

0.1% oil	1 %oil	2 %oil
Detected in <20% of samples	Detected in >75% of samples	Detected in <90% of samples.

9.3 Sample duplicates.

9.3.1 The laboratory must prepare and analyze (Section 11.2 and 11.4) each authentic sample in duplicate, from a given sampling site or, if for compliance monitoring, from a given discharge.

9.3.2 The duplicate samples must be compared versus the prepared corresponding NAF blank.

9.3.3 Prepare and analyze the duplicate samples according to procedures outlined in Section 11.

9.3.4 The results of the duplicate analyses are acceptable if each of the results give the same response (fluorescence or no fluorescence). If the results are different, sample non-homogenicity issues may be a concern. Prepare the samples again, ensuring a well-mixed sample prior to extraction. Analyze the samples once again.

9.3.5 If different results are obtained for the duplicate a second time, the analytical system is judged to be out of control and the problem shall be identified and corrected, and the samples reanalyzed.

9.4 Spiked duplicates—Laboratory prepared spiked duplicates are analyzed to demonstrate acceptable accuracy and precision.

9.4.1 Preparation and analysis of a set of spiked duplicate samples with each set of no more than 10 field samples is required to demonstrate method accuracy and precision and to monitor matrix interferences (interferences caused by the sample matrix). A field NAF sample expected to contain less than 0.5% crude oil (and documented to not fluoresce as part of the sample batch analysis) will be spiked with 1% (by volume) of suitable reference crude oil and analyzed as field samples, as described in Section 11. If no low-level drilling fluid is available, then the unused NAF can be used as the drilling fluid sample.

9.5 Laboratory reagent blanks—Laboratory reagent blanks are analyzed to demonstrate freedom from contamination.

9.5.1 A reagent blank is prepared by passing 4 mL of the isopropyl alcohol through a Teflon syringe filter and collecting the filtrate in a 4-mL glass vial. A Sep Pak® C_{18} cartridge is then preconditioned with 3 mL of isopropyl alcohol. A 0.5-mL aliquot of the filtered isopropyl alcohol is added to the syringe barrel along with 3.0 mL of isopropyl alcohol. The solvent is passed through the preconditioned Sep Pak® cartridge. An additional 2-mL of isopropyl alcohol is eluted through the cartridge. The cartridge is now considered the ''reagent blank'' cartridge and is ready for viewing (analysis). Check the reagent blank cartridge under the black light for fluorescence. If the isopropyl alcohol and filter are clean, no fluorescence will be observed.

9.5.2 If fluorescence is detected in the reagent blank cartridge, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples must be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.

9.6 NAF reference blanks—NAF reference blanks are prepared from the NAFs sent from the supplier (NAF that has not been circulated downhole) and used as the reference when viewing the fluorescence of the test samples.

9.6.1 A NAF reference blank is prepared identically to the authentic samples. Place a 0.1 mL aliquot of the ''clean'' NAF into a 25-mL glass vial. Add 10 mL of isopropyl alcohol to the vial. Cap the vial. Vortex the vial for approximately 10 sec. Allow the solids to settle for approximately 15 minutes. Using a 5-mL syringe, draw up 4 mL of the extract and filter it through a PTFE syringe filter, collecting the filtrate in a 4-mL glass vial. Precondition a Sep Pak® C_{18} cartridge with 3 mL of isopropyl alcohol. Add a 0.5-mL aliquot of the filtered extract to the syringe barrel along with 3.0 mL of isopropyl alcohol. Pass the extract and solvent through the preconditioned Sep Pak® cartridge. Pass an additional 2-mL of isopropyl alcohol through the cartridge. The cartridge is now considered the NAF blank cartridge and is ready for viewing (analysis). This cartridge is used as the reference cartridge for determining the absence or presence of fluorescence in all authentic drilling fluid samples that originate from the same NAF. That is, the specific NAF reference blank cartridge is put under the black light along with a prepared cartridge of an authentic sample originating from the same NAF material. The fluorescence or absence of fluorescence in the authentic sample cartridge is determined relative to the NAF reference cartridge.

10.0 Calibration and Standardization

10.1 Calibration and standardization methods are not employed for this procedure.

11.0 Procedure

This method is a screening-level test. Precise and accurate results can be obtained only by strict adherence to all details.

11.1 Preparation of the analytical batch.

11.1.1 Bring the analytical batch of samples to room temperature.

11.1.2 Using a large glass stirring rod, mix the authentic sample thoroughly.

11.1.3 Using a large glass stirring rod, mix the clean NAF (sent from the supplier) thoroughly.

11.2 Extraction.

11.2.1 Using an automatic positive displacement pipetter and a disposable pipette tip transfer 0.1-mL of the authentic sample into a 25-mL vial.

11.2.2 Using an automatic pipetter and a disposable pipette tip dispense a 10-mL aliquot of solvent grade isopropyl alcohol (IPA) into the 25 mL vial.

11.2.3 Cap the vial and vortex the vial for ca. 10–15 seconds.

11.2.4 Let the sample extract stand for approximately 5 minutes, allowing the solids to separate.

11.2.5 Using a 5-mL disposable plastic syringe remove 4 mL of the extract from the 25-mL vial.

11.2.6 Filter 4 mL of extract through a Teflon syringe filter (25-mm diameter, 0.45μm pore size), collecting the filtrate in a labeled 4-mL vial.

11.2.7 Dispose of the PFTE syringe filter.

11.2.8 Using a black permanent marker, label a Sep Pak® C_{18} cartridge with the sample identification.

11.2.9 Place the labeled Sep Pak® C_{18} cartridge onto the head of a SPE vacuum manifold.

11.2.10 Using a 5-mL disposable plastic syringe, draw up exactly 3-mL (air free) of isopropyl alcohol.

11.2.11 Attach the syringe tip to the top of the C_{18} cartridge.

11.2.12 Condition the C_{18} cartridge with the 3-mL of isopropyl alcohol by depressing the plunger slowly. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.13 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.14 Using automatic pipetters and disposable pipette tips, transfer 0.5 mL of the filtered extract into the syringe barrel, followed by a 3.0-mL transfer of isopropyl alcohol to the syringe barrel.

11.2.15 Insert the plunger and slowly depress it to pass only the extract and solvent through the preconditioned C_{18} cartridge. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.16 Remove the syringe temporarily from the top of the cartridge, then remove the plunger, and finally reattach the syringe barrel to the top of the C_{18} cartridge.

11.2.17 Using an automatic pipetter and disposable pipette tip, transfer 2.0 mL of isopropyl alcohol to the syringe barrel.

11.2.18 Insert the plunger and slowly depress it to pass the solvent through the C_{18} cartridge. Note: Depress the plunger just to the point when no liquid remains in the syringe barrel. Do not force air through the cartridge. Collect the eluate in a waste vial.

11.2.19 Remove the syringe and labeled C_{18} cartridge from the top of the SPE vacuum manifold.
11.2.20 Prepare a reagent blank according to the procedures outlined in Section 9.5.
11.2.21 Prepare the necessary NAF reference blanks for each type of NAF encountered in the field samples according to the procedures outlined in Section 9.6.
11.3 Reagent blank fluorescence testing.
11.3.1 Place the reagent blank cartridge in a black box, under a black light.
11.3.2 Determine the presence or absence of fluorescence for the reagent blank cartridge. If fluorescence is detected in the blank, analysis of the samples is halted until the source of contamination is eliminated and a prepared reagent blank shows no fluorescence under a black light. All samples must be associated with an uncontaminated method blank before the results may be reported for regulatory compliance purposes.
11.4 Sample fluorescence testing.
11.4.1 Place the respective NAF reference blank (Section 9.6) onto the tray inside the black box.
11.4.2 Place the authentic field sample cartridge (derived from the same NAF as the NAF reference blank) onto the tray, adjacent and to the right of the NAF reference blank.
11.4.3 Turn on the black light.
11.4.4 Observe the presence or absence of fluorescence for the sample cartridge (in right position) relative to the NAF reference blank.
11.4.5 The presence of fluorescence indicates the detection of crude oil contamination. The absence of fluorescence in the sample cartridge indicates that the drilling fluid is ''clean''.

12.0 Data Analysis and Calculations

Specific data analysis techniques and calculations are not performed in this SOP.

13.0 Method Performance

This method was validated through a single laboratory study, conducted with rigorous statistical experimental design and interpretation (Reference 16.4).

14.0 Pollution Prevention

14.1 The solvent used in this method poses little threat to the environment when recycled and managed properly.

15.0 Waste Management

15.1 It is the laboratory's responsibility to comply with all Federal, State, and local regulations governing waste management, particularly the hazardous waste identification rules and land disposal restriction, and to protect the air, water, and land by minimizing and controlling all releases from bench operations. Compliance with all sewage discharge permits and regulations is also required.
15.2 All authentic samples (drilling fluids) failing the fluorescence test (indicated by the presence of fluorescence) shall be retained and classified as contaminated samples. Treatment and ultimate fate of these samples is not outlined in this SOP.
15.3 For further information on waste management, consult ''The Waste Management Manual for Laboratory Personnel,'' and ''Less is Better: Laboratory Chemical Management for Waste Reduction,'' both available from the American Chemical Society's Department of Government Relations and Science Policy, 1155 16th Street, NW, Washington, DC 20036.

16.0 References

16.1 ''Carcinogen—Working with Carcinogens,'' Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health, Publication No. 77–206, August 1977.
16.2 ''OSHA Safety and Health Standards, General Industry,'' (29 CFR 1910), Occupational Safety and Health Administration, OSHA 2206 (Revised, January 1976).
16.3 ''Handbook of Analytical Quality Control in Water and Wastewater Laboratories,'' USEPA, EMSL-Ci, Cincinnati, OH 45268, EPA–600/4–79–019, March 1979.
16.4 Report of the Laboratory Evaluation of Static Sheen Test Replacements—Reverse Phase Extraction (RPE) Method for Detecting Oil Contamination in Synthetic Based Mud (SBM). October 1998. Available from API, 1220 L Street, NW, Washington, DC 20005–4070, 202–682–8000.

Appendix 7 to Subpart A of Part 435—API Recommended Practice 13B–2

1. Description

a. This procedure is specifically intended to measure the amount of oleaginous base fluid from cuttings generated during a drilling operation. It is a retort test which measures all oily material (base fluid) and water released from a cuttings sample when heated in a calibrated and properly operating ''Retort'' instrument.
b. In this retort test a known weight of cuttings is heated in the retort chamber to vaporize the liquids associated with the sample. The base fluid and water vapors are then condensed, collected, and measured in a precision graduated receiver.

Note: Obtaining a representative sample requires special attention to the details of sample handling (location, method, frequency). The sampling procedure in a given area may be specified by local or governmental rules.

2. Equipment

a. Retort instrument—The recommended retort instrument has a 50-cm^3 volume with an external heating jacket.
Retort Specifications:
1. Retort assembly—retort body, cup and lid.
(a) Material: 303 stainless steel or equivalent.
(b) Volume: Retort cup with lid.
Cup Volume: 50-cm^3
Precision: ±0.25-cm^3
2. Condenser—capable of cooling the oil and water vapors below their liquification temperature.
3. Heating jacket—nominal 350 watts.
4. Temperature control—capable of limiting temperature of retort to 930 ±70°F (500 ±38°C).
b. Liquid receiver (10-cm^3, 20-cm^3, or 50-cm^3)—the 10-cm^3 and 20-cm^3 receivers are specially designed cylindrical glassware with rounded bottom to facilitate cleaning and funnel-shaped top to catch falling drops.
1. Receiver specifications.

Total volume: 10-cm^3	20-cm^3	50-cm^3	
Precision (0 to 100%)	±0.05cm^3	±0.05cm^3	±0.05cm^3 nom.
Outside diameter	10-mm	13-mm	

Wall thickness	1.5±0.1mm	1.2±0.1mm	
Frequency of graduation marks (0 to 100%)	0.10cm³	0.10cm³	1.0cm³
Calibration	To contain ''TC''	20°C	
Scale	cm³	cm³	cm³

Note: Verification of receiver volume. The receiver volume should be verified gravimetrically. The procedure and calculations are in Par. 5.

2. Material—Pyrex® or equivalent glass.
c. Toploading balance—capable of weighing 2000 g and precision of 0.1g.
d. Fine steel wool (No. 000)—for packing retort body.
e. Thread sealant lubricant: high temperature lubricant, e.g. Never-Seez® or equivalent.
f. Pipe cleaners—to clean condenser and retort stem.
g. Brush—to clean receivers.
h. Retort spatula—to clean retort cup.
i. Corkscrew—to remove spent steel wool.

3. Procedure

a. Clean and dry the retort assembly and condenser.
b. Pack the retort body with steel wool.
c. Apply lubricant/sealant to threads of retort cup and retort stem.
d. Weigh and record the total mass of the retort cup, lid, and retort body with steel wool. This is mass (A), grams.
e. Collect a representative cuttings sample. (See Note in Par. 1)
f. Partially fill the retort cup with cuttings and place the lid on the cup.
g. Screw the retort cup (with lid) onto the retort body, weigh and record the total mass. This is mass (B), grams.
h. Attach the condenser. Place the retort assembly into the heating jacket.
i. Weigh and record the mass of the clean and dry liquid receiver. This is mass (C), grams. Place the receiver below condenser outlet.
j. Turn on the retort. Allow it to run a minimum of 1 hour.

Note: If solids boil over into receiver, the test must be rerun. Pack the retort body with a greater amount of steel wool and repeat the test.

k. Remove the liquid receiver. Allow it to cool. Record the volume of water recovered. This is (V), cm³.

Note: If an emulsion interface is present between the oil and water phases, heating the interface may break the emulsion. As a suggestion, remove the retort assembly from the heating jacket by grasping the condenser. Carefully heat the receiver along the emulsion band by gently touching the receiver for short intervals with the hot retort assembly. Avoid boiling the liquids. After the emulsion interface is broken, allow the liquid receiver to cool. Read the water volume at the lowest point of the meniscus.

l. Weigh and record the mass of the receiver and its liquid contents (oil plus water). This is mass (D), grams.
m. Turn off the retort. Remove the retort assembly and condenser from the heating jacket and allow them to cool. Remove the condenser.
n. Weigh and record the mass of the cooled retort assembly without the condenser. This is mass (E), grams.
o. Clean the retort assembly and condenser.

4. Calculations

a. Calculate the mass of oil (base fluid) from the cuttings as follows:
1. Mass of the wet cuttings sample (M_D) equals the mass of the retort assembly (A).

$$\mathbf{M_w = B–A \quad (a)}$$

2. Mass of the dry retorted cuttings (M_D) equals the mass of the cooled retort assembly (E) minus the mass of the empty retort assembly (A).

$$\mathbf{M_D = E–A \quad (b)}$$

3. Mass of the base fluid (M_{BF}) equals the mass of the liquid receiver with its contents (D) minus the sum of the mass of the dry receiver (C) and the mass of the water (V).

$$\mathbf{M_{BF} = D—(C+V) \quad (c)}$$

Note: Assuming the density of water is 1 g/cm³, the volume of water is equivalent to the mass of the water.

b. Mass balance requirement:
The sum of M_D, M_{BF}, and V should be within 5% of the mass of the wet sample.

$$\mathbf{(M_D + M_{BF} + V)/M_w = 0.95 \text{ to } 1.05}$$

The procedure should be repeated if this requirement is not met.
c. Reporting oil from cuttings:
1. Assume that all oil recovered is NAF base fluid.
2. The weight percent base fluid retained on the cuttings (%BF) is equal to 100 times the mass of the base fluid (M_{BF}) divided by the mass of the wet cuttings sample (M_w).

$$\mathbf{\%BF = (M_{BF}/M_w) \times 100}$$

3. The %BF is determined for all cuttings wastestreams, including fines, and is associated with a respective length of hole drilled (L in feet) and bit diameter (d in inches).
4. Any cuttings or fines that are retained for no discharge are included in the weighted average with a %BF value of zero.
5. Each cuttings or fines sample corresponds to a wastestream fraction X_w (unitless), and should be representative for a certain length of hole drilled L (feet), using a drill bit of a specific diameter d (inches). The wastestream fraction (X_w) is the weight of discharge in each stream calculated as a fraction of total cuttings (including fines) discharge. The weighted average of %BF for the entire wastestream is equal to the sum of %BF times the wastestream fraction (X_w) times the length of hole (L) at given diameter times the square of the diameter (d^2) divided by the sum of the wastestream fraction (X_w) times the length of the hole (L) at given a diameter times the square of the diameter (d^2).

$$\mathbf{\text{Weighted average of \%BF} = \Sigma\ (\%BF \times X_w \times L \times d^2)/\Sigma\ (X_w \times L \times d^2)}$$

5. Verification of Liquid Receiver Volume

a. This procedure is used to verify that the liquid receiver meets specifications stated in Par. 2b.
b. Equipment:
1. Distilled water.
2. Glass thermometer—to measure ambient temperature ±0.1°F (±0.1°C).

3. Toploading balance—precision of 0.1 g.
4. Syringe or pipette—10-cm^3 or larger.
c. Procedure:
1. Allow receiver and distilled water to reach ambient temperature. Record temperature.
2. Place the clean, empty receiver with its base on the balance and tare to zero.
3. While the receiver is on the balance, fill it to the various graduation marks (2, 4, 6, 8, 10-cm^3 for the 10-cm^3 receiver, 4, 8, 12, 16, 20-cm^3 for the 20-cm^3, and 10, 20, 30, 40, and 50-cm^3 for the 50-cm^3 receiver) with distilled water. Using a pipette or syringe, carefully fill the receiver to the desired graduation mark without leaving water droplets on the walls of the receiver.
4. Record weights for the incremental volumes, IV, of water at the specific graduation marks, W_{IV}, grams.
d. Calculation:
1. Calculate volume of the receiver at each mark, V_{MARK}, using density of water Table 1.

$$V_{MARK} = (W_{IV}, g)/(\text{Density of Water, g/cm}^3) \quad \text{(a)}$$

TABLE 1.—DENSITY OF WATER

°F	°C	Density, g/cm^3
59.0	15.0	0.9991
59.9	15.5	0.9991
60.8	16.0	0.9990
61.7	16.5	0.9989
62.6	17.0	0.9988
63.5	17.5	0.9987
64.4	18.0	0.9986
65.3	18.5	0.9985
66.2	19.0	0.9984
67.1	19.5	0.9983
68.0	20.0	0.9982
68.9	20.5	0.9981
69.8	21.0	0.9980
70.7	21.5	0.9979
71.6	22.0	0.9977
72.5	22.5	0.9976
73.4	23.0	0.9975
74.3	23.5	0.9974
75.2	24.0	0.9973
76.1	24.5	0.9971
77.0	25.0	0.9970
77.9	25.5	0.9969
78.8	26.0	0.9968
79.7	26.5	0.9966
80.6	27.0	0.9965
81.5	27.5	0.9964
82.4	28.0	0.9962
83.3	28.5	0.9961
84.2	29.0	0.9959
85.1	29.5	0.9958
86.0	30.0	0.9956
86.9	30.5	0.9955
87.8	31.0	0.9953
88.7	31.5	0.9952
89.6	32.0	0.9950
90.5	32.5	0.9949
91.4	33.0	0.9947
92.3	33.5	0.9945
93.2	34.0	0.9944
94.1	34.5	0.9942
95.0	35.0	0.9940

Addendum A—Sampling of Cuttings Discharge Streams for Use With API Recommended Practice 13B–2

Sampling Locations

1. Each individual discharge stream should be sampled and tested. These may include the discharge streams from the primary shakers, the secondary shakers, and any other cuttings separation device, such as a centrifuge, whose discharge is dumped directly to the environment. The weight of discharge in each stream should be measured and calculated as a fraction of total cuttings discharge, X_w. The wastestream fraction, X_W, is used in the weighted average percent base fluid in cuttings. Each sample should report the respective linear feet of hole drilled represented by this sample (L in feet), and the drill bit diameter (d in inches).

2. It is essential that the samples be representative of the discharge stream. Sampling should be conducted to avoid the serious consequences of error, i.e., bias or inaccuracy. They should be caught near the point of origin and before the solids and liquid fractions of the stream have a chance to separate from one another. For example, shaker samples should be taken as the cuttings are coming off the shaker and not from of a holding container downstream where separation of larger particles from the liquid can take place.

3. A simple schematic diagram of the solids control system being used shall be provided indicating where the samples were taken.

Sample Size and Handling

1. The sample size should be about one quart (or liter). A viscosity cup is a suitable and usually available container for catching the sample. The sample can be transferred to a quart jar if the retort measurement is not going to be made immediately. Mark the container to clearly identify each sample.

2. Before pouring sample into retort cup, it should be made homogeneous by gentle mixing such as hand stirring or shaking of a jar. The bottom of the container should be examined to be sure that solids are not sticking to it. For best results, the sample should be run immediately after stirring and no more than two hours after catching the sample. Do not discard sample before weight percent synthetic has been calculated and results are within prescribed limits noted in the analytical method. Rerunning the retort test may be necessary.

Type of Sample and Sampling Frequency

3. Samples should represent steady state drilling operations after obtaining bottoms-up. They should be time lagged to obtain the actual depth of origin of the formation cuttings rather than the drilling depth at the time the sample was caught. Samples should not be taken at any time when there are not newly generated formation cuttings in the discharge stream.

4. During drilling operations, at least one sample per day should be caught and tested. In fast drilling, a sample should be caught for every 500 feet of hole drilled up to a maximum of three samples per day.

Subpart D—Coastal Subcategory

8. Section 435.41 is revised to read as follows:

§ 435.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided in this section, the general definitions, abbreviations and methods of analysis set forth in 40 CFR part 401 shall apply to this subpart.

(b) The term *average of daily values for 30 consecutive days* shall be the average of the daily values obtained during any 30 consecutive day period.

(c) The term *base fluid retained on cuttings* shall refer to American Petroleum Institute Recommended Practice 13B–2 supplemented with the specifications, sampling methods, and averaging of the retention values provided in Appendix 7 of 40 CFR part 435, subpart A.

(d) The term *biodegradation rate* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the test procedure presented in appendix 4 of 40 CFR part 435, subpart A.

(e) The term *Cook Inlet* refers to coastal locations north of the line between Cape Douglas on the West and Port Chatham on the east.

(f) The term *daily values* as applied to produced water effluent limitations and NSPS shall refer to the daily measurements used to assess compliance with the maximum for any one day.

(g) The term *deck drainage* shall refer to any waste resulting from deck washings, spillage, rainwater, and runoff from gutters and drains including drip pans and work areas within facilities subject to this subpart.

(h) The term *percent degraded at 120 days* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment relative to the initial concentration of base fluid in sediment at the start of the test on day zero.

(i) The term *percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero* shall mean that the percent base fluid degraded at 120 days of any single sample of base fluid shall not be less than the percent C_{16}-C_{18} internal olefin degraded at 120 days as a control standard.

(j) The term *development facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of productive wells.

(k) The term *dewatering effluent* means wastewater from drilling fluids and drill cuttings dewatering activities (including but not limited to reserve pits or other tanks or vessels, and chemical or mechanical treatment occurring during the drilling solids separation/recycle/disposal process).

(l) The term *diesel oil* shall refer to the grade of distillate fuel oil, as specified in the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils D975–91, that is typically used as the continuous phase in conventional oil-based drilling fluids. 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 the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. Copies may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC. A copy may also be inspected at EPA's Water Docket, 401 M Street SW., Washington, DC 20460.

(m) The term *domestic waste* shall refer to materials discharged from sinks, showers, laundries, safety showers, eye-wash stations, hand-wash stations, fish cleaning stations, and galleys located within facilities subject to this subpart.

(n) The term *drill cuttings* shall refer to the particles generated by drilling into subsurface geologic formations and carried out from the wellbore with the drilling fluid.

(o) The term *drilling fluid* refers to the circulating fluid (mud) used in the rotary drilling of wells to clean and condition the hole and to counterbalance formation pressure. Classes of drilling fluids are:

(1) A water-based drilling fluid has water or a water miscible fluid as the continuous phase and the suspending medium for solids, whether or not oil is present.

(2) A non-aqueous drilling fluid is one in which the continuous phase is a water immiscible fluid such as an oleaginous material (e.g., mineral oil, enhanced mineral oil, paraffinic oil, or synthetic material such as olefins and vegetable esters).

(3) An oil-based drilling fluid has diesel oil, mineral oil, or some other oil, but neither a synthetic material nor enhanced mineral oil, as its continuous phase with water as the dispersed phase. Oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(4) An enhanced mineral oil-based drilling fluid has an enhanced mineral oil as its continuous phase with water as the dispersed phase. Enhanced mineral oil-based drilling fluids are a subset of non-aqueous drilling fluids.

(5) A synthetic-based drilling fluid has a synthetic material as its continuous phase with water as the dispersed phase. Synthetic-based drilling fluids are a subset of non-aqueous drilling fluids.

(p) The term *enhanced mineral oil* as applied to enhanced mineral oil-based drilling fluid means a petroleum distillate which has been highly purified and is distinguished from diesel oil and conventional mineral oil in having a lower polycyclic aromatic hydrocarbon (PAH) content. Typically, conventional mineral oils have a PAH content on the order of 0.35 weight percent expressed as phenanthrene, whereas enhanced mineral oils typically have a PAH content of 0.001 or lower weight percent PAH expressed as phenanthrene.

(q) The term *exploratory facility* shall mean any fixed or mobile structure subject to this subpart that is engaged in the drilling of wells to determine the nature of potential hydrocarbon reservoirs.

(r) The term *no discharge of formation oil* shall mean that cuttings contaminated with non-aqueous drilling fluids (NAFs) may not be discharged if the NAFs contain formation oil, as determined by the GC/MS baseline

method as defined in appendix 5 to 40 CFR part 435, subpart A, to be applied before NAFs are shipped offshore for use, or the RPE method as defined in appendix 6 to 40 CFR part 435, subpart A, to be applied at the point of discharge. At the discretion of the permittee, detection of formation oil by the RPE method may be assured by the GC/MS method, and the results of the GC/MS method shall supercede those of the RPE method.

(s) The term *garbage* means all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of coastal oil and gas facility and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other Annexes to MARPOL 73/78. A copy of MARPOL may be inspected at EPA's Water Docket; 401 M Street SW, Washington DC 20460

(t) The term *maximum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the maximum concentration allowed as measured in any single sample of the barite for determination of cadmium and mercury content, or as measured in any single sample of base fluid for determination of PAH content.

(u) The term *maximum weighted average for well* for BAT effluent limitations and NSPS for base fluid retained on cuttings shall mean the weighted average base fluid retention as determined by API RP 13B–2, using the methods and averaging calculations presented in appendix 7 of 40 CFR part 435, subpart A.

(v) The term *maximum for any one day* as applied to BPT, BCT and BAT effluent limitations and NSPS for oil and grease in produced water shall mean the maximum concentration allowed as measured by the average of four grab samples collected over a 24-hour period that are analyzed separately. Alternatively, for BAT and NSPS the maximum concentration allowed may be determined on the basis of physical composition of the four grab samples prior to a single analysis.

(w) The term *minimum* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall mean the minimum 96-hour LC_{50} value allowed as measured in any single sample of the discharged waste stream. The term minimum as applied to BPT and BCT effluent limitations and NSPS for sanitary wastes shall mean the minimum concentration value allowed as measured in any single sample of the discharged waste stream.

(x) The term *M9IM* shall mean those offshore facilities continuously manned by nine (9) or fewer persons or only intermittently manned by any number of persons.

(y) The term *M10* shall mean those offshore facilities continuously manned by ten (10) or more persons.

(z)(1) The term *new source* means any facility or activity of this subcategory that meets the definition of ''new source'' under 40 CFR 122.2 and meets the criteria for determination of new sources under 40 CFR 122.29(b) applied consistently with all of the following definitions:

(i) The term *water area* as used in the term ''site'' in 40 CFR 122.29 and 122.2 shall mean the water area and water body floor beneath any exploratory, development, or production facility where such facility is conducting its exploratory, development or production activities.

(ii) The term *significant site preparation work* as used in 40 CFR 122.29 shall mean the process of surveying, clearing or preparing an area of the water body floor for the purpose of constructing or placing a development or production facility on or over the site.

(2) ''New source'' does not include facilities covered by an existing NPDES permit immediately prior to the effective date of these guidelines pending EPA issuance of a new source NPDES permit.

(aa) The term *no discharge of free oil* shall mean that waste streams may not be discharged that contain free oil as evidenced by the monitoring method specified for that particular stream, e.g., deck drainage or miscellaneous discharges cannot be discharged when they would cause a film or sheen upon or discoloration of the surface of the receiving water; drilling fluids or cuttings may not be discharged when they fail the static sheen test defined in appendix 1 to 40 CFR part 435, subpart A.

(bb) The term *produced sand* shall refer to slurried particles used in hydraulic fracturing, the accumulated formation sands and scales particles generated during production. Produced sand also includes desander discharge from the produced water waste stream, and blowdown of the water phase from the produced water treating system.

(cc) The term *produced water* shall refer to the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

(dd) The term *production facility* shall mean any fixed or mobile structure subject to this subpart that is either engaged in well completion or used for active recovery of hydrocarbons from producing formations. It includes facilities that are engaged in hydrocarbon fluids separation even if located separately from wellheads.

(ee) The term *sanitary waste* shall refer to human body waste discharged from toilets and urinals located within facilities subject to this subpart.

(ff) The term *sediment toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

(gg) The term *static sheen test* shall refer to the standard test procedure that has been developed for this industrial subcategory for the purpose of demonstrating compliance with the requirement of no discharge of free oil. The methodology for performing the static sheen test is presented in appendix 1 to 40 CFR part 435, subpart A.

(hh) The term *synthetic material* as applied to synthetic-based drilling fluid means material produced by the reaction of specific purified chemical feedstock, as opposed to the traditional base fluids such as diesel and mineral oil which are derived from crude oil solely through physical separation processes. Physical separation processes include fractionation and distillation and/or minor chemical reactions such as cracking and hydro processing. Since they are synthesized by the reaction of purified compounds, synthetic materials suitable for use in drilling fluids are typically free of polycyclic aromatic hydrocarbons (PAH's) but are sometimes found to contain levels of PAH up to 0.001 weight percent PAH expressed as phenanthrene. Poly(alpha olefins) and vegetable esters are two examples of synthetic materials suitable for use by the oil and gas extraction industry in formulating drilling fluids. Poly(alpha olefins) are synthesized from the polymerization (dimerization, trimerization, tetramerization, and higher oligomerization) of purified straight-chain hydrocarbons such as C_6–C_{14} alpha olefins. Vegetable esters are synthesized from the acid-catalyzed esterification of vegetable fatty acids with various alcohols. The mention of

these two branches of synthetic fluid base materials is to provide examples, and is not meant to exclude other synthetic materials that are either in current use or may be used in the future. A synthetic-based drilling fluid may include a combination of synthetic materials.

(ii) The term *SPP toxicity* as applied to BAT effluent limitations and NSPS for drilling fluids and drill cuttings shall refer to the bioassay test procedure presented in appendix 2 of 40 CFR part 435, subpart A.

(jj) The term *well completion fluids* shall refer to salt solutions, weighted brines, polymers, and various additives used to prevent damage to the well bore during operations which prepare the drilled well for hydrocarbon production.

(kk) The term *well treatment fluids* shall refer to any fluid used to restore or improve productivity by chemically or physically altering hydrocarbon-bearing strata after a well has been drilled.

(ll) The term *workover fluids* shall refer to salt solutions, weighted brines, polymers, or other specialty additives used in a producing well to allow for maintenance, repair or abandonment procedures.

(mm) The term *10-day LC_{50}* shall refer to the concentration (milligrams/kilogram dry sediment) of the base fluid in sediment that is lethal to 50 percent of the test organisms exposed to that concentration of the base fluids after 10-days of constant exposure.

(nn) The term *10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero* shall mean that the 10-day LC_{50} of any single sample of the base fluid shall not be less than the LC_{50} of C_{16}-C_{18} internal olefin as a control standard.

(oo) The term *96-hour LC_{50}* shall refer to the concentration (parts per million) or percent of the suspended particulate phase (SPP) from a sample that is lethal to 50 percent of the test organisms exposed to that concentration of the SPP after 96 hours of constant exposure.

9. In § 435.42 the table is amended by removing the entries ''Drilling fluids'' and ''Drill cuttings'' and by adding new entries (after ''Deck drainage'') for ''Water based'' and ''Non-aqueous'' to read as follows:

§ 435.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

* * * * *

BPT EFFLUENT LIMITATIONS—OIL AND GREASE

[In milligrams per liter]

Pollutant parameter waste source	Maximum for any 1 day	Average of values for 30 consecutive days shall not exceed	Residual chlorine minimum for any 1 day
* * * *	*	*	*
Water-Based:			
Drilling fluid	(1)	(1)	NA
Drill cuttings	(1)	(1)	NA
Non-aqueous:			
Drilling fluid	No discharge	No discharge	NA
Drill cuttings	(1)	(1)	NA
* * * *	*	*	*

1 No discharge of free oil.

* * * * *

10. In § 435.43 the table is amended by revising entry B under the entry for ''Drilling fluids, drill cuttings, and dewatering effluent'' and by revising footnote 4 and adding footnotes 5–9 to read as follows:

§ 435.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

* * * * *

BAT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BAT effluent limitations
* *	* *	* * *
Drilling Fluids, Drill Cuttings, and Dewatering Effluent:[1]		
* *	* *	* * *
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings and dewatering effluent.	SPP Toxicity	Minimum 96-hour LC_{50} of the SPP shall be 3 percent by volume.[4]
	Free Oil[2]	No discharge.
	Diesel Oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.

BAT EFFLUENT LIMITATIONS—Continued

Stream	Pollutant parameter	BAT effluent limitations
Non-aqueous drilling fluids and dewatering effluent.	.....	No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid.[5]
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero.[6]
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero.[7]
Discharge Limitations	Diesel oil	No discharge.
	Formation Oil	No discharge.[8]
	Base fluid retained on cuttings	Maximum weighted average for well shall be 10.2 percent.[9]

* * * * * * *

[1] BAT limitations for dewatering effluent are applicable prospectively. BAT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

* * * * * * *

[4] As determined by the suspended particulate phase toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)]

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

[7] As determined by the biodegradation test (see appendix 4 to 40 CFR part 435, subpart A).

[8] As determined by the GC/MS baseline and assurance method (see appendix 5 to 40 CFR part 435, subpart A), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (see appendix 6 to 40 CFR part 435, subpart A).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (see appendix 7 to 40 CFR part 435, subpart A).

11. In § 435.44 the table is amended by revising the entry for ''Cook Inlet'' under the entry for ''Drilling fluids and drill cuttings and dewatering effluent'' as follows:

§ 435.44 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

* * * * *

BCT EFFLUENT LIMITATIONS

Stream	Pollutant parameter	BCT effluent limitations
* * * * * * *		
Drilling Fluids and Drill Cuttings and Dewatering Effluent:[1]		
* * * * * * *		
Cook Inlet:		
Water-based drilling fluid, drill cuttings, and dewatering effluent	Free oil	No discharge.[2]
Non-aqueous drilling fluids and dewatering effluent	.....	No discharge.
Cuttings associated with non-aqueous drilling fluids	Free oil	No discharge.[2]
* * * * * * *		

[1] BCT limitations for dewatering effluent are applicable prospectively. BCT limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see Appendix 1 to 40 CFR Part 435, Subpart A).

* * * * *

12. In § 435.45 the table is amended by revising entry B under the entry for ''Drilling fluids, drill cuttings, and dewatering effluent'' and by revising footnote 4 and adding footnotes 5–9 to read as follows:

§ 435.45 Standards of performance for new sources (NSPS).

NSPS EFFLUENT LIMITATIONS

Stream	Pollutant parameter	NSPS effluent limitations
Drilling Fluids, Drill Cuttings and Dewatering Effluent:[1]		
* * * * * * *		
(B) Cook Inlet:		
Water-based drilling fluids, drill cuttings and dewatering effluent.	Free oil	No discharge[2]
	Diesel oil	No discharge.
	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	SPP Toxicity	Minimum 96-hour LC50 of the SPP shall be 3% by volume.[4]
Non-aqueous drilling fluids and dewatering effluent.		No discharge.
Cuttings associated with non-aqueous drilling fluids		
Stock Limitations	Mercury	1 mg/kg dry weight maximum in the stock barite.
	Cadmium	3 mg/kg dry weight maximum in the stock barite.
	Polynuclear Aromatic Hydrocarbons (PAH).	Maximum 10 ppm wt. PAH based on phenanthrene/wt. of stock base fluid.[5]
	Sediment Toxicity	10-day LC_{50} of stock base fluid minus 10-day LC_{50} of C_{16}-C_{18} internal olefin shall not be less than zero.[6]
	Biodegradation Rate	Percent stock base fluid degraded at 120 days minus percent C_{16}-C_{18} internal olefin degraded at 120 days shall not be less than zero.[7]
Discharge Limitations	Diesel oil	No discharge.
	Free oil	No discharge.[2]
	Formation oil	No discharge.[8]
	Base fluid retained or cuttings	Maximum weighted average for well shall be 10.2 percent.[9]
* * * * * * *		

[1] NSPS limitations for dewatering effluent are applicable prospectively. NSPS limitations in this rule are not applicable to discharges of dewatering effluent from reserve pits which as of the effective date of this rule no longer receive drilling fluids and drill cuttings. Limitations on such discharges shall be determined by the NPDES permit issuing authority.

[2] As determined by the static sheen test (see appendix 1 to 40 CFR part 435, subpart A).

[6] * * * * * * *

[4] As determined by the suspended particulate phase toxicity test (see appendix 2 of 40 CFR part 435, subpart A).

[5] As determined by EPA Method 1654A: Polynuclear Aromatic Hydrocarbon Content of Oil by High Performance Liquid Chromatography with an Ultraviolet Detector in Methods for the Determination of Diesel, Mineral, and Crude Oils in Offshore Oil and Gas Industry Discharges, EPA–821–R–92–008 [Incorporated by reference and available from National Technical Information Service (NTIS) (703/605–6000)].

[6] As determined by ASTM E1367–92: Standard Guide for Conducting 10-day Static Sediment Toxicity Tests with Marine and Estuarine Amphipods (Incorporated by reference and available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA, 19428) supplemented with the sediment preparation procedure in appendix 3 of 40 CFR part 435, subpart A.

[7] As determined by the biodegradation test (see appendix 4 to 40 CFR part 435, subpart A).

[8] As determined by the GC/MS baseline and assurance method (see appendix 5 to 40 CFR part 435, subpart A), and by the RPE method applied to drilling fluid removed from cuttings at primary shale shakers (see appendix 6 to 40 CFR part 435, subpart A).

[9] Maximum permissible retention of base fluid on wet cuttings averaged over drill intervals using non-aqueous drilling fluids as determined by retort method (see appendix 7 to 40 CFR part 435, subpart A).

[FR Doc. 99–317 Filed 2–2–99; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
February 3, 1999

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 34

Emission Standards for Turbine Engine Powered Airplanes; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 34

[Docket No. FAA–1999–5018; Amendment No. 34–3]

RIN 2120–AG68

Emission Standards for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document revises the emission standards for turbine engine powered airplanes to incorporate the current standards of the International Civil Aviation Organization (ICAO) for gaseous emissions of oxides of nitrogen (No_X) and carbon monoxide (CO), and to adopt revised test procedures for gaseous emissions. This rule will bring the United States emissions standards into alignment with the standards of ICAO. Because, this rule is consistent with international standards, an emission certification test that meets U.S. requirements will meet ICAO requirements.

EFFECTIVE DATE: February 3, 1999.

The incorporation by reference of the publication listed in the rule is approved by the director of the Federal Register February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Edward McQueen, Research and Engineering Branch (AEE–110), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3560.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

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), the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661), or the FAA's Aviation Rulemaking Advisory Committee Bulletin Board service (telephone 800–322–2722 or 202–267–5948).

Internet users may reach the FAA's web page at **http://www.faa.gov/avr/arm/nprm/nprm.htm** or the Government Printing Office's webpage at **http://www.access.gpo.gov/nara/aces/aces140.html** for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking and Final Rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question concerning this rule, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1–888–551–1594. Internet users can find additional information on SBREFA in the ''Quick Jump'' section of the FAA's web page at **http://www.faa.gov** and may send electronic inquiries to the following Internet address: 9–AWA–SBREF@faa.gov

Background

Section 232 of the Clean Air Act Amendments of 1970 (the Act), 42 U.S.C. 7401 *et. seq.*, requires the Federal Aviation Administrations (FAA) to issue regulations that ensure compliance with all aircraft emission standards promulgated by the Environmental Protection Agency (EPA) under Section 231 of the Act. The EPA has promulgated standards for engine fuel venting emissions, engine smoke emissions, and exhaust gaseous emissions of unburned hydrocarbons (HC), oxides of nitrogen NO_X, and carbon monoxide (CO). These emission standards are prescribed in 40 CFR part 87.

Since the promulgation of the initial U.S. standards in 1973 by the EPA, the FAA has worked with the International Civil Aviation Organization (ICAO) on the development of international aircraft engine exhaust emissions standards for NO_X, CO, HC, and smoke (SN). Currently, the FAA regulations governing aircraft engine exhaust emissions do not include NO_X and CO. This rule amends 14 CFR Part 34 to add the standards for NO_X and CO that were adopted by the EPA in July 1997.

Analysis of the Rule as Adopted

Section 34.1

Section 34.1 is amended by expanding the definition of Class TF so that it would apply to new engine development programs such as propfan, unducted fan, and advanced ducted propfan (ADP) engines.

Section 34.2

Section 34.2 is amended by adding the abbreviations for Carbon Monoxide (CO) and Oxides of Nitrogen (NO_X), the two emissions standards being added to the regulations.

Section 34.21(d), (d)(1), and (e)(3)

In section 34.21, paragraphs (d), (d)(1) and (e)(3) are being amended to add CO and NO_X standards for exhaust emissions as requirements for newly manufactured aircraft gas turbine engines of rated thrust greater than 26.7 Kilonewtons (kN). This change will make U.S. and international emissions standards and test procedures compatible.

Section 34.60(c)

Section 34.60(c) is amended to require a NO_X measurement as part of the test procedures for engine exhaust gaseous emissions. This change is necessary to provide the data from which compliance with the new NO_X standard may be demonstrated.

Section 34.61

Section 34.61 is amended by adjusting the allowable ranges of values in the properties of the fuel specifications to be used in aircraft turbine engine emission testing. This change will allow a wider band of test fuel acceptability without degradation in emission data quality and make U.S. and international emissions standards and test procedures compatible.

Section 34.62(a)(2)

Section 34.62(a)(2) is amended by adding CO emissions to the taxi/idle operating modes of the test procedure. This change is necessitated by the addition of the CO standard, and will make U.S. international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.64

Section 34.64 is amended by incorporating by reference the most

recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of gaseous emissions. This change is necessitated by the addition of the CO and NO_X standards, and will make U.S. and international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.71

Section 34.71 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of gaseous emissions. This change is necessitated by the addition of the CO and NO_X standards, and will make U.S. and international emissions test procedures for engine exhaust gaseous emissions compatible.

Section 34.82

Section 34.82 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of smoke emissions. This change will make U.S. and international emissions test procedures for engine smoke emissions compatible.

Section 34.89

Section 34.89 is amended by incorporating by reference the most recent version of ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, dated July 1993. Appendices 3 and 5 of this document specify the system and procedures for sampling and measurement of smoke emissions. This change will make U.S. and international emissions test procedures for engine smoke emissions compatible.

Paperwork Reduction Act

There are no requirements for information collection associated with this final rule; accordingly, no analysis under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) is required.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and recommended practices and Joint Aviation Airworthiness Authorities requirements and has identified no differences in these amendments and the foreign regulations. These changes are intended to make the U.S. and international standards more compatible.

Regulatory Evaluation Summary

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the final rule will generate benefits that justify its costs and is not ''a significant regulatory action'' as defined under section 3(f) of Executive Order 12866 and Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The final rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. In addition, this final rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. However, because expenditures by the private sector will not exceed $100 million annually, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Overview

In July, 1997, the Environmental Protection Agency (EPA) amended existing United States regulations governing the exhaust emissions from new commercial gas turbine aircraft engines. Under authority of section 231 of the Clean Air Act (the Act), the EPA promulgated new emission standards for oxides of nitrogen (NO_X) and carbon monoxide (CO) for newly manufactured and newly certified commercial gas turbine aircraft engines. The EPA action codified the NO_X and CO emission standards of the United Nations International Civil Aviation Organization (ICAO). As a result, U.S. emission standards are in alignment with internationally adopted standards.

This final rule amends Part 34 of Title 14 of the Code of Federal Regulations (14 CFR Part 34) to ensure that it contains the same aircraft emission standards as those promulgated by the EPA in 40 CFR Part 87. A full regulatory evaluation of the potential monetary costs that would be imposed and benefits generated (including separate analyses for regulatory flexibility, international trade impact, and unfunded mandates) is usually prepared for FAA rulemaking actions. However, this regulation brings FAA rules into conformity with EPA rules, which have already been issued. Therefore, a full regulatory evaluation is unwarranted because the FAA is not imposing a new rule on the aviation industry, and any costs associated with these changes have been accounted for by the EPA rule (62 FR 25356, May 8, 1997). Thus, for the aforementioned reason, an abbreviated regulatory evaluation has been prepared for this final rule, which will serve as both the summary and full regulatory evaluation.

Costs

On July 7, 1997, EPA issued a final rule amending regulations governing the exhaust emissions from aircraft and aircraft engines, emission standards, and test procedures. The EPA estimated that their action will impose no additional burden on manufacturers. This final rule puts forth the FAA's responsibility to enforce the EPA's revised emission standards.

Aircraft manufacturers and affected aircraft parts manufacturers are currently meeting the NO_X and CO emission standards that EPA adopted. Therefore, the FAA has determined that because the emission test procedures are widely applied and accepted, little or no costs will be incurred by the aviation industry as a result of the FAA's action.

Benefits

This final rule will ensure that the public receives the air quality benefits established by the Clean Air Act. These certification testing rules are consistent with ICAO's standards, and emission certification test procedures. This harmonization of U.S. emission requirements with ICAO emission requirements is expected to reduce certificate testing requirements for newly manufactured aircraft engines and could help the sale of U.S. aviation products abroad.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory

issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear. The rule incorporates current ICAO standards already met by the impacted aircraft manufacturers and aircraft parts manufacturers of commercial gas turbine engines, this rule does not add additional cost to the aviation industry. In addition, in July 1997, the EPA issued a final rule amending regulations governing the exhaust emissions from aircraft and aircraft engines, emission standards, and test procedures. This final rule does not add any additional costs on the aviation industry. This rule only puts forth the FAA's responsibility to enforce the EPA's emission standards. Accordingly, the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will not impose a competitive disadvantage to either U.S. air carriers doing business abroad or foreign air carriers doing business in the United States. However, it could positively affect the sale of United States aviation products or services in foreign countries due to the harmonization and consistency for certification testing between United States and international emission standards and control program requirements.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution accordance with Executive Order 12612, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain any Federal intergovernmental mandates, but does contain a private sector mandate. Since expenditures by the private sector will not exceed $100 million annually, as the result of little or no costs imposed by this final rule, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Environmental Analysis

Pursuant to Department of Transportation, ''Policies and Procedures for Considering Environmental Impacts'' (FAA Order 1050.1D, Appendix 7, paragraph 4, Change 3, December 5, 1986), the FAA is categorically excluded from providing an environmental analysis with regard to Part 34. It is mandated by law to issue regulations to ensure compliance with the EPA aircraft emissions standards and the EPA has performed all required environmental analyses prior to the issuance of those standards.

Determination of Effective Date

This regulation is being promulgated as a final rule without notice and opportunity for prior public comment. Since the regulations adopted in this rule were adopted by the EPA in 1997 in 40 CFR part 87 and are already required for aircraft engine certification under those regulations, the FAA has determined that notice and prior public comment are necessary. The FAA does not anticipate that a request for public comment at this time would result in a receipt of useful information. Opportunity for public comment was provided by the EPA, and comments received were addressed by that agency.

For the same reason, the FAA has determined that good cause exists for making this amendment effective in less than 30 days. Compliance with these regulations has been required since their promulgation by the EPA in 1997.

List of Subjects in 14 CFR Part 34

Air pollution control, Aircraft, Incorporation by reference.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 34 of Title 14, Code of Federal Regulations (14 CFR part 34) as follows:

PART 34—FUEL VENTING AND EXHAUST EMISSION REQUIREMENTS FOR TURBINE ENGINE POWERED AIRPLANES

1. The authority citation for part 34 continues to read as follows:

Authority: 42 U.S.C. 4321 et seq., 7572; 49 U.S.C. 106(g), 40113, 44701–44702, 44704, 44714.

2. Section 34.1 is amended by revising the definition of ''Class TF'', to read as follows:

§ 34.1 Definitions.

* * * * *

Class TF means all turbofan or turbojet aircraft engines or aircraft engines designed for applications that otherwise would have been fulfilled by turbojet and turbofan engines except engines of class T3, T8, and TSS.

* * * * *

3. Section 34.2 is amended by adding the following abbreviations in alphabetical order to read as follows:

§ 34.2 Abbreviations.

* * * * *

CO Carbon Monoxide

* * * * *

NO_X Oxides of Nitrogen

* * * * *

Subpart C—Exhaust Emissions (New Aircraft Gas Turbine Engines)

4. Section 34.21 is amended by revising paragraphs (d) and (e)(3) to read as follows:

§ 34.21 Standards for exhaust emissions.

* * * * *

(d) Gaseous exhaust emissions from each new aircraft gas turbine engine shall not exceed:

(1) For Classes TF, T3, T8 engines greater than 26.7 kilonewtons (6000 pounds) rated output:

(i) Engines manufactured on or after January 1, 1984:

Hydrocarbons: 19.6 grams/kilonewton r0.

(ii) Engines manufactured on or after July 7, 1997.

Carbon Monoxide: 118 grams/kilonewton r0.

(iii) Engines of a type or model of which the date of manufacture of the first individual production model was on or before December 31, 1995, and for which the date of manufacture of the individual engine was on or before December 31, 1999:

Oxides of Nitrogen: (40+2(rPR)) grams/kilonewtons r0.

(iv) Engines of a type or model of which the date of manufacture of the first individual production model was after December 31, 1995, or for which the date of manufacture of the individual engine was after December 31, 1999:

Oxides of Nitrogen: (32+1.6 (rPR)) grams/kilonewtons r0.

(v) The emission standards prescribed in paragraphs (d)(1)(iii) and (iv) of this section apply as prescribed beginning July 7, 1997.

(2) For Class TSS Engines manufactured on or after January 1, 1984:

Hydrocarbons=140 $(0.92)^{rPR}$ grams/kilonewtons r0.

(e) * * *

(3) For Class TP of rated output equal to or greater than 1,000 kilowatts manufactured on or after January 1, 1984:

$SN=187(ro)^{-0.168}$ (ro is in kilowatts)

* * * * *

Subpart G—Test Procedures for Engine Exhaust Gaseous Emissions (Aircraft and Aircraft Gas Turbine Engines)

5. Section 34.60 is amended by revising paragraph (c) to read as follows:

§ 34.60 Introduction.

* * * * *

(c) The exhaust emission test is designed to measure concentrations of hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen, and to determine mass emissions through calculations during a simulated aircraft landing-takeoff cycle (LTO). The LTO cycle is based on time in mode data during high activity periods at major airports. The test for propulsion engines consists of at least the following four modes of engine operation: taxi/idle, takeoff, climbout, and approach. The mass emission for the modes are combined to yield the reported values.

* * * * *

6. Section 34.61 is revised to read as follows:

§ 34.61 Turbine fuel specifications.

For exhaust emission testing, fuel that meets the specifications listed in this section shall be used. Additives used for the purpose of smoke suppression (such as organometallic compounds) shall not be present.

SPECIFICATION FOR FUEL TO BE USED IN AIRCRAFT TURBINE ENGINE EMISSION TESTING

Property	Allowable range of values
Density at 15°C	780–820.
Distillation Temperature, °C 10% Boiling Point.	155–201.
Final Boiling Point	235–285.
Net Heat of Combustion, MJ/Kg.	42.86–43.50.
Aromatics, Volume %	15–23.
Naphthalenes, Volume %.	1.0–3.5.
Smoke point, mm	20–28.
Hydrogen, Mass %	13.4–14.1.
Sulfur Mass %	Less than 0.3%.
Kinematic viscosity at— 20° C, mm^2 /sec.	2.5–6.5.

7. Section 34.62 is amended by revising paragraph (a)(2) to read as follows:

§ 34.62 Test procedure (propulsion engines).

(a)(1) * * *

(2) The taxi/idle operating modes shall be carried out at a power setting of 7% rated thrust unless the Administrator determines that the unique characteristics of an engine model undergoing certification testing at 7% would result in substantially different HC and CO emissions than if the engine model were tested at the manufacturers recommended idle power setting. In such cases the Administrator shall specify an alternative test condition.

* * * * *

8. Section 34.64 is revised to read as follows:

§ 34.64 Sampling and analytical procedures for measuring gaseous exhaust emissions.

The system and procedures for sampling and measurement of gaseous emissions shall be as specified in Appendices 3 and 5 to the International Civil Aviation Organization (ICAO) Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the International Civil Aviation Organization (ICAO), Document Sales Unit, P.O. Box 400, Succursale: Place de L'Aviation Internationale, 1000 Sherbrooke Street West, Suite 400, Montreal, Quebec, Canada H3A 2R2. Copies may be reviewed at the FAA Office of the Chief Counsel, Rules Docket, Room 916, Federal Aviation Administration Headquarters Building, 800 Independence Avenue, SW., Washington, DC, or at the FAA New England Regional Office, 12 New England Executive Park, Burlington, Massachusetts, or at the Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

9. Section 34.71 is revised to read as follows:

§ 34.71 Compliance with gaseous emission standards.

Compliance with each gaseous emission standard by an aircraft engine shall be determined by comparing the pollutant level in grams/kilonewton/thrust/cycle or grams/kilowatt/cycle as calculated in § 34.64 with the applicable emission standard under this part. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993, effective March 20, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from, and copies may be reviewed at, the

respective addresses listed in § 34.64. Other methods of demonstrating compliance may be approved by the FAA Administrator with the concurrence of the Administrator of the EPA.

10. Section 34.82 is revised to read as follows:

§ 34.82 Sampling and analytical procedures for measuring smoke exhaust emissions.

The system and procedures for sampling and measurement of smoke emissions shall be as specified in Appendix 2 to ICAO Annex 16, Volume II, Environmental Protection, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from, and copies may be reviewed at, the respective addresses listed in § 34.64.

11. Section 34.89 is revised to read as follows:

§ 34.89 Compliance with smoke emission standards.

Compliance with each smoke emission standard shall be determined by comparing the plot of SN as a function of power setting with the applicable emission standard under this part. The SN at every power setting must be such that there is a high degree of confidence that the standard will not be exceeded by any engine of the model being tested. An acceptable alternative to testing every engine is described in Appendix 6 to ICAO Annex 16, Environmental Protection, Volume II, Aircraft Engine Emissions, Second Edition, July 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This document can be obtained from the address listed in § 34.64. Other methods of demonstrating compliance may be approved by the Administrator with the concurrence of the Administrator of the EPA.

Issued in Washington, DC, on January 20, 1999.

Jane F. Garvey,

Administrator.

[FR Doc. 99–1608 Filed 2–2–99; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
February 3, 1999

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

National Science Foundation

Department of Energy

Office of the Secretary

Rice Genome Sequencing Project; Interagency Program Announcement; Request for Proposals and Request for Input; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

NATIONAL SCIENCE FOUNDATION

DEPARTMENT OF ENERGY

Office of the Secretary

The United States Rice Genome Sequencing Project; Interagency Program Announcement; Request for Proposals and Request for Input

AGENCIES: U.S. Department of Agriculture, National Science Foundation and U.S. Department of Energy.

ACTION: Notice of request for proposals and request for input.

SUMMARY: As a collaborative, interagency effort, the Cooperative State Research, Education, and Extension Service (CSREES) of the Department of Agriculture, the National Science Foundation, and the Department of Energy are soliciting proposals for the United States Rice Genome Sequencing Projects. Proposals are hereby requested from eligible institutions as identified herein for competitive consideration of awards. By this notice, the CSREES additionally solicits stakeholder input from any interested party regarding the FY 1999 request for proposals for use in the development of the next request for proposals for The United States Rice Genome Sequencing Project.

DATES: Proposals are due May 4, 1999. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Dr. Ed Kaleikau; Plant Genome Program; NRI Competitive Grants Program; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2241; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2241; Telephone: 202–401–1901; Fax: 202–401–6488; E-mail: ekaleikau@reeusda.gov; or Dr. David Meinke; Plant Genome Research Program; Division of Biological Infrastructure; National Science Foundation; 4201 Wilson Blvd; Arlington, VA 22230; Telephone: 703–306–1470; Fax: 703–306–0339; E-mail: dmeinke@nsf.gov; or Gregory L. Dilworth; Division of Energy Biosciences, ER–17; U.S. Department of Energy; 19901 Germantown Road; Germantown, MD 20874; Telephone: 301–903–2873; Fax: 301–903–1003; E-mail: Greg.dilworth@oer.doe.gov.

Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding.

SUPPLEMENTARY INFORMATION:

Table of Contents

Purpose

The purpose of this interagency program announcement is to solicit proposals to initiate systematic sequencing of the genome of rice in the United States as part of an international effort that includes the Rice Genome Program of Japan. The ultimate goal of this project is to sequence the entire rice genome as a model monocot (grass) species. The target date for completion is before the year 2008. Initially, it is anticipated that up to three 3-year awards will be made through this program in fiscal year (FY) 1999 contingent upon the quality of proposals received and the availability of funds.

Background

The National Science and Technology Council (NSTC), in response to a request of Congress, established an Interagency Working Group on Plant Genomes (IWGPG) in May 1997. The IWGPG consisted of representatives from the Department of Agriculture (USDA), National Science Foundation (NSF), Department of Energy (DOE), National Institutes of Health (NIH), the Office of Science and Technology Policy (OSTP) and the Office of Management and Budget (OMB). The IWGPG was created to identify science-based priorities for a national plant genome initiative and to plan for a collaborative interagency approach to address these priorities. In January 1998, the IWGPG provided a report describing a five-year plan and rationale for a National Plant Genome Initiative. One of the Initiative's goals is to participate in an international effort to sequence the rice genome in collaboration with the Rice Genome Program of Japan, other countries and the private sector where appropriate. It is expected that through these efforts the resulting information, data, software, germplasm, and other research tools and biological materials can be made readily and openly available to the scientific community at large.

Grasses are one of the most diverse groups of plants and include the world's major food crops such as rice, corn, wheat, rye, barley, sorghum, sugarcane, and millet. While the genome size among grass species varies greatly, they share common sets of genes. There has been a strong interest among many plant biologists to sequence the rice genome, as a representative monocot to complement and extend advances made with the *Arabidopsis thaliana* (dicot) genome project. The rapid advances in sequencing technologies have now made it a feasible undertaking given the relatively small size of the rice genome (~ 430 million base pairs).

Scientists interested in the genome sequencing of rice participated in a workshop held in September 1997. An ad hoc international working group, nominated in Singapore, met in February 1998 in Tsukuba, Japan to develop a long-range plan for the International Rice Genome Sequencing Project. A follow up Workshop on Rice Genome Sequencing was held, with the support of USDA, NSF, and DOE, in Washington, D.C., April 1998, to address the U.S. response to this initiative. This program announcement is an outcome of that workshop.

Introduction

Recognizing the potential of a rice genome sequencing effort to contribute to their mission, NSF and DOE have joined with USDA to initiate a U.S. Rice Genome Sequencing Project. This project will be coordinated with other ongoing U.S. genome projects including the human genome research project supported by NIH and DOE, the microbial genome project supported by DOE, the NSF Plant Genome Research Program, and the USDA Plant Genome Program in order to minimize duplication of effort and to maximize efficient use of available resources. It is intended that the U.S. efforts to

complete the sequence of rice will be coordinated on an international level with other national and transnational programs.

As a member of the *Gramineae* and a crop plant, a wealth of fundamental information about important aspects of plant biology, including economically important characteristics, can be learned from the genome sequence of rice. Because it shares collinear genomes, rice is a key to knowledge of the genome organization of the other grasses. Comparison of the sequence of the dicot, *Arabidopsis thaliana,* with that of rice, a model monocot, will reveal what genome structures these two different groups of angiosperms have in common and how they differ.

While the goals of the International Rice Genome Project must be focused, the information provided by the International Project can be exploited by the entire research community to learn: the functions and relative map locations of all cereal genes; the use of map-based sequence information to identify and provide markers for agronomically significant genes; the molecular basis of plant growth and development so that fundamental questions in plant p hysiology, biochemistry, cell biology, and pathology can be addressed and; the relationship of genome structure to gene expression.

Authority

The authority for the USDA participation in this program is found in 7 U.S.C. 450i(b). The authority for NSF participation in this program is found in the National Science Foundation Act of 1950, as amended, 42 U.S.C. 1861, *et seq.* The authority for DOE participation in this program is found in the Atomic Energy Act of 1954, as amended, Sec. 31, Pub. L. 83–703, 68 Stat. 919, (42 U.S.C. 2051); Energy Reorganization Act of 1974, Title I, Sec. 107, Pub. L. 93–438, 88 Stat. 1240, (42 U.S.C. 5817); Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93–577; Department of Energy Organization Act of 1977, as amended, Pub. L. 95–91, (U.S.C. 7101).

Applicant Eligibility

Proposals are solicited from a broad community of scientists at U.S. institutions, including any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual. Consortia of eligible individuals or organizations may apply, but a single organization or individual must accept overall management responsibility. Involvement of international collaborators is encouraged, although primary support for foreign participants/activities must be secured through their own national programs.

Principal Investigator and Other Senior Staff

The Principal Investigator (PI) and other senior staff responsible for the project are expected to have expertise and experience in large-scale, high-through-put genomic DNA sequencing. If the application is submitted by a consortium of several groups from one or more institutions, the consortium must make a convincing case that it can function in an effective, efficient, timely and cost-conscious manner.

Award Information and Available Funding

The participating agencies currently have a total of approximately $4 million available for this Program in FY 1999. Subject to the availability of funds, the participating agencies anticipate that an additional $4 million in funding will be available for this program in each FY 2000 and FY 2001, for an anticipated total level of support for this Program of $12 million over three years. The program anticipates initially supporting up to three 3-year awards. These awards will be made in the form of grants and cooperative agreements which will be determined at the time of the award. The exact amount of the award will depend on the advice of reviewers and on the availability of funds. Each participating agency will obligate funds separately. However, a proposal may be funded by one or more of the participating agencies.

How To Obtain Application Materials

All participating agencies have agreed to use the USDA guidelines for proposal format (see below) and application kit. Other material may be required at the time of funding to facilitate the implementation of the award. The guidelines and application kit are available on the USDA web site at the URL: http://www.reeusda.gov/crgam/nri/howto/applkit/applkitdoc.htm.

Paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the Proposal Services Unit, Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Ave., S.W.; Washington, D.C. 20250–2245. Telephone: (202) 401–5048.

Proposal Format

The proposals should be prepared following the guidelines and the instructions below.

Each proposal must contain the following elements in the order indicated:

1. Application For Funding Cover Page (Form CSREES–661). All proposals must contain an Application for Funding (Form CSREES–661), which must be signed by the proposed principal investigator(s) and by the cognizant Authorized Organizational Representative who possesses the necessary authority to commit the applicant's time and other relevant resources. Principal investigators who do not sign the proposal cover sheet will not be listed on the award document in the event an award is made. The title of the proposal must be brief (80-character maximum), yet represent the major emphasis of the project. Because this title will be used to provide information to those who may not be familiar with the proposed project, highly technical words or phraseology should be avoided where possible. In addition, phrases such as ''investigation of'' or ''research on'' should not be used.

2. Table of Contents. For ease in locating information, each proposal must contain a detailed table of contents just after the proposal cover page. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Project Summary (see next section).

3. Project Summary (Form CSREES–1232). The proposal must contain a Project Summary form (Form CSREES–1232). This form must be assembled as the third page of the proposal (immediately after the Table of Contents) and should not be numbered. The names and institutions of all principal and co-investigators should be listed on this form (if space is insufficient, please enter ''see attached'' in this space and provide this information on a separate sheet immediately following the Project Summary form in the proposal). The project summary itself MUST fit within the space indicated (approximately 250 words). The summary is not intended for the general reader; consequently, it may contain technical language comprehendible by persons in disciplines relating to the food and agricultural sciences. The project summary should be a self-contained,

specific description of the activity to be undertaken and should focus on: Overall project goal(s) and supporting objectives; plans to accomplish project goal(s); and relevance of the project to the systematic sequencing of the genome of rice in the United States.

4. Project Description. A description of the project must not exceed 20 pages inclusive of tables, diagrams and other visual material. The project description should be numbered and single-spaced with text on one side of the page using a 12 point (10 cpi) type font size and one-inch margins. The following points must be addressed in this section.

A. Sequencing Strategies—The proposal should include descriptions of: 1. DNA substrates to be sequenced: Include source of the DNA (clones), map of the chromosomal region involved, rationale for choosing the region, method of substrate preparation and all other pertinent information. The strategies proposed must be scalable and applicable to efforts to sequence the entire rice genome.

2. Sequence quality and quantity: This section should include the level of accuracy to be sought and how that will be measured, the number of bases to be sequenced per unit time, and a discussion of the finishing process and how that will be defined. Plans to fill sequence gaps and coordinate sequencing efforts within the rice community must be discussed in detail.

3. Genome sequencing technologies and strategies: Technologies/strategies that will be used should be described as well as plans for incorporating new developments and/or improvements in sequencing protocols, strategies and technologies as they become available.

4. Costs of production sequencing in relation to the product proposed: The cost-effectiveness of the sequences generated will be a very important issue. An estimate of the dollars required to produce a specific number of bases (which should include the costs of generating clones, assembly and annotation) should be given. If investigators are proposing a strategy that will yield less than the complete genome sequence, they must provide an overall vision of how this strategy will contribute to the cost-effective completion of the entire rice genome.

B. Project Management—The proposal should include descriptions of: 1. Plans for establishing coordination with the Rice Genome Program of Japan and other existing or planned rice sequencing projects, both nationally and internationally.

2. Plans for establishing a close linkage to the plant biology research community at large in order to ensure a close collaboration between the sequencing project and the ultimate user community of the sequence information.

3. Ways to assess progress of the project, including establishing milestones and measuring progress toward them. A common advisory committee will be appointed based upon suggestions from all of the participants, including the agencies, which will serve as a means of advising all participants of problems or solutions which will benefit all of the participants. Describe how such an advisory committee can be incorporated into the management strategies of the proposed project.

4. Available facilities and equipment including a statement of institutional commitment for the successful completion of the project.

C. Information Management—The proposal should include: 1. Data management plan should address both internal and external data management issues, including: (1) Mechanisms to assess validity and accuracy of data obtained which will augment or complement procedures to monitor accuracy which may be mandated by the agencies; (2) mechanisms for annotation of data and release of both raw and finished data into public databases—creative, cost-effective strategies for annotating sequences are encouraged; and (3) community access to data mechanisms of data distribution and interactions with other community databases.

2. Data release policies including how rapidly sequence data will be publicly released after production. The sponsoring agencies require the rapid release of sequence data as described in the most recent International Strategy Meeting on Human Genome Sequencing held in 1997 in Bermuda. The National Human Genome Research Institute has set forth these principles on the NIH web site at the following URL: http://www.nhgri.nih.gov/Grant__info/Funding/Statements/RFA/data__release.html

3. A statement signed by an authorized institutional official should be included which clearly describes the institutional policy for sharing information materials resulting from this work with other researchers of the community of scientists.

5. References to Project Description. All references cited should be complete, including titles and co-authors, and should conform to an accepted journal format.

6. Facilities and Equipment. All facilities and major items of equipment that are available for use or assignment to the proposed research project during the requested period of support should be described. In addition, items of nonexpendable equipment necessary to conduct and successfully complete the proposed project and for which support is requested under this program should be listed in the budget narrative with the amount and justification for each item.

7. Collaborative Arrangements. If the nature of the proposed project requires collaboration or subcontractual arrangements with other research scientists, corporations, organizations, agencies, or entities, the applicant must identify the collaborator(s) and provide a full explanation of the nature of the collaboration. Funding contributions by collaborators that will be used to accomplish the stated objectives should be identified. Evidence (i.e., letters of intent) should be provided to assure peer reviewers that the collaborators involved have agreed to render this service. Note, however, that the contributions of collaborators will not be a direct factor in the awarding of any award. In addition, the proposal must indicate whether or not such a collaborative arrangement(s) has the potential for conflict(s) of interest.

8. Vitae and Publication List(s). (A) Curriculum vitae. The curriculum vitae should be limited to a presentation of academic and research credentials, or commodity production knowledge or experience with that commodity (e.g., educational, employment and professional history, and honors and awards). Unless pertinent to the project, to personal status, or to the status of the organization, meetings attended, seminars given, or personal data such as birth date, marital status, or community activities should not be included. Each vitae shall be no more than two pages in length, excluding the publication lists; and

(B) Publication List(s). A chronological list of all publications in refereed journals during the past four years, including those in press, must be provided for each professional project member for whom a curriculum vitae is provided. Authors should be listed in the same order as they appear on each paper cited, along with the title and complete reference as these items usually appear in journals.

9. Conflict of Interest List (Form CSREES–1233). A separate Conflict of Interest List Form (Form CSREES–1233) must be submitted for each investigator for whom a curriculum vitae is required (see above). This form is necessary to assist program staff in excluding from proposal review those individuals who have conflicts of interest with the project personnel in the proposal.

CSREES must be informed of additional conflicts of interest that arise after the proposal has been submitted. Instructions below are reiterated on Form CSREES–1233.

For each investigator (and other personnel as described in the program description), list ALPHABETICALLY the full names of only the individuals for each category. Other investigators working in the applicant's specific research area are deemed not to be a conflict of interest for the applicant unless those investigators fall within one of the categories listed below. Additional pages may be used as necessary. A conflict of interest list must be submitted before a proposal is considered complete. Inclusion of a curriculum vitae or publication list in lieu of Form CSREES–1233 is not sufficient.

- All collaborators on research projects within the past four years, including current and planned collaborations;
- All co-authors on publications within the past four years, including pending publications and submissions;
- All persons in your field with whom you have had a consulting, financial arrangement, or other arrangement that might give rise to a conflict of interest within the past four years; and
- All thesis or postdoctoral advisees/advisors within the past four years.

10. Budget (Form CSREES–55). A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose (Form CSREES–55), along with instructions for completion, is included in the Application Kit and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute.

11. Budget Narrative. A budget narrative should be included which discusses how the budget specifically supports the proposed project activities. It should explain how each budget item (such as salaries and wages for professional and technical staff, student workers, travel, equipment, etc.) is essential to achieving project objectives. Funds may be requested under any of the categories listed on the budget form, provided that the item or service for which support is sought is allowable under the enabling legislation and the applicable Federal cost principles.

The following guidelines should be used in developing your proposal budget(s):

1. *Salaries and Wages.* Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of Funded Work Months must be shown in the spaces provided. Award funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution. Administrative and Clerical salaries are normally classified as indirect costs. (See Item 9. below.) However, if requested under A.2.e., they must be fully justified.

2. *Fringe Benefits.* Funds may be requested for fringe benefit costs if the usual accounting practices of your institution provide that institutional contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. *Nonexpendable Equipment.* Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. Items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost. This applies to revised budgets, as the equipment item(s) and amount(s) may change. NOTE: If the organization has established a lower threshold, amounts less than $5,000 may be included in this category.

No funds will be awarded for the purchase or installation of fixed equipment. In the case of any equipment or product that may be authorized to be purchased with funds provided under this program, entities receiving such funds are encouraged to use such funds to purchase only American-made equipment or products.

4. *Materials and Supplies.* The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs.

5. *Travel.* The type and extent of travel and its relationship to project objectives should be described briefly and justified. Provide the purpose of the trip, destination, mode of transportation, number of people, number of days, and cost per trip. Airfare allowances normally should not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR Part 3015.205(b)(4) for further guidance.

6. *Publication Costs/Page Charges.* Anticipated costs of preparing and publishing results of the research being proposed (including page charges, necessary illustrations, and the cost of a reasonable number of coverless reprints) may be estimated and charged against the award.

7. *Computer (ADPE) Costs.* Reimbursement for the costs of using specialized facilities (such as a university-or department-controlled computer mainframe or data processing center) may be requested if such services are required for completion of the work.

8. *All Other Direct Costs.* Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified on a separate sheet of paper attached to Form CSREES–55. This applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, charges for consulting services, and fees for necessary laboratory analyses. You are encouraged to consult the ''Instructions for Completing Form CSREES–55, Budget,'' of the Application Kit for detailed guidance relating to this budget category.

9. *Indirect Costs.* When submitting a proposal, institutions should use their current Federal negotiated rate for indirect costs. Please note that indirect costs for proposals funded by USDA will be capped at 14% of total Federal funds provided under that award. Congress, in section 711 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act for FY 1999, Sec. 101(a) of Pub. L. No. 105–277, prohibits CSREES from using the funds available for this Program for FY 1999 to pay indirect costs exceeding 14 percent of the total Federal funds provided under each award on competitively awarded research grants.

(Note: The FY 1999 Appropriations Act supercedes the limitation on indirect costs of 19 percent of the total Federal funds provided for competitively-awarded research grants in Section 230(a) of the Agricultural Research, Extension, and Education Reform

Act of 1998 (7 U.S.C. 3310). Therefore, awards made by CSREES are limited to this 14 percent indirect costs limitation. This limitation also applies to the recovery of indirect costs by any subawardee or subcontractor, and should be reflected in the subrecipient budget.)

To accommodate the differences in allowable indirect costs between USDA, NSF and DOE, the applicant may be required at the time of award to submit a separate budget with indirect cost rates appropriate to each agency.

10. *Cost-sharing.* Cost-sharing is encouraged; however, cost-sharing is not required nor will it be a direct factor in the awarding of any award.

12. Current and Pending Support (Form CSREES–663). All proposals must contain Form CSREES–663 listing this proposal and any other current public or private research support (including in-house support) to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for the person(s) involved is included in the budget. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to other possible sponsors, including other USDA programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by the participating agency for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or that will be funded) by another organization or agency will not be funded under this program.

13. Assurance Statements (Form CSREES–662) (Research Involving Special Considerations). If it is anticipated that the research project will involve recombinant DNA or RNA research, experimental vertebrate animals, or human subjects, an Assurance Statement, Form CSREES–662, must be completed and included in the proposal. Please note that funds will not be released until the awarding agency receives and approves documentation indicating approval by the appropriate institutional committee(s) regarding DNA or RNA research, animal care, or the protection of human subjects, as applicable.

14. Certifications Regarding Debarment and Suspension, Drug-Free Work Place, and Lobbying. By signing the Application For Funding cover page (Form CSREES–661), applicants are providing the required certifications set forth in 7 CFR Part 3017, as amended, regarding Debarment and Suspension and Drug-Free Workplace; and 7 CFR Part 3018 regarding Lobbying. Submission of the individual forms found in the application kit is not required (Forms AD–1047, –1049, –1050, and the Certification Regarding Lobbying). For additional information, refer to the certification at the bottom of Form CSREES–661.

Form AD–1048 must be completed by a subcontractor or consultant and retained by the awardee.

Questions specifically related to the completion of the above certifications should be directed to the CSREES Office of Extramural Programs, Grants Management Branch at (202) 401–5050.

15. National Environmental Policy Act Exclusions Form (Form CSREES–1234). As outlined in 7 CFR Part 3407 (CSREES's implementation of the National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 et seq.)), the environmental data or documentation for any proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. In some cases, however, the preparation of environmental data or documentation may not be required. Certain categories of actions are excluded from the requirements of NEPA. The USDA and CSREES exclusions are listed in 7 CFR 1b.3 and 7 CFR 3407.6, respectively.

In order for CSREES to determine whether any further action is needed with respect to NEPA (e.g., preparation of an environmental assessment (EA) or environmental impact statement (EIS)), pertinent information regarding the possible environmental impacts of a proposed project is necessary; therefore, the National Environmental Policy Act Exclusions Form (Form CSREES–1234) provided in the Application Kit must be included in the proposal indicating whether the applicant is of the opinion that the project falls within one or more of the categorical exclusions. Form CSREES–1234 should follow Form CSREES–661, Application for Funding, in the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an EA or an EIS is necessary for an activity if substantial controversy on environmental grounds exists or if other extraordinary conditions or circumstances are present that may cause such activity to have a significant environmental effect.

16. Additions to Project Description. The participating agencies expect each project description to be complete while meeting the page limit established in this section (Proposal Format). However, if the inclusion of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs that do not reproduce well, reprints, and other pertinent materials that are deemed to be unsuitable for inclusion in the text of the proposal), then 14 copies of the materials should be submitted. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the principal investigator(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

Proposal Submission

What To Submit

An original and 14 copies of a proposal must be submitted. Each copy must be stapled securely in the upper left-hand corner (DO NOT BIND). All copies of the proposal must be submitted in one package.

When and Where To Submit Proposals

Proposals must be received by May 4, 1999. Proposals sent by First Class mail must be sent to the following address: The United States Rice Genome Sequencing Project; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, S.W.; Washington, D.C. 20250–2245; Telephone: (202) 401–5048.

Proposals that are delivered by express mail, a courier service, or by hand must be submitted to the following address (note that the zip code differs from that shown above): The United States Rice Genome Sequencing Project; c/o Proposal Services Unit; Office of Extramural Programs; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, S.W.; Washington, D.C. 20024; Telephone: (202) 401–5048. Facsimile (FAX) copies will not be accepted.

Proposal Evaluation

Selection of awards will be based on merit review by experts using established peer review systems as described in these guidelines. A special emphasis panel will be formed to review the applications and site visits may be used as needed. The following evaluation factors will be used in reviewing applications:

1. Performance competence: This criterion addresses the technical merit of the proposed approach, the capabilities of the proposed personnel, including those of the Principal

Investigator and other senior staff as discussed above, the adequacy of the resources available or proposed, and the likelihood that this project will lead to a successful, timely, cost-effective completion of the rice genome sequence.

2. Project management: This criterion addresses the overall quality of the technical and managerial aspects of the proposal, including plans for the release of the data and the sharing of the information and resources resulting from the project to the scientific community as noted below, and for management oversight and long-range planning.

3. Effect of the activity on the scientific and agricultural infrastructure: This criterion addresses the potential of the proposed activity to contribute to better understanding or improvement of the quality and effectiveness of the Nation's scientific research, education, and human resources capabilities. An important issue is a likelihood of national impact and widespread, appropriate dissemination and use of results in strengthening the scientific and agricultural infrastructure of this nation.

4. Scientific collaboration and information sharing: Sequencing of the genome of a model organism is a community activity. As such, a close collaboration among the scientists and organizations involved in sequencing activities and effective dissemination to the users of the information are important components of this criterion.

5. Scientific merit of the project: This criterion addresses the conceptual adequacy of the sequencing approach including suitability and feasibility of methodology, clarity and delineation of objectives, demonstration of feasibility through preliminary data, novelty, uniqueness and originality.

6. Appropriateness of the proposed budget.

Award Administration

The U.S. Rice Genome Sequencing Project will be administered and managed as an interagency program involving all participating agencies throughout the entire process from the development of the program announcement to the review and selection. USDA, NSF and DOE will fund awards separately. The amount of each award will be determined jointly by USDA/NSF/DOE representatives after the panel review process has been completed. Other material may be required at the time of funding to facilitate the implementation of the award from participating agencies. Awards will be administered as follows:

Awards

1. General: Within the limit of funds available for such purpose, the awarding official shall make awards to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program area by procedures set forth in this request for proposals. The date specified as the effective date of the award shall be no later than September 30, of the Federal fiscal year in which the project is approved for support and funds are appropriated for such purpose, unless otherwise permitted by law. It should be noted that the project need not be initiated on the award effective date, but as soon thereafter as practicable so that project goals may be attained within the funded project period. All funds awarded under this request for proposals shall be expended solely for the purpose for which the funds are awarded in accordance with the approved application and budget, the terms and conditions of the award, the applicable Federal cost principles, and the applicable participating agency assistance regulations.

2. Organizational Management Information: Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of an award if such information has not been provided previously under this or another program for which the sponsoring agency is responsible. Copies of forms recommended for use in fulfilling the requirements contained in this section will be provided by the awarding agency as part of the pre-award process.

3. Award Document: The award document shall include at a minimum the following:

a. Legal name and address of performing organization or institution to whom the funding agency has awarded an award under this program;

b. Title of Project;

c. Name(s) and address(es) of principal investigator(s) chosen to direct and control approved activities;

d. Award identification number assigned by the funding agency;

e. Project period, specifying the amount of time the funding agency intends to support the project without requiring recompetition for funds;

f. Total award amount approved by the funding agency during the project period;

g. Legal authority(ies) under which the award is made;

h. Approved budget plan for categorizing project funds to accomplish the stated purpose of the award; and

i. Other information or provisions deemed necessary by the funding agency to carry out its respective awarding activities or to accomplish the purpose of a particular award.

4. Notice of Award: The notice of award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the awardee that is not included in the award document.

5. The awarding agency will make awards as either grants or cooperative agreements to carry out this program.

Use of Funds; Changes

Unless otherwise stipulated in the terms and conditions of the award, the following provisions apply:

1. Delegation of Fiscal Responsibility: The awardee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of funds.

2. Changes in Project Plans:

a. The permissible changes by the awardee, principal investigator(s), or other key project personnel in the approved research project award shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the awardee and/or the principal investigator(s) are uncertain as to whether a change complies with this provision, the question must be referred to the Authorized Departmental Officer (ADO) for a final determination.

b. Changes in approved goals, or objectives, shall be requested by the awardee and approved in writing by the ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

c. Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the awardee and approved in writing by the awarding official prior to effecting such changes.

d. Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the awardee and approved in writing by the ADO prior to effecting such transfers.

e. Changes in Project Period: The project period may be extended by the awarding agency without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any

extension of time shall be conditioned upon prior request by the awardee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of an award.

f. Changes in Approved Budget: Changes in an approved budget must be requested by the awardee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal costs principles, Departmental regulations, or in the award document.

Applicable Regulations

Several other Federal statutes and regulations apply to proposals considered for review and to projects awarded under this program. These include but are not limited to regulations cited in the section entitled REGULATIONS, GUIDELINES, AND LITERATURE in the Catalog of Federal Domestic Assistance (CFDA) for each of the participating agencies. The CFDA numbers are as follows: USDA—10.206; NSF—47.074; DOE—81.049. The OMB number for NSF is OMB No. 3145–0058. The USDA component of this program is subject to the program regulations at 7 CFR 3411. Note that CSREES, consistent with those regulations, has provided other terms in this RFP to govern proposal format and evaluation.

Additional Information

Confidential Aspects of Proposals and Awards

When a proposal results in an award, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Administrator determines to be of a privileged nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as privileged should be clearly marked as such and sent in a separate statement, two copies of which should accompany the proposal. The original copy of a proposal that does not result in an award will be retained by the Agency for a period of one year. Other copies will be destroyed. Proposals that do not receive an award will be released to others only with the consent of the applicant or to the extent required by law. If such a request is made, the applicant will be consulted prior to release of the proposal. A proposal may be withdrawn at any time prior to the final selection action thereon.

Potential applicants are strongly encouraged to contact project officers and discuss their plans. Inquiries regarding the announcement can be directed to any one of the agency representatives identified at the beginning of this request for proposals.

Stakeholder Input

CSREES is soliciting comments regarding this request for proposals from any interested party. These comments will be considered in the development of the next request for proposals for the program as needed. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). This section requires the Secretary of Agriculture to solicit and consider input on a current request for proposals from persons who conduct or use agricultural research, education, or extension for use in formulating the next request for proposals for an agricultural research program funded on a competitive basis.

In your comments, please include the name of the program and the fiscal year request for proposals to which you are responding. Comments are requested within six months from the issuance of the request for proposals. Comments received after that date will be considered to the extent practicable.

Done at Washington, D.C., on this 27th day of January, 1999.

Colien Hefferan,

Acting Administrator, Cooperative State Research, Education, and Extension Service.

Mary E. Clutter,

Assistant Director for Biological Sciences, National Science Foundation.

Patricia Dehmer,

Associate Director, Office of Sciences, Department of Energy.

[FR Doc. 99–2538 Filed 2–2–99; 8:45 am]

BILLING CODE 3410–22–P

Federal Register

Wednesday
February 3, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 990

Operating Fund Rule; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–01]

Operating Fund Rule; Notice of Intent To Establish a Negotiated Rulemaking Committee and Notice of First Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of intent to establish a negotiated Rulemaking Advisory Committee and notice of first meeting.

SUMMARY: The Department of Housing and Urban Development (HUD) is establishing a Negotiated Rulemaking Advisory Committee under the Federal Advisory Committee Act. The establishment of the committee is required by the Quality Housing and Work Opportunity Act of 1998, which requires issuance of regulations under the Negotiated Rulemaking Act of 1990. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs). The Committee will consist of representatives with a definable stake in the outcome of a proposed rule. In accordance with section 564 of the Negotiated Rulemaking Act of 1990, this notice: (1) Advises the public of the establishment of the committee; (2) provides the public with information regarding the committee; (3) solicits public comment on the proposed membership of the committee; and (4) explains how persons may be nominated for membership on the committee.

DATES: Comment due date: March 5, 1999. HUD's tentative plan is to hold the first meeting of the Committee on March 23–March 25, 1999.

ADDRESSES: HUD plans to hold the first meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024.

Interested persons are invited to submit comments regarding the Committee and its proposed members to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500. Comments or any other communications submitted should consist of an original and four copies and refer to the above docket number and title. Facsimile (FAX) comments are *not* acceptable. The docket will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone numbers is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD currently uses a formula approach called the Performance Funding System (PFS) to distribute operating subsidies to public housing agencies (PHAs). A regulatory description of the PFS can be found at 24 CFR 990. Generally, the amount of subsidy received by a PHA is the difference between projected expenses and projected income, with the PFS regulations detailing how these projections will be made. PHAs calculate their PFS eligibility annually and submit a request for funding as part of their budget process. While the amount varies, this subsidy can represent a substantial amount of revenue to a PHA. For example, in 1998, HUD distributed over $2.9 billion in operating subsidies to PHAs.

On October 21, 1998, the Congress enacted the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA). QHWRA makes sweeping changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The assistance to be made available from that fund is to be determined using a formula developed through negotiated rule-making procedures. The general effective date of the formula (the beginning date of the fiscal year for which PHAs will determine their subsidy eligibility using the new formula) is October 1, 1999. Section 519(n)(f) of QHWRA, however, permits HUD to extend the effective date for up to six months beyond the general effective date.

II. Regulatory Negotiation

Negotiated rulemaking, or ''neg-reg,'' is a relatively new process for HUD. The basic concept of neg-reg is to have the agency that is considering drafting a rule bring together representatives of affected interests for face-to-face negotiations that are open to the public. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems.

In anticipation of possible Congressional action, HUD entered into an interagency agreement in June 1998 with the Federal Mediation and Conciliation Service (FMCS) for convening and facilitation services associated with a negotiated rulemaking regarding a possible operating fund proposed rule. FMCS submitted its Convening Report in November 1998. The report concluded that it was feasible to assemble the committee, and provided a list of individual PHAs and organizations, representing a wide range of interests, that are willing and able to work within a consensus framework on a new Operating Fund formula. A copy of the Convening Report is available for review by contacting the Regulations Division, Office of General Counsel, at the phone number listed in the **ADDRESSES** section of this notice.

III. Committee Membership

The FMCS conveners consulted and interviewed over 40 officials of various organizations that would be affected by the operating fund rule. The goal was to develop a committee whose membership reflects a balanced representation of interested organizations and individuals. Three national PHA associations—the Council of Large Public Housing Authorities (CLPHA), the National Association of Housing and Renewal Officials (NAHRO), and the Public Housing Authority Directors Association (PHADA) worked together to suggest executive directors of PHAs for committee membership that would reflect the diversity of PHAs in terms of size, location, and special circumstances. The national associations also indicated a willingness to serve on the committee.

After reviewing the recommendations of the FMCS conveners, HUD has tentatively identified the following list of possible interests and parties. This list should be considered tentative, and the final list of participants may not include all of these parties. HUD will decide on the final list of participants, based upon comments on this Notice, as well as its own efforts to identify other entities having an interest in the outcome of this rulemaking.

- Housing Agencies

1. Oakland Housing Authority, Oakland, CA
2. Indianapolis Housing Authority, Indianapolis, IN
3. Pittsburgh Housing Authority, Pittsburgh, PA
4. New York City Housing Authority, NYC, NY
5. Reno Housing Authority, Reno, NV
6. Littleton Housing Authority, Littleton, CO
7. Akron Metro Housing Authority, Akron, OH
8. Chicago Housing Authority, Chicago, IL
9. Atlanta Housing Authority, Atlanta, GA
10. Athens Housing Authority, Athens, GA
11. Puerto Rico Public Housing Authority, San Juan, PR
12. Seattle Housing Authority, Seattle, WA
13. Wilmington Housing Authority, Wilmington, DE
14. York Housing Authority, York, NE

- Tenant Organizations

1. Massachusetts Union of Public Housing Tenants, Needham, MA
2. New Jersey Association of Public and Subsidized Housing Residents, Newark, NJ

- Public Interest Groups

1. National Low Income Housing Coalition, Washington, DC
2. Housing and Development Law Institute, Washington, DC
3. Center for Community Change, Washington, DC

- National PHA Associations

1. Public Housing Authority Directors Association (PHADA)
2. National Association of Housing and Renewal Officials (NAHRO)
3. Council of Large Public Housing Authorities (CLPHA)

- Federal Government

1. U.S. Department of Housing and Urban Development

We invite you to give us comments and suggestions on this tentative list of committee members. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we must be satisfied that the group as a whole reflects a proper balance and mix of interests. Accordingly, the composition of the final list will likely be different from this tentative list. Negotiation sessions will be open to members of the public, so individuals and organizations that are not members of the committee may attend all sessions and communicate informally with members of the committee.

IV. Neighborhood and Community Based Groups

In particular, HUD welcomes and solicits expressions of interest or nominations from any groups or individuals that operate on behalf of the communities and neighborhoods served by public housing, and organizations that represent local officials.

V. Requests for Representation

If you are interested in serving as a member of the committee or in nominating another person to serve as a member of the committee, you must submit a written nomination to HUD at the address listed in the **ADDRESSES** section of this notice. Your nomination for membership on the committee must include:

(1) The name of your nominee and a description of the interests the nominee would represent;

(2) Evidence that your nominee is authorized to represent parties with the interests the nominee would represent;

(3) A written commitment that the nominee will actively participate in good faith in the development of the rule; and

(4) The reasons that the parties listed in this notice do not adequately represent your interests.

HUD will determine, in consultation with the FMCS conveners, whether a proposed member should be included in the makeup of the committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule and whether the interest of the proposed member could be represented adequately by other members.

VI. Substantive Issues for Negotiation

The subject and scope of the proposed rule to be considered is the development of an operating fund for the purpose of making assistance available to PHAs for the operation and management of public housing in accordance with the criteria outlined in section 519 of QHWRA.

VII. Final Notice Regarding Committee Establishment

After reviewing any comments on this Notice and any requests for representation, HUD will issue a final notice. That notice will announce the final composition of the Negotiated Rulemaking Advisory Committee and the firm date, time, and place of the initial meeting.

VIII. Tentative Schedule

At this time, HUD's tentative plan is to hold the first meeting of the committee on March 23–March 25, 1999. On March 23, 1999, the meeting is expected to start at 10:00 a.m. and run until completion; on March 24, 1999, the meeting is expected to start at 9:00 a.m. and run until completion; and on March 25, 1999, the meeting will start at 9:00 a.m. and run until approximately 3:00 p.m. We plan to hold the meeting at the Channel Inn Hotel (Captain's Room), 650 Water Street, SW, Washington, DC 20024. The purpose of the meeting will be to orient members to the neg-reg process, to establish a basic set of understandings and ground rules (protocols) regarding the process that will be followed in seeking a consensus, and to begin to address the issues. This meeting will be open to the public. In the event that the date and times of these meetings are changed, HUD will advise the public through **Federal Register** notice.

Decisions with respect to future meetings will be made at the first meeting and from time to time thereafter. Notices of future meetings will be published in the **Federal Register**.

Dated: January 19, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–2572 Filed 1–29–99; 4:23 pm]

BILLING CODE 4210–33–P

Federal Register

Wednesday
February 3, 1999

Part VII

Environmental Protection Agency

40 CFR Part 61

National Emission Standard for Hazardous Air Pollutants: National Emission Standards for Radon Emissions From Phosphogypsum Stacks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–6229–4]

RIN 2060–AF04

National Emission Standard for Hazardous Air Pollutants; National Emission Standards for Radon Emissions From Phosphogypsum Stacks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is promulgating revisions to the National Emission Standard for Hazardous Air Pollutants (NESHAP) that sets limits on radon emissions from phosphogypsum stacks, codified as subpart R of 40 CFR part 61. The Agency is taking today's action in response to a petition for reconsideration from The Fertilizer Institute (TFI), which critiqued the risk assessment EPA performed in support of the version of subpart R promulgated in 1992. Today's action raises the limit on the quantity of phosphogypsum that may be used for indoor research and development from 700 to 7,000 pounds, eliminates current sampling requirements for phosphogypsum used in indoor research and development, and clarifies sampling procedures for phosphogypsum removed from stacks for other purposes.

DATES: These regulations are effective April 5, 1999. Petitions for judicial review of this final action must be filed no later than April 5, 1999.

ADDRESSES: Copies of the two documents entitled ''Risk Assessment for Research and Development Uses of Phosphogypsum'' and ''Statistical Procedures for Certifying Phosphogypsum for Entry into Commerce'' may be obtained by writing to this address. A summary of comments received on the proposed rule accompanied by the Agency's responses may be obtained by requesting the response to comment document entitled ''Comments and Response to Comments—NESHAPS; National Emission Standards of for Radon Emissions from Phosphogypsum Stacks on Amendments to Subpart R.''

FOR FURTHER INFORMATION CONTACT: Pat Tilson; telephone number (202) 564–9762; address: Radiation Protection Division, Mail Code 6602J, U.S. Environmental Protection Agency, Washington, DC 20460; email address: tilson.pat@epa.gov.

SUPPLEMENTARY INFORMATION:

Docket

Docket No. A–79–11 contains the public record supporting the final rule revising 40 CFR Part 61, Subpart R, which EPA issued in 1992 (57 FR 23305, June 3, 1992). It also contains the August 3, 1992, TFI petition, and the EPA response partially granting and partially denying the TFI petition (59 FR 14040, March 24, 1994). Docket No. A–94–57 contains certain documents which led to the May 8, 1996, proposal and this final rulemaking. These dockets are available for public inspection between the hours of 8 a.m. and 5 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copies of documents.

Introduction

Purpose of Today's Action and Summary of Changes to Subpart R

The Agency is promulgating revisions to those portions of Subpart R of 40 CFR part 61 which concern: (1) the distribution and use of the substance, phosphogypsum, for indoor research and development purposes; (2) the sampling and measurement of radium-226 in phosphogypsum; and (3) use of phosphogypsum for outdoor agricultural purposes. The Environmental Protection Agency is taking today's action in response to issues raised in a petition for reconsideration from The Fertilizer Institute which questioned aspects of the risk assessment EPA performed in support of the rulemaking that revised Subpart R in 1992. The risk assessment was an evaluation of the risk to persons who perform research and development activities in a laboratory using phosphogypsum. Phosphogypsum—a byproduct of the wet-acid process of producing phosphoric acid from phosphate rock—contains naturally occurring radiation emitted by uranium-238 and its decay products such as radium-226 and radon-222. Exposure to the radiation emitted by these and other radionuclides in phosphogypsum can increase an individual's probability of developing cancer. If present in quantities above certain limits, the radionuclides in phosphogypsum could cause unacceptable risks of incurring fatal cancer.

Specifically, today's action revises § 61.205 to conform to the technical findings EPA made when it re-evaluated the risk assessment used to promulgate Subpart R in 1992. *See* 57 FR 23305, June 3, 1992. EPA found that the risk assessment contained errors in the calculation of the quantity of the radioactive gas, radon-222, that would be present in a laboratory in which phosphogypsum was used for indoor research and development purposes. Today's action revises the limit set by Subpart R on the amount of phosphogypsum that may be used in indoor research and development from 700 pounds upward to 7,000 pounds. In addition, today's action provides clarification on how to determine compliance with the new, 7,000-pound limit, such as whether this limit should be applied on a facility-by-facility or on an experiment-by-experiment basis.

In addition, the Agency is removing the requirement to sample and measure the radium-226 in phosphogypsum that is used for indoor research and development activities because Subpart R does not contain a corresponding limit on the concentration of radium-226 in phosphogypsum when it is used for these activities. Sampling of radium-226 concentrations must still be performed when phosphogypsum is used for outdoor agricultural purposes, as set forth in § 61.204, and when application is made to EPA for approval to use phosphogypsum for other purposes pursuant to § 61.206. Today's action makes minor changes to §§ 61.204 and 61.205 to draw the distinction more sharply between the uses of phosphogypsum which are covered by the respective sections.

In addition, the Agency is revising section 61.207 to establish the level of statistical uncertainty that is allowed in measurements of radium-226 in phosphogypsum. These measurements are performed in connection with outdoor agricultural uses of phosphogypsum and those other uses of phosphogypsum that the Agency approves on a case-by-case basis.

History of the NESHAP for Phosphogypsum and TFI's Petition for Reconsideration

EPA first promulgated the NESHAP for phosphogypsum stacks on December 15, 1989. At that time, the standard required that all phosphogypsum be disposed of in stacks. Phosphogypsum stacks are large, on-site disposal piles composed of the excess phosphogypsum formed during the wet-acid process. Unlike subsequent versions of Subpart R, the 1989 standard did not permit alternate uses of phosphogypsum such as for indoor research and development.

EPA subsequently received several petitions requesting that it reconsider setting standards that would permit alternatives to disposal of phosphogypsum in stacks. Petitioners argued that EPA had not considered the

implications of these alternatives when it set the 1989 rule. EPA agreed to convene a rulemaking to evaluate the attendant risks of these alternatives to disposal and establish standards under which these alternatives might be permissible. *See* 55 FR 13480, April 10, 1990. EPA promulgated revisions to Subpart R after analyzing the associated risks of alternate uses and evaluating the comments received on the proposed rule. *See* 57 FR 23305, June 3, 1992. The revised Subpart R permitted uses of phosphogypsum that fall into three categories: (1) Outdoor agricultural uses, for example as a conditioner for soils containing high quantities of salt or low quantities of calcium and other nutrients; (2) indoor research and development activities, for example to study the production of road-base and building materials using phosphogypsum; and (3) other alternate uses that are approved by EPA on a case-by-case basis.

Subsequently, TFI sought judicial review of the 1992 rule in The Fertilizer Institute v. Environmental Protection Agency, No. 92–1320 (D.C. Cir.). TFI also filed a petition with EPA on August 3, 1992, requesting EPA to reconsider the 1992 rule pursuant to section 307(d)(7)(B). A second suit was brought against the Agency by ManaSota-88 in ManaSota-88 v. Browner, No. 92–1330 (D.C. Circuit). EPA entered settlement discussions with TFI and ManaSota-88, and agreed jointly to move the D.C. Circuit Court of Appeals to stay judicial review of the 1992 rule. The Court granted the motion. As part of that agreement, EPA agreed to make a final decision whether to grant or deny TFI's petition for reconsideration. EPA decided to partially deny and partially grant the petition after careful review of all the objections to the 1992 rule set forth in the petition for reconsideration. *See* 59 FR 14040, March 24, 1994. The principal purpose of the present rulemaking is to effectuate the decision by EPA to partially grant the TFI petition.

Statutory Basis and the Benzene Policy

EPA initially promulgated the NESHAP for phosphogypsum stacks on December 15, 1989 pursuant to Section 112 of the Clean Air Act (CAA). In 1990, Section 112 was amended by the Clean Air Act Amendments of 1990. Section 112(q)(2) of the CAA, as amended, specifically provides that Section 112 of the CAA shall remain in effect for, *inter alia*, radionuclide emissions from phosphogypsum stacks.

Under the CAA, as in effect prior to enactment of the Clean Air Act Amendments of 1990, the Agency, in establishing risk-based standards, must follow the method specified in the ''Vinyl Chloride decision.'' *Natural Resources Defense Council* v. *EPA*, 824 F.2d 1146 (D.C. Cir. 1987). The Vinyl Chloride decision requires that these Section 112 standards be established in two steps. In the first step, the Agency determines a ''safe'' or ''acceptable'' level of risk by considering only health-related factors. Next, the Agency may make the standard more protective considering costs and technological feasibility. The resulting standard must protect public health with an ample margin of safety.

EPA implemented the Vinyl Chloride decision in 1989 with the promulgation of the NESHAP for benzene. This rulemaking established the ''Benzene Policy'' by which EPA sets standards under Section 112 of the Clean Air Act, as in effect prior to enactment of the Clean Air Act Amendments of 1990. *See* 54 FR 38044 (September 14, 1989). The Benzene Policy sets forth the specific criteria EPA uses when determining the safe level of risk set by NESHAPs. Any amendments or revisions to the existing NESHAP for phosphogypsum would have to meet these criteria for the Agency to consider it adequately protective of public health with an ample margin of safety. Included among these criteria is the requirement that NESHAPs protect the individual receiving the highest lifetime risk to a level of 1 in 10,000.

Description of the Final Rule

Today's action affects those portions of Subpart R which cover the use of phosphogypsum in indoor research and development found at § 61.205 and the procedures for sampling and measurement of radium-226 in phosphogypsum found at § 61.207. In addition, today's rulemaking revises § 61.204 to clarify that agricultural uses that occur in an indoor laboratory must comply with § 61.205, while outdoor agricultural uses of phosphogypsum must comply with § 61.204.

The New 7,000 Pound Limit on Indoor Research and Development Uses

Today's action raises the limit set by § 61.205(b)(2) on the amount of phosphogypsum that may be used in indoor research and development from 700 pounds to 7,000 pounds. The Agency is revising the limit to conform to the technical findings it made when it re-evaluated the risk assessment used to promulgate Subpart R in 1992. Specifically, EPA found that the risk assessment contained errors in the calculation of the quantity of the radioactive gas, radon-222, that would be present in a laboratory in which phosphogypsum was being used for research and development purposes. EPA has revised three of the key assumptions used in these calculations. A complete discussion of the changed parameters and the effect of these changes on the presence of radon-222 are contained in the document, ''Risk Assessment of Research and Development Uses of Phosphogypsum.'' First, EPA revised the assumption made regarding the number of drums of phosphogypsum that would be opened at any one time and from which radon-222 could therefore escape to the ambient air in the laboratory. During the 1992 rulemaking, EPA's risk assessment assumed that five such drums would be open. EPA changed this assumption to reflect that at most only one single drum would be open under actual conditions in laboratories. Public comments on the notice of proposed rulemaking noted that laboratories typically use phosphogypsum a few pounds at a time, making it unnecessary to have several drums open simultaneously.

Second, EPA changed the assumption regarding how much of the radon-222 that is present in the phosphogypsum actually emanates into the ambient air of the laboratory. When setting the 1992 rule, EPA had assumed that all the radon-222 generated by the radium-226 in phosphogypsum would be released. EPA's new risk assessment reconsiders such factors as the rate at which air is ventilated from a laboratory, the size of the laboratory and the effect of moisture on the rate of emanation of radon-222 from the phosphogypsum.

Third, EPA revised the assumption on the number of hours a researcher spends in the laboratory from 4,000 hours down to 1,000 hours per year. The value of 4,000 hours that was used in the 1992 rulemaking exceeded by 100 percent the typical occupational year of 2,000 hours. The value of 1,000 hours was judged to be a more realistic estimate.

By making these three changes and re-calculating the risk, EPA found that the use of 7,000 pounds of phosphogypsum for indoor research and development purposes would cause a risk that was just slightly higher than 1 in 100,000. It was apparent that revising the regulation so as to permit 7,000 pounds of phosphogypsum would still meet the presumptively safe risk level of 1 in 10,000 that EPA established with the Benzene Policy.

EPA requested public comment on what practical advantages a higher limit of 7,000 pounds would provide in the Notice of Proposed Rulemaking (61 FR 20775, May 8, 1996). The comments received by the Agency indicated that

the higher limit would permit larger scale experiments yielding results which can be applied more accurately to real uses of phosphogypsum. Comments also stated that the higher limit would permit a facility to keep phosphogypsum in one large, 7,000-pound storage area rather than in several smaller separate storage areas associated with each individual experiment or activity. (For more on how to apply the 7,000-pound limit, see discussion below on how regulated parties should determine if individual laboratories and experiments are in compliance.) Further comments stated that the health risk corresponding to 7,000 pounds of phosphogypsum was acceptable, especially given the view that EPA's conservative choice of parameter values (e.g., hours spent inside a laboratory) led to over-estimates of the risk to persons doing research. Other comments expressed concern, however, that doses to persons performing radium extraction might be higher than in routine handling in other indoor research and development. EPA's revised risk assessment nonetheless shows that even handling the large amounts of phosphogypsum required for extracting radium would not cause risks in excess of the 1 in 10,000 level set by the Benzene Policy, provided that the 7,000-pound limit was not exceeded. Based on the public comments received and the findings of EPA's revised risk assessment, EPA is amending the limit on the amount of phosphogypsum to 7,000 pounds. For further discussion of the revised risk assessment, see the document, ''Risk Assessment of Research and Development Uses of Phosphogypsum.''

How to Determine Compliance With the 7,000-Pound Limit

Today's action revises § 61.205(b)(2) to clarify how compliance is determined with the 7,000 pound limit. Both TFI's petition and many public comments on the notice of proposed rulemaking (61 FR 20775, May 8, 1996) expressed confusion over whether this limit applies to one room (i.e., a ''laboratory''), an entire building, etc. In other words, is the correct method for determining compliance to add up the total pounds of phosphogypsum in use, everywhere for all experiments and rooms in a facility, and testing this total against the 7,000-pound limit? Or should compliance be determined by separately comparing the phosphogypsum used in each experiment and/or room to the 7,000-pound limit?

The Agency first evaluated the health risk implied by each of the above two methods of determining compliance. The risk assessment examined whether a person working in a facility that had several ongoing projects of 7,000 pounds would experience greater risk than a person working in a facility having only one such project. The risk breaks down to the sum of two types of radiation risks: (1) the risk from direct gamma radiation; and (2) the risk from inhaled radon which is generated by the presence of radium-226. With respect to gamma radiation, the risk assessment assumes that the researcher is exposed to 10 drums (7,000 pounds) in the same room for 1,000 hours, at a distance of one meter. A researcher might receive additional gamma radiation if any other experiments were taking place elsewhere in the building. EPA's risk assessment considered this latter possibility. The effect of gamma radiation from these additional rooms would, however, be substantially decreased the further away a person is located from the source. Hence, EPA's risk assessment found that the researcher would for the most part only be affected by the gamma radiation from the drums in the room he is standing in. The risk due to gamma radiation would effectively remain unchanged with either way of determining compliance with the 7,000-pound limit.

The second component of risk, the inhalation of radon-222, would not increase if additional experiments took place in nearby rooms within the same building. This results from the fact that the air in rooms where separate experiments occur would effectively remain isolated; the radon-222 in one room would not migrate to other rooms and increase the radon-222 concentration found within the other rooms. The combined risk from gamma radiation and inhaled radon-222 effectively would be the same whether the limit applied separately to the different projects within a facility or if it limited the total phosphogypsum from all research activities within a research complex to 7,000 pounds. A more in-depth discussion is contained in ''Risk Assessment for Research and Development Uses of Phosphogypsum.''

Based on the findings of the risk assessment and public comments received on the notice of proposed rulemaking, EPA revised § 61.205(b)(2) of Subpart R so that the 7,000-pound limit applies separately to each individual research and development activity. In addition, no more than 7,000 pounds may be stored in any room at a research and development facility. Thus, a particular facility may purchase or possess more than 7,000 pounds of phosphogypsum for use in multiple research activities, so long as it does not exceed this limit for any individual research activity and no one room within the facility contains more than this limit.

Difference in Applicability Between Sections 61.204 and 61.205

EPA is revising § 61.205(b)(5) to clarify that research and development activities authorized by this section must occur indoors in a controlled laboratory setting that the public cannot enter freely, except on an infrequent basis for tours of the facility. In addition, EPA is revising the title of § 61.205 to indicate that this section applies to indoor research and development. EPA is making these revisions in response to both TFI's petition and public comments. These parties expressed uncertainty as to which section of Subpart R would apply to agricultural uses of phosphogypsum that are conducted for the purpose of research and development. To this end, EPA has added clarifying language to § 61.205(b)(5) of the final rule that specifies that *outdoor* agricultural research and development must comply with § 61.204, on *outdoor agricultural uses.* As a compliment to this new language, EPA has added language to § 61.204 to specify that agricultural research and development that occurs indoors, in a laboratory, must comply with § 61.205, on *indoor research and development in a laboratory.*

To summarize, outdoor uses of phosphogypsum must comply with either § 61.204, ''Distribution and use of phosphogypsum for outdoor agricultural purposes'' or § 61.206, ''Distribution and use of phosphogypsum for other purposes.'' Section 21.206 allows EPA to authorize, on a case-by-case basis, indoor and outdoor uses not covered or authorized by §§ 61.204 and 61.205. Phosphogypsum that remains in outdoor stacks must comply with the numerical limits of § 61.202.

Situations in Which Sampling of Radium-226 is Required

Today's action removes the portions of §§ 61.205(a) and 61.207(a) requiring sampling of phosphogypsum that is to be used for indoor research and development activities. TFI's petition and many public comments on the notice of proposed rulemaking noted that Subpart R does not establish any limit on the concentration of radium-226 in phosphogypsum used pursuant to § 61.205, only on the number of pounds that are used. Hence, these parties noted that the existing requirement on sampling would merely add hundreds of dollars of cost without

increasing the assurance that public health is being protected with an ample margin of safety.

By removing this requirement, EPA will not change the level of protection afforded to persons who perform indoor research and development. The risk assessment EPA performed on indoor research and development assumed that the phosphogypsum would have a very high concentration of radium-226 (equal to 26 pCi/g) and set a pound limit appropriate to this assumption. This high level of radium-226 represents the radium concentration found in the most radioactive phosphogypsum stacks, which are in Florida. The 7,000-pound limit controls the radiological cancer risk because it has the effect of limiting the total quantity of radium-226 that is present.

Sampling of radium-226 concentrations must nonetheless still be performed when phosphogypsum is used for outdoor agricultural purposes, as set forth in § 61.204, and when application is made to EPA under § 61.206 for approval of phosphogypsum use for other purposes.

Procedures for Sampling and Measurement of Radium-226

The Agency is substantially revising § 61.207, on sampling and measurement of phosphogypsum, to clarify what levels of statistical uncertainty are allowable in measurements of radium-226 in phosphogypsum. The 1992 rule established the requirement for measurement and sampling of phosphogypsum used for outdoor agricultural uses under § 61.204 and for ''other uses'' under § 61.206. TFI's petition and the public comments on the notice of proposed rulemaking noted that the 1992 rule did not specify the allowable uncertainties. Today's action provides clarification on the statistical method that must be followed to establish this statistical uncertainty.

The following discussion relies on several statistical terms. *Critical value* means the percentile value, α, of a probability distribution above or below which only α per cent of the probability lies. Thus there is a .05 probability that a normally distributed variable will have a value above the upper 5% critical value, which is calculated by summing the product of 1.64 times the standard deviation of the distribution to the mean of the distribution. When testing an hypothesis, α is the level of significance, and determines the critical value.

Hypothesis testing means a procedure for the statistical determination of the validity of an hypothesis. A test statistic, such as the standard normal variable, is calculated for the purpose of discriminating between a null hypothesis and an alternative.

Level of significance means the probability, α of rejecting the null hypothesis in a test of an hypothesis.

Sampling distribution means a probability distribution assumed by a statistic such as the sample mean, calculated from a sample drawn from a population.

Under this final rule, the procedure for certifying an area of a phosphogypsum stack for entry into commerce requires the collection of samples of phosphogypsum and the measurement of their radium-226 content. The samples must be collected from regularly spaced locations across the area of the stack being considered for entry into commerce. After the radium-226 concentration in each sample is measured, the mean and standard deviation of the collected samples must be calculated.

A decision rule, based on the sampling distribution for the sample mean, must be used to determine if the phosphogypsum is acceptable for entry into commerce. This rule requires the determination of the critical value for a 5% level of significance in the upper, or right hand, tail of the sampling distribution. The critical value is the 95th percentile of the sampling distribution.

The decision rule has three outcomes. If the critical value is less than or equal to 10 pico-curies per gram (pCi/g), phosphogypsum from this area of the stack can be entered into commerce. (By definition, one curie of a given radionuclide experiences 37 billion nuclear decays per second. A pico-curie (pCi) is one trillionth of one curie.) If the mean of the collected samples is greater than or equal to10 pCi/g, phosphogypsum from this area of the stack cannot be entered into commerce. If the sample mean is less than 10 pCi/g and the critical value is greater than 10 pCi/g, the phosphogypsum cannot be entered into commerce unless further testing is undertaken. The sample size must be increased, and the sample mean and standard deviation recalculated. The increased sample size reduces the standard deviation of the sampling distribution of the mean, thereby, reducing the interval between the mean of the sampling distribution and the critical value. This increases the ability of the decision rule to distinguish between the mean of the sample and the 10 pCi/g concentration limit, thereby improving the chance that the radium-226 concentration can be shown to be less than 10 pCi/g.

The reason for determining the critical value for the upper, or right hand, tail of the sampling distribution is the concern that the radium-226 concentration in the phosphogypsum not be greater than 10 pCi/g.

If a larger sample size is needed to demonstrate that the sample mean is less than 10 pCi/g, the number of additional samples required increases rapidly as the mean approaches 10 pCi/g, and can be quite large in cases where the sample mean is only slightly less than 10 pCi/g. In such cases the additional cost of certification may become a factor in the decision to continue with the attempt to enter the phosphogypsum from this area of the stack into commerce.

Any required additional samples must also be taken from regularly spaced locations across the area of the phosphogypsum stack being considered for entry into commerce. Once the required number of additional samples have been collected, the radium-226 concentrations in each additional sample must be measured. The mean and standard deviation of the radium-226 concentrations for the entire set of sample concentrations (including those previously measured) must be recalculated and a new sampling distribution established. The critical value for a 5% level of significance in the upper tail is established once again. The decision rule must then be revisited. As before, phosphogypsum from this area of the stack can be entered into commerce only if the critical value is less than or equal to 10 pCi/g.

Although acceptance for entry into commerce is the objective of increasing the sample size and establishing the new sampling distribution and critical value, and is the expected outcome of the reconsideration, it is possible the recalculated critical value will not be less than or equal 10 pCi/g. This is because random variation in the new sample concentrations, which can result from nonuniformity in the distribution of radium-226 in the phosphogypsum and the random nature of radioactive decay, may cause an increased sample mean or standard deviation. Either or both of these increases can change the critical value so that it is not less than 10 pCi/g. If this is the case, either the sample size must be increased once again, and a new sampling distribution and critical value determined, or the attempt to certify that area of the stack for entry into commerce must be abandoned.

Judicial Review

This rulemaking action promulgates revisions of a national standard issued under Clean Air Act Section 112, 42 U.S.C. 7412. Any petition for judicial review of this action must be filed no later than April 5, 1999 in the United States Court of Appeals for the District of Columbia Circuit. Under Section 307(d)(7)(B) of the Clean Air Act, only those objections to this rule which were raised with reasonable specificity during the period for public comment or at the public hearing may be raised as part of such judicial review.

Regulatory Analyses

Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b). EPA has further determined that this final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's rule will have a positive economic impact on the great majority of entities regulated by subpart R, including small businesses. Specifically, this rule will allow greater quantities of phosphogypsum to be used and reduce costs of demonstrating compliance by removing certain regulatory requirements. No new restrictions, exclusions or limitations are being added. As such, this rule will lessen the regulatory burden on regulated entities, including small entities, which existed prior to today's action.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Today's final action contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local or tribal governments or the private sector.

Paperwork Reduction Act

There are no information collection requirements in this final rule.

Review Under Executive Order 12866

Under Executive Order 12866, 58 FR 51736 (October 4, 1993), EPA must determine whether a regulation is ''significant'' and therefore subject to review by the Office of Management and Budget. 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.

EPA has determined that this action does not meet any of the criteria enumerated above, and therefore does not constitute a ''significant regulatory action'' under the terms of the Order.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule 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.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

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.''

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

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 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

The National Technology Transfer and Advancement Act 2 of 1995 (NTTAA)

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Pub L. No. 104–113, is designed to encourage the

adoption of standards developed by ''voluntary consensus bodies'' in regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs agencies to provide Congress, through OMB, explanations when a decision is made not to use available and applicable voluntary consensus standards.

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

The Congressional Review Act (CRA)

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, U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective April 5, 1999.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Phosphogypsum, Radon, Radium.

Dated: January 27, 1999.

Carol Browner,

Administrator.

For the reasons set forth in the preamble, the Environmental Protection Agency amends 40 CFR part 61 as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7416, 7601 and 7602.

Subpart R—National Emission Standards for Radon Emissions From Phosphogypsum Stacks

2. Amend § 61.204 by revising the section title, introductory text, paragraph (c), paragraph (d), and adding paragraph (e) to read as follows:

§ 61.204 Distribution and use of phosphogypsum for outdoor agricultural purposes.

Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in outdoor agricultural research and development and agricultural field use if each of the following requirements is satisfied:

* * * * *

(c) All phosphogypsum distributed in commerce for use pursuant to this section by the owner or operator of a phosphogypsum stack shall be accompanied by a certification document which conforms to the requirements of § 61.208(a).

(d) Each distributor, retailer, or reseller who distributes phosphogypsum for use pursuant to this section shall prepare certification documents which conform to the requirements of § 61.208(b).

(e) Use of phosphogypsum for indoor research and development in a laboratory must comply with § 61.205.

3. Amend § 61.205 by revising the section title and paragraphs (a) and (b) to read as follows:

§ 61.205 Distribution and use of phosphogypsum for indoor research and development.

(a) Phosphogypsum may be lawfully removed from a stack and distributed in commerce for use in indoor research and development activities, provided that it is accompanied at all times by certification documents which conform to the requirements of § 61.208. In addition, before distributing phosphogypsum to any person for use in indoor research and development activities, the owner or operator of a phosphogypsum stack shall obtain from that person written confirmation that the research facility will comply with all of the limitations set forth in § 61.206(b).

(b) Any person who purchases and uses phosphogypsum for indoor research and development purposes shall comply with all of the following limitations. Any use of phosphogypsum for indoor research and development purposes not consistent with the limitations set forth in this section shall be construed as unauthorized distribution of phosphogypsum.

(1) Each quantity of phosphogypsum purchased by a facility for a particular research and development activity shall be accompanied by certification documents which conform to the requirements of § 61.208.

(2) No facility shall purchase or possess more than 7,000 pounds of phosphogypsum for a particular indoor research and development activity. The total quantity of all phosphogypsum at a facility, as determined by summing the individual quantities purchased or possessed for each individual research and development activity conducted by that facility, may exceed 7,000 pounds, provided that no single room in which research and development activities are conducted shall contain more than 7,000 pounds.

(3) Containers of phosphogypsum used in indoor research and development activities shall be labeled with the following warning: Caution: Phosphogypsum Contains Elevated Levels of Naturally Occurring Radioactivity.

(4) For each indoor research and development activity in which phosphogypsum is used, the facility shall maintain records which conform to the requirements of § 61.209(c).

(5) Indoor research and development activities must be performed in a controlled laboratory setting which the general public cannot enter except on an infrequent basis for tours of the facility. Uses of phosphogypsum for outdoor agricultural research and development and agricultural field use must comply with § 61.204.

* * * * *

4. Section 61.207 is revised to read as follows:

§ 61.207 Radium-226 sampling and measurement procedures.

(a) Before removing phosphogypsum from a stack for distribution in commerce pursuant to § 61.204, or § 61.206, the owner or operator of a phosphogypsum stack shall measure the average radium-226 concentration at the location in the stack from which phosphogypsum will be removed. Measurements shall be performed for each such location prior to the initial distribution in commerce of phosphogypsum removed from that location and at least once during each calendar year while distribution of phosphogypsum removed from the location continues.

(1) A minimum of 30 phosphogypsum samples shall be taken at regularly spaced intervals across the surface of the location on the stack from which the phosphogypsum will be removed. Let n_1 represent the number of samples taken.

(2) Measure the radium-226 concentration of each of the n_1 samples in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(3) Calculate the mean, $\bar{x}_1$, and the standard deviation, s_1, of the n_1 radium-226 concentrations:

$$\bar{x}_1 = \frac{\sum_{i=1}^{n_1} x_i}{n_1},$$

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_i - \bar{x}_1)^2}{n_1 - 1}},$$

Where $\bar{x}_1$ and s_1 are expressed in pCi/g.

(4) Calculate the 95th percentile for the distribution, $\bar{x}^*$, using the following equation:

$$\bar{x}^* = \bar{x}_1 + 1.64\left(\frac{s_1}{\sqrt{n_1}}\right),$$

Where $\bar{x}^*$ is expressed in pCi/g.

(5) If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.206, the owner or operator of a phosphogypsum stack shall report the mean, standard deviation, 95th percentile and sample size. If the purpose for removing phosphogypsum from a stack is for distribution to commerce pursuant to § 61.204, the additional sampling procedures set forth in paragraphs (b) and (c) of this section shall apply.

(b) Based on the values for $\bar{x}_1$ and $\bar{x}^*$ calculated in paragraphs paragraphs (a)(3) and (4) of this section, determine which of the following conditions will be met:

(1) If $\bar{x}_1 < 10$ pCi/g and $\bar{x}^* \leq 10$ pCi/g; phosphogypsum may be removed from this area of the stack for distribution in commerce pursuant to § 61.204.

(2) If $\bar{x}_1$, < 10 pCi/g and $\bar{x}^* > 10$ pCi/g, the owner or operator may elect to follow the procedures for further sampling set forth in paragraph (c) of this section:

(3) If $\bar{x}_1 \geq 10$ pCi/g; phosphogypsum shall not be removed from this area of the stack for distribution in commerce pursuant to § 61.204.

(c) If the owner or operator elects to conduct further sampling to determine if phosphogypsum can be removed from this area of the stack, the following procedure shall apply. The objective of the following procedure is to demonstrate, with a 95% probability, that the phosphogypsum from this area of the stack has a radium-226 concentration no greater than 10 pCi/g. The procedure is iterative, the sample size may have to be increased more than one time; otherwise the phosphogypsum cannot be removed from this area of the stack for distribution to commerce pursuant to § 61.204.

(1)(i) Solve the following equation for the total number of samples required:

$$n_2 = \left(\frac{1.64 s_1}{10 - \bar{x}_1}\right)^2.$$

(ii) The sample size n_2 shall be rounded upwards to the next whole number. The number of additional samples needed is $n_A = n_2 - n_1$.

(2) Obtain the necessary number of additional samples, n_A, which shall also be taken at regularly spaced intervals across the surface of the location on the stack from which phosphogypsum will be removed.

(3) Measure the radium-226 concentration of each of the n_A additional samples in accordance with the analytical procedures described in 40 CFR part 61, appendix B, Method 114.

(4) Recalculate the mean and standard deviation of the entire set of n_2 radium-226 concentrations by joining this set of n_A concentrations with the n_1 concentrations previously measured. Use the formulas in paragraph (a)(3) of this section, substituting the entire set of n_2 samples in place of the n_1 samples called for in paragraph (a)(3) of this section, thereby determining the mean, $\bar{x}_2$, and standard deviation, s_2, for the entire set of n_2 concentrations.

(5) Repeat the procedure described in paragraph (a)(4) of this section, substituting the recalculated mean, $\bar{x}_2$, for $\bar{x}_1$, the recalculated standard deviation, s_2, for s_1, and total sample size, n_2, for n_1.

(6) Repeat the procedure described in paragraph (b) of this section, substituting the recalculated mean, $\bar{x}_2$ for $\bar{x}_1$.

[FR Doc. 99–2545 Filed 2–2–99; 8:45 am]
BILLING CODE 6560–50–P

Federal Register

Wednesday
February 3, 1999

Part VIII

The President

Proclamation 7164—National Consumer Protection Week, 1999

Federal Register
Vol. 64, No. 22
Wednesday, February 3, 1999

Presidential Documents

Title 3—

The President

Proclamation 7164 of January 29, 1999

National Consumer Protection Week, 1999

By the President of the United States of America

A Proclamation

Consumers are too often the target of unfair, deceptive, or fraudulent practices. Modern advances in telecommunications and marketing technology have dramatically increased both the sophistication and the potential threat of such practices. Perpetrators of fraud can reach consumers across the country through the Internet, on television, the telephone, or by direct mail, misrepresenting themselves as legitimate business people. Because their proposals appear legitimate, these unscrupulous operators frequently succeed in cheating vulnerable consumers out of hard-earned dollars.

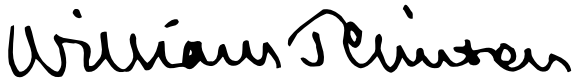
One of the most damaging fraudulent practices is credit fraud. Credit fraud—stealing credit cards or credit identities and cheating consumers through deceptive or abusive lending practices—can be difficult to recognize. Fraudulent credit transactions are often complicated and can occur when perpetrators hide or fail to disclose essential information to consumers. By stealing consumers' credit identities, criminals can run up huge debts and ruin their victims' credit records. And credit fraud costs all of us in higher interest rates and fees.

The best defense we have against credit fraud is education. The Federal Trade Commission (FTC), the National Association of Consumer Agency Administrators, the U.S. Postal Inspection Service, the American Association of Retired Persons, the National Consumers League, the Consumer Federation of America, and the National Association of Attorneys General are working in partnership to inform Americans about the dangers of credit fraud. As part of this effort, the FTC and its partners offer information on-line, by telephone, and in writing to alert consumers about the warning signs of credit fraud and how to protect themselves against it. The FTC, in cooperation with State Attorneys General and the Internal Revenue Service, is also actively prosecuting credit fraud cases that target some of our most vulnerable citizens.

I encourage all Americans to learn more about credit fraud, to read their credit reports carefully, to protect such personal information as their bank account, credit card, and Social Security numbers, and to know how to recognize the characteristics of fraudulent proposals. By using credit wisely and remaining alert to the possibility of credit fraud, we can better protect the well-being of our families and preserve our financial health and security.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim January 31 through February 6, 1999, as National Consumer Protection Week. I call upon government officials, industry leaders, consumer advocates, and the American people to participate in programs that foster credit literacy and raise public awareness about the dangers of credit fraud and other deceptive and fraudulent practices.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of January, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 99–2717
Filed 2–2–99; 8:45 am]
Billing code 3195–01–P

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Federal Register

Vol. 64, No. 22

Wednesday, February 3, 1999

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FEDERAL REGISTER PAGES AND DATES, FEBRUARY

CFR PARTS AFFECTED DURING FEBRUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

49 CFR

23.....5096
26.....5096
1002.....5191
1312.....5194

Proposed Rules:

192.....5018
195.....5018
244.....4833
571.....4834, 5259

50 CFR

600.....5093
622.....5195
648.....5196
679.....4790, 5198

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT FEBRUARY 3, 1999

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
High Seas Fishing Compliance Act; implementation:
Vessel identification and reporting requirements; published 1-4-99

COMMODITY FUTURES TRADING COMMISSION
Commission records and information; open commission meetings; published 1-4-99

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Copper-ethylenediamine complex; published 1-4-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Monensin; published 2-3-99

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Experienced miner and supervisor training; published 10-6-98

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Aircraft:
Turbine engine powered airplanes—
Emission standards and revised test procedures; published 2-3-99
Airworthiness directives:
Airbus; published 1-19-99
Bell Helicopter Textron Canada; published 1-19-99
Empresa Brasileira de Aeronautica S.A.; published 1-29-99
McDonnell Douglas; published 1-19-99
Schweizer Aircraft Corp.; published 1-19-99

TREASURY DEPARTMENT
Customs Service
Customs with Canada and Mexico:
Land border carrier initiative program; published 1-4-99

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Taxpayer Relief Act—
Roth IRA's; published 2-4-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Poultry carcasses from regions where exotic Newcastle disease exists; comments due by 2-8-99; published 12-9-98
Plant-related quarantine, foreign:
Fruits and vegetables; importation—
Grapefruit, lemons, and oranges from Argentina; comments due by 2-11-99; published 12-4-98
Grapefruit, lemons, and oranges from Argentina; comments due by 2-11-99; published 10-16-98

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food distribution programs:
Indian households in Oklahoma; waiver authority; comments due by 2-8-99; published 1-8-99

AGRICULTURE DEPARTMENT
Rural Utilities Service
Telecommunications standards and specifications:
Materials, equipment, and construction—
Central office equipment contract (not including installation) (RUS Form 545); comments due by 2-9-99; published 12-11-98

COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
Specially designated terrorists and foreign terrorist organizations; exports and reexports; foreign policy controls; comments due by 2-8-99; published 1-8-99

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock catcher/processors; observer and inseason management requirements; comments due by 2-8-99; published 1-22-99
Atlantic coastal fisheries—
Atlantic lobster; comments due by 2-10-99; published 1-15-99
Magnuson-Stevens Act provisions—
Pacific Coast groundfish fishery specifications and management measures, etc.; comments due by 2-8-99; published 1-8-99
Pacific Coast groundfish fishery specifications and management measures, etc.; correction; comments due by 2-8-99; published 2-2-99
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish; comments due by 2-8-99; published 1-8-99

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Voluntary consensus standards use (OMB Circular A-119); comments due by 2-8-99; published 12-10-98
Personnel:
Former operatives incarcerated by Democratic Republic of Vietnam; compensation; comments due by 2-8-99; published 12-10-98

ENVIRONMENTAL PROTECTION AGENCY
Acquisition regulations:
Contractor proposal evaluations; comments due by 2-8-99; published 12-9-98
Air pollutants, hazardous; national emission standards:
Amino/phenolic resins; comments due by 2-12-99; published 12-14-98
Air pollution; standards of performance for new stationary sources:
Synthetic organic chemical manufacturing industry wastewater; volatile organic compounds; comments due by 2-8-99; published 12-9-98
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 2-10-99; published 1-11-99
Florida; comments due by 2-8-99; published 1-7-99
Consolidated Federal air rule:
Synthetic organic chemical manufacturing industry; comments due by 2-10-99; published 1-14-99
Drinking water:
National primary drinking water regulations—
Small public water systems; unregulated contaminant monitoring requirements; suspension; comments due by 2-8-99; published 1-8-99
Small public water systems; unregulated contaminant monitoring requirements; suspension; comments due by 2-8-99; published 1-8-99
Hazardous waste program authorizations:
Utah; comments due by 2-12-99; published 1-13-99
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cytokinins, etc.; comments due by 2-8-99; published 1-8-99
Water pollution; effluent guidelines for point source categories:
Industrial laundries; comments due by 2-8-99; published 12-23-98

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations—
Chartered territories; comments due by 2-8-99; published 11-9-98

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Massachusetts; comments due by 2-8-99; published 12-28-98